"CORRECTIVE TECHNIQUES IN CRIMINAL JUSTICE SYSTEM"

DISSERTATION

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DESIGNATION

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LUCKNOW

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LL.M.

(Criminal and Security Law)

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LIST OF ABBRIVETION

A.I.R.	:	All India Reporter
SCC	:	Supreme court cases
H.C.C	:	High court cases
HC.	:	High court
SC	:	Supreme court
CAPT.	:	Captain
e.g.	:	Example
I.P.C.	:	Indian Penal Code
Prof.	:	Professor
S.	:	Section
U.S.A.	:	United States of America
V.	:	Versus
i.e,	:	That is
ART	:	Article

LIST OF CASES

- Sebastian Hongrey v. Union of India AIR 1984 SC 1026
- Sunil Batra v. Delhi Administration, AIR 1978 SC 1675
- RatanLal v. State of Punjab AIR 1965 SC 444
- Punch v. State of Orrisa 1993 Cri LJ 953
- Charlev Sobraj v. Superintendent, Central Jail, Tihar, A.I.R. 1978 S.C. 1514
- Subhash Chander v. State (Chandigarh Admn.), (1980) 2 SCC 155.
- Public Prosecutor v. Mandangi Varjuno, 1976 Cr LJ 46 (AP).
- Mohammed Giasuddin v. State of Andhra Pradesh, A.I.R. 1977 S.C.1926
- State Tr. P. S. Lodhi Colony, New Delhi v. Sanjeev Nanda (2012) 7 SCC 120
- D.K. Basu v. State of West Bengal 1997 Cr.L.J. 743
- Bhoop Ram V. State of UP AIR1989 SC 34
- Sanjay Suri V. Delhi Administration, (1988) Cr. LJ 705
- Mohd. Gaisuddin V. State of Andhra Pradesh, AIR 1977 SC 1925.
- Bhikhabhai Devshi V. State of Gujarat, AIR 1987 Guj. 136
- Samshuddin v. State of Haryana, 2004(2) R.C.R. (Cr.)
- Ramesh Dass v. Raghu Nath, A.I.R. 2008 S.C.
- Banwari v. State of Haryana, 2004(2) R.C.R. (Cr.) (P. & H.)
- Ramesh Dassww v. Raghu Nath, A.I.R. 2008 S.C
- Guhar v. State of M.P., (2007) 1 S.C.C. (Cr.) 395 at p
- Rattan Lal v. State of Punjab, A.I.R. 1965 S.C. 444
- Joginder Kumar v. State of U.P. 1994 Cri L.J. 1981
- State of U.P. v. Ram Sagar Yadav, AIR 1985 Sc 416
- Somnath Puri v. State of Rajasthan, AIR. 1972 S.C. 1490
- A.R.Antulay v. R.S.Nayak, A.I.R. 1988 S.C. 1531
- Babu Singh v. State of Uttar Pradesh, 1978 SCR (2) 777
- Pappu Khan v. State of Rajasthan, 2005 Cri LJ 4732 (SC

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1. INTRODUCTION

A person is not a born criminal. It is due to his association with bad company that often leads him into trouble. A person is always capable of reforming provided he sees his release in the society as a reward for it. If no such temptation is provided to accused persons, he will never try to reform himself and always languish in jails. This often leads to overcrowding of prisons and serious health issues arise in the prisons. It is to be noted that the corrective methods are required for the accused persons and not for under-trials.[1] A mechanism has to be prepared for separating under trials from convicts. Due to various corrective measures a convict can be reformed and be released in the society because it is always better to reform a convict than to punish a person who is already repenting for his wrongdoing.[2] It is ultimately the fight against crime and not criminals.[3]

The history of the treatment of criminals or its reformation or reformatory measurers take-up in prison is primarily the story of man's inhumanity to man. At the same time it contains innumarable examples of his compassion and of his will to lead the offender into a new life as a useful and responsible citizen. According to Torsten Erikson (1976) The treatment of deviant behavior and criminals through the ages is a fascinating tale not least when we realize that much of what we think has already been through by others, that what we say has been said before, that what we do has already been done and in days when resources were criminal in comparison with out own, that the same ideas have been conceive, expressed and executed by reformers who encountered much stronger opposition and were in much smaller minority than any present day reformers need experience During the long complex history of penal actions against the deviants, all types of reactions have been implied atone time or another, offend have been subjected to death or torture and social humiliation such as stocks & pillories, banishment and transportation, imprisonment and financial penalties.

(Don .C. Gibbons,1970).

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[1]Chakrabarthi, N.K., *Institutional Corrections in the Administration of Criminal Justice*, 34-35(New Delhi: Deep & Deep Publications Pvt. Ltd. 1999).
[2]*ibid*
[3]*ibid*

As early as in 1597 jails were established, the jails of old times were miserable places, men women and children, first offenders, casual offenders and habitual were all hurled together. Prisons in the modem sense of the term were unknown in the medieval times, a prison could be incarcerated while trail was pending. In the words of Dr..F.J.C.Hearshaw, Prison were "totally unlighted and unwarned, dump and vermin infested, lack of sanitation and without any furniture without education, they were veritable anti-chambers of the grave" (M.J.Sethan,1989).

In the modem age the concepts and mode of punishment are in accumulation through the ages. New ideas and patterns of punishment have come into circulation while, others have lost the currency, where as at present in all over the world criminologist, penologist are more concerned towards the reformation of criminals instead of punishing them.As per the (W.C Reckless 1940), the reason why society punishes are bound up with several conceptions, attitudes and values as well as with more recent justifications and motives. As given by Professor Reckless,

"some of the still existing justifications of punishment, some of them antique, and some of them more recent in origin, may be listed as follows

a) Retribution
b) Atonement
c) Deterence
d) Protection
e) Reformation.

These stereotyped rationalized justifying the use of punishment, are current in the modern society today" (Reckless W.C 1940).

This research will be concerned with the criminal justice system in India and how corrections as a discipline, fits into its system. Because there are many areas wherein different component of criminal justice interrelate, it would be desirable to coordinate planning and working between those components. In, practice, unfortunately, and in most jurisdictions there is a very little coordination between the different components of criminal justice system[4]. Criminal Justice refers to the agencies of government charged with enforcing law,

[4]Chauhan, B., & Srivastava, M., *Change and Challenges for Indian Prison Administration*, 69-86, (The Indian Police Journal, Vol, LV111 (1). Jan-Mar, 2011).

adjudicating crime, and correcting criminal conduct.[5] The criminal justice system is essentially an instrument of social control: society considers some behaviours so dangerous and destructive that it either strictly controls their occurrence or outlaws them outright. It is the job of the agencies of justice to prevent these behaviours by apprehending and punishing transgressors or deterring their future occurrence.[6] Although society maintains other forms of social control, such as the family, school, and church, they are designed to deal with moral, not legal, misbehaviour. Only the criminal justice system has the power to control crime and punish criminals.

The successful rehabilitation of the offender is the responsibility of the criminal justice system. The object of punishment in the scheme of the modern social defence is correction of the wrong doer who in many cases may be a mere manifestation of a deep rooted psychosocial maladjustment for which the society itself may be responsible in a number of ways.[7] Therefore there is the shift in the criminal administration system from crime to criminal. The acceptance of the notion that crime was a moral disease have had its effects in the field of criminal justice administration and the rehabilitative theory and corrective techniques brought to the forefront of all theories of punishment [8]

All India Committee on Jail Reforms (1980-83)[9] emphasized that imprisonment is not always the best way to meet the objectives of punishment, the government shall endeavor to provide in law new alternatives to imprisonment such as community services, forfeiture of property, payment of compensation to victims, public censure etc. in addition to the ones already existing. Different treatment approaches are necessary because programmed treatment cannot be equally applicable to all types of offenders, treatment modalities should not be constant for all the offenders in all geographical areas and circumstance

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.[10] 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

[5]Chakrabarthi *Supra* note 1 at pg 35
[6]*ibid*
[7]Chakrabarthi *Supra* note 1 at pg 36
[8] Saghir Ahmad and Another v. JamiaMilliaIslamia UniversityMANU/DE/1152/2002; Nitin Saxena v. State &AnotherMANU/DE/2498/2010
[9] Donald T. Shanahan, *the Administration of Justice: An Introduction.*317-318 (Holbrook Press Inc., Boston). Cited in S.P. Singh Makkar, ―*Correctional Objectives of Prison: A Critique on Justice Krishna Iyer's Correctional Meditation*‖ 39 PULR 143 (1992)
[10]*Ibid*

prevention of crime through reform and rehabilitation of the offenders. Various corrective measures we have in India are open prisons, concept of parole, probation, prison labour etc. This research attempts to examine the problems and prospects of correction methods in the context of Indian conditions.

1.1. Research Problem

In this research work prime focus is to analyse the criminal justice system and how correctional techniques work in order reform a criminal and what are the problems which may exist to restore such criminal in the society. To analyse the difficulties which are faced by criminal, after or during, completion of prescribed imprisonment.

1.2. Objective of the research

Researcher has conducted descriptive research work on the basis of set objectives, the objectives are as follows:

- To study the criminal justice system and further explore the effectiveness of correctional techniques.
- To study about the adjustment level of offenders in society and how they can be reformed as they say, hate the crime and not the criminal.
- To study the way of implementation of correctional techniques in criminal justice system.

1.3. Research hypothesis

In consistence with the objectives, following hypotheses have been formed by the researcher:

- Criminal justice system has changed its focus from crime to criminal
- Usage of corrective techniques in reforming the criminal is one of the best way in which a crime can be prevented to make society a better place
- Although the methodology used by Indian Prison system has been the effective one but there are certain limitations which are to be dealt with.

1.4. Research Methodology

Research Methodology adopted is doctrinal method of researching. Approach to research has been focused on case-law, statutes and other legal sources. Further, in this research worker both qualitative and quantitative research work has been analysed to arrive at the conclusion. Different means of doctrinal methods are used to analyse the criminal justice system while focusing on correctional techniques.

1.5. Literature review

1. **Paranjape:** A scholarly work by Dr. N.V. Paranjape, providing a clear and comprehensive explanation of the basic principles of Criminology, Penology and Victimology. An attempt has been made to evaluate the latest developing trends in the field, taking stock of contemporary changes of the new millennium which are taking place in other parts of the globe notably, Britain and United States without, however, losing sight of the Indian perspective. Accessibly written for a wide audience, the book serves as a definitive reference for scholars and a broad survey for students in criminology and criminal justice.
2. **Khadish H.S. Encyclopaedia**- legal encyclopedia is a comprehensive set of brief articles on legal topics. It is arranged similarly to a general encyclopedia, such as *Encyclopedia Britannica*, with topical articles arranged in alphabetical order. In the final volume(s) of most legal encyclopedias is an index.
3. **Reckless W.C** : Walter C. Reckless is one of the most recognized criminologists of the past century, though this nearly was not the case for this three-time president of the American Society of Criminology (1964, 1965, and 1966). And has presented a magnificent work in his book regarding behaviour of criminals
4. **Shaw Clifford R**: Sociological studies of prisons have been conducted only since the 1940's. Most studies have been conducted on a single prison. These case studies often provide conflicting images of important characteristics of prison structure (such as program availability and quality, or physical condition of prisons) and prison life (for example, the extent of violence,drug use, and homosexuality). Generalization about

prison life based on any one institution are suspect Moreover, since prisons are constantly changing even valid generalizations are valid only for short periods

5. **Easton Susane & Piper C**: The particular complexities of this crime/unemployment relationship have been clarified to an extent by studies which have focused specifically on the employment status of offender populations rather than on the more general crime/unemployment nexus. A number of studies have contended that for offenders who succeed in moving out of a criminal lifestyle, employment plays a central role.
6. **Justice Krishna Iyer**: retirement championed the cause with renewed fervor. In particular he has highlighted neglected field of prison jurisprudence. In the seventies and early eighties he transformed Indian prison jurisprudence and a few other judges inspired by him contributed to this change. By the time of his retirement in the mid eighties he had led India through a decade of forensic change. The issue of prison conditions and environment has emerged as one of the predominant themes of correctional philosophy, raising questions concerning inmate's rights and the blight of prison life. Justice Krishna Iyer was socially conscious Judge, resourceful, versatile and experimental, dealt with human problems to a complex background of modernity and tradition. The extraordinarily contribution of Justice Krishna Iyer can not be unheeded.
7. **Suresh Bada Math**: Much of the discussion concerning the literature on prison based job training and prerelease programmes refers to the lack of rigorous evaluation of such programmes has been made in his book.
8. **Dass S**: The analysis of the United Nations data refutes the hypothesis of larger police and prison workforce in authoritarian countries and larger judicial staff in liberal democracies. Instead, democracy increases both the personnel strength of the courts and that of the police and the prisons. The author proposed that there exists a strong relationship between democracy and increased criminal case attrition.
9. **Chauhan, B., & Srivastava, M**: In criminal law, fundamental constitutional rights to an individual in court sharply limit the occurrence of procedural aggregation, such as joinder, during trials. Courts now aggregate criminal cases, and they do so without violating constitutional rights, by joining cases only before trial and during appeals.
10. **Bhusan V**: A synopsis of the ‘prison effects’ debate will be provided, following which research topics attracting more recent interest will be explored. The terms ‘life sentence prisoner’ and ‘lifer’ will be used interchangeably to reflect their use both

within the literature and among prisoners themselves. The aims of the review are to illuminate the most dominant research trends in relation to life sentence prisoners and to identify gaps in the empirical research base.

11. **Chakrabarthi, N.K.**: It has been repeatedly felt since long that there is an immediate need to have a national policy on prisons. The Ministry of Home Affairs, Government of India had constituted a working Group on Prisons in 1972 which for the first time emphasized the need to have a national policy on Prisons salient features has been discussed.
12. **Prasad S**: Put simply, sociologists pointed to the psychological harms inherent in the power of institutions while psychologists argued that incarceration had little lasting impact on individuals. Long-term prisoners became an obvious focus of research attention given the presumption that detrimental effects were likely to accumulate over length of time served.
13. **Justice M. Rama Joshi**: basic human needs must be satisfied before engagement in therapeutic work becomes a priority. Given that lifers are under extreme pressure to engage in personal development in order to increase their hopes of release, it would be useful to explore how they manage the tension between unmet needs has been discussed in his book.
14. **Norman J**: detailed discussion how important is the function of the corrections system is the deterrence of crime has been discussed in this book. Focus is done on the premise is that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses.
15. **Chauhan, B., & Srivastava, M**: argued that the transformation of justice administration in democratic countries is a transition from a crime control to a due process orientation
16. **Chakrabarthi, N.K**: a brief comment on the role of judiciary in criminal judicial system was done. A sensitive judiciary could take cognizance of social realities while interpreting the provisions of the law and could be more assertive while protecting and promoting the interests of the beneficiaries of the legislation and how it affects the criminals.
17. **Donald T. Shanahan**: aid shall to prisoners to seek justice from prison authorities, and, if need be to challenge the decision in court- in cases where they are too poor to secure on their own. If lawyer's services are not given, the decisional process

becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase. Further, their condition were discussed in detailed

18. **G.Robinson & I. Crow**: Access to Justice and fair treatment is the first category of rights under the U.N Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. The researcher had gone through the literature and could perceive that the justice system was more prone to favour the offender than the victim by way of procedural delays, disproportionate sentencing, and room for technical flaws both in investigation, forensic findings, etc., punishments were high where the system was under sharp scrutiny. The system got diluted in rendering justice due to various factors. It is pertinent, in this context, to look at these studies that can contribute to better access to justice for victims. A brief summary of each is given below.

2. HISTORY OF INDIAN CRIMINAL JUSTICE SYSTEM

RigVed mentions that punishment of a thief rested with the very person wronged. In early society the victim had himself (as there was no State or other authority) to punish the offender through retaliatory and revengeful methods; this was, naturally, governed by chance and personal passion.[11] Gradually, individual revenge gave way to group revenge and the crime against a man became a crime against group of men i.e society. Further society necessitated consensus on ideals and the formulation of rules of behavior to be followed by its members. These rules defined the appropriate behavior and the action that was to be taken when members did not obey the rules. This code of conduct, which governed the affairs of the people, came to be known as Dharma or law.

In the very early period of the Indian civilization great importance was attached to Dharma. Everyone was acting according to Dharma and there was no necessity of any authority to compel obedience to the law[12]

There existed an ideal society wherein members of the society respected each others right. Following verses indicates that such society did exist in the earlier times-

"There was neither kingdom nor the King; neither punishment nor the guilty to be punished."[13]

"People were acting according to Dharma; and thereby protecting one another"[14]

However, the ideal stateless society did not last long. While the faith in the efficacy and utility of Dharma, belief in God and the God fearing attitude of people continued to dominate the society, the actual state of affairs gradually deteriorated. A situation arose when some persons began to exploit and torment the weaker sections of society for their selfish ends.[15] Tyranny of the strong over the weak reigned unabated. This situation forced the law abiding

[11] Choudhuri, Mrinmaya, *Languishing for Justice, Being A Critical Survey of the Criminal Justice System*, 54-55, (Dattsons Nagpur, 2004).
[12] Justice M. Rama Joshi, *legal and constitutional history of India*, 575-76, ed-7th, (New Delhi: universal law publications co., 2010).
[13] *Ibid*
[14] *Ibid*
[15] Tripathi Rahul, *Evolution of criminal justice system in ancient India*, 153-157, (International Journal of Multidisciplinary Research and Development, Volume 5; Issue 1; January 2018);
(visited on 21, April, 2020) http://www.allsubjectjournal.com.

people to search for a remedy. This resulted in the discovery of the institution of King and establishment of his authority over the society, which came to be known as the State.[16]

Administration of justice is one of the most essential functions of the state.[17] A State consists of three organs, the legislature, the executive and the judiciary. The judiciary, it has been said, is the weakest of the three organs. It has neither the power of the purse nor the power of the sword, neither money nor patronage, not even the physical force to enforce its decisions. Despite that, the courts have by and large enjoyed high prestige amongst and commanded respect of the people. This is so because of the moral authority of the courts and the confidence the people have in the role of the courts to do justice between the rich and the poor, the mighty and the weak, the state and the citizen, without fear or favor.

The judicial system deals with the administration of the laws through the agency of the courts. The system provides the machinery for the resolving of the disputes on account of which the aggrieved. Party approaches the courts. Nothing rankles in human heart more than a brooding sense of injustice. No society can allow a situation to grow where the impression prevails of there being no redress for grievances.

History of our judicial system takes us to the hoary past when Manu and Brihaspati gave us Dharam Shastras, Narada the Smritis, and Kautilya the Arthshastra.[18] The elements of state administration signifying rule by a King with the help of his advisers or assistants may be traced back to the early Vedic period. In the Rig-Veda the King is called Gopa janasya or protector of the people. This implies that he was charged with the maintenance of law and order. According to the Dharma sutras and the Arthashastra, it was the duty of the King to ensure the security and welfare of his subjects.[19] Salient features of the criminal justice system as evolved and prevailed during ancient India are described below.

2.1. Concept of Dharma (Law)-

Dharma is the Indian version of Natural law, how Indians perceived it in ancient society but the vision of them was very far-fetched and is praised by many imminent personalities like

[16] *Ibid*
[17] S.D. Sharma, *Administration of Justice in Ancient India*, 170, (New Delhi: Harman Publishing House, 1988)
[18] *Ibid*
[19] Tripathi Rahul, *Supra* note 15, at 133.

Max Muller.[20]Dharma is a special attribute of man. Bereft of dharma, man is equal to animal. The Vedas are considered as the 'first source of dharma'. Dharma constitutes the foundations of all affairs in the world. Everything in this world is founded on dharma and it is therefore, considered 'supreme'. Commandants of dharma like nature's laws, admit of no meddling.[21]

It has been emphasized that those who exercise political power must wear the hand glove of dharma and 'principles of dharma governs every sphere of activity including governance of the country[22]

The Hindu legal system was embedded in Dharma as propounded in the Vedas, Puranas, Smritis and other works on the topic. Dharma, i.e. law, constituted the blue print or master-plan for all round development of the individual and different sections of the society. The following verse describes the importance of the Dharma (law):

"Those who destroy Dharma get destroyed. Dharma protects those who protect it. Therefore Dharma should not be destroyed."[23]

The law was recognized as a mighty instrument necessary for the protection of the individual's rights and liberties. Whenever the right or liberty of an individual was encroached upon by another, the injured individual could seek the protection of the law with the assistance of the King, howsoever powerful the opponent might be. The power of the King to enforce the law or to punish the wrong doer was recognized as the force (sanction) behind the law, which could compel implicit obedience to the law.[24]

2.1. Sources of Dharma

The Veda was the first source of Dharma in ancient India. The Dharma sutras, Smritis and Puranas were the other important sources. Subsequently the Mimamsa (art of interpretation) and the Nibandhas (commentaries and digest) also became supplementary sources of law. Whenever there was conflict between Vedas, Smritis and Puranas, what was stated in the Vedas was to be taken as authority [25]

[20] Rawls, John. *A Theory of Justice*, 124-125 (Cambridge, Mass: Belknap Press of Harvard University Press, 1971).
[21]*Ibid.*
[22] Choudhuri, Mrinmaya, *Supra* note 11 at pg.6.
[23] Gupta R.K., *Ethics, Integrity and Aptitude,* 32-37(New Delhi, Prabhat Prakashan 2006).
[24] *Ibid.*
[25] Kumar, Dr. Surendra, *Manu Smriti*, 6-7 (Arsh Sahitya Prachar Trust, New Delhi).

The Vedas are four in number, viz. the Rig Veda, the Yajur Veda, the Sam Veda and the Atharva Veda. As per Wilkins, among the Vedas, the RigVeda is the oldest, next in order was the Yajur-Veda, then the Sama-Veda and last of all the Atharva-Ved[26]

The Dharmashastras laid down the law or rules of conduct regulating the entire gamut of human activity. This necessarily included civil and criminal law. The earlier works, which laid down the law in the form of sutras, were divided into three classes, viz. Srauta sutras, Grihya sutras and Dharma sutras. The Dharma sutras dealt with civil and criminal law. The important Dharma sutras, which were considered as high authority, were of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishnu. These Dharma sutras, therefore, can be regarded as the earliest works on Hindu legal system[27]

The next important source of the Hindu law was the Smritis. The compilation of the Smritis resembles the modern method of codification. All the legal principles scattered in the Vedas and also those included in the Dharma sutras as well as the custom or usage which came to be practised and accepted by the society were collected together and arranged subject wise in the Smritis.[28] The important Smritis are the Manu Smriti, the Yajnavalkya Smriti, the Narada Smriti, the Parashara Smriti and the Katyayana Smriti

However, later on, with passage of time, as it came to be recognized that in case of conflict between the law laid down in the Shrutis (Vedas) or the Smritis and the Dharmanyaya, i.e. King's law, the latter prevailed.

In addition to the literary works of the Hindu law, the customs and usages were also considered as law to administer justice. The Katyayana Smriti also provided that in the absence of a provision in the texts, a King should follow the usage. The Yajnavalkya Smriti prescribed that where two Smritis conflicted, principles of equity as determined by popular usages should prevail. The Narada Smriti mentioned: "When it is impossible to act up to the precept of sacred law, it becomes necessary to adopt a method on reasoning because custom decides everything and overrules the sacred law." From these provisions in the Smritis it is inferred that a practice had evolved to recognize the prevailing customs and local usage as authority during ancient India.[29]

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[26] Rangarajan LR . *Kautilya -The Arthashastra*, 377.
[27] *Ibid*
[28] Choudhuri, Mrinmaya, *Supra* note 11 at pg.8
[29] Rangarajan LR, *Supra* note, 26, 380

As time elapsed the customs and usage had not only become the laws but also achieved superiority over the sacred law as found in the Vedas. As regards the residuary matters, the power was vested with the King. It was provided that in cases where no principle of law was found in the Shruti, Smritis or custom, the King should decide according to his conscience. As acknowledged by the Smritis themselves, they were based partly on usage, partly on regulations made by the rulers and partly on decisions arrived at as a result of experience.[30]

2.2. King and Courts

Administration of justice, according to the Smritis, was one of the most important functions of the King. The Smritis stressed that the very object with which the institution of kingship was conceived and brought into existence was for the enforcement of Dharma (law) by the use of might of the King and also to punish individuals for contravention of Dharma and to give protection and relief to those who were subjected to injury.[31]

The Smritis greatly emphasized that it was the responsibility of the King to protect the people through proper and impartial administration of justice and that alone could bring peace and prosperity to the King himself and to the people as well The King's Court was the highest court of appeal as well as an original Court in cases of vital importance to the State. In the King's Court, the King was advised by the Chief Justice and other judges, Ministers and elders, and representatives of trading community. Next to the King's Court was the Court of Chief Justice, which consisted of a board of Judges to assist him. In towns and districts the courts were presided over by the State officers, under the Authority of the King, to administer justice. Ashoka entrusted Mahamatras with the task of invigilation of the town judiciary by means of periodical tours.[32]

2.3. Judicial System in Villages

The criminal justice system of ancient India was so organized that every villager had easy and convenient access to a judicial forum. In Vedic society the village Samitis and Sabhas were two important instruments of Indian polity.[33] The Village Councils, similar to modern Panchayats, consisted of a board of five or more members to dispense justice to villagers. The administration of justice was largely the work of these village assemblies or other popular or communal bodies.[34] Village headman had the authority to levy fines on offenders. There were

[30] Tripathi Rahul, Supra note 15, pg 34.
[31] *Ibid*
[32] Rangarajan LR, Supra note 26, pg 35.
[33] Kumar, Dr. Surendra , *Supra* note 25, pg.4 -6.
[34] *Ibid*

several village committees, including a justice committee, appointed by people's vote.Village Council dealt with simple civil and criminal cases. Other criminal cases were presented before the central court or the courts in towns and district headquarters presided over by the government officers under the Royal authority to administer justice.

2.4. Police

The first institution of state police may be traced to the preMauryan period. Its full development is recorded in Kautilya's Arthashastra. It mentions that the police during ancient India was divided in two wings, namely, the regular police and the secret police. The regular police consisted of three tiers of officials: the Pradesta (rural) or the Nagaraka (urban) at the top, the rural and urban Sthanikas in the middle and the rural and urban Gopas at the bottom. In the course of his description of the Pradesta's duties, Kautilya tells how an inquest was held in case of sudden death.[35] This involved a post-mortem examination of the body as well as thorough police investigation. In Kautilya's work the secret police is divided into two categories namely, the peripatetic and the stationary. The Manu Smriti prescribed instructions for the King to detect offences with the help of soldiers and spies. The Katyayana Smriti mentions of informant and investigating officer. This suggests that an agency like modern police existed during that period to assist the King in administration of justice.[36]

2.5. Crime and Investigation

Violation of criminal laws was considered an offence against the State. Any member of the public could bring the violation to the notice of the King and the King was under a duty to apprehend and punish the offender. It was provided that the King should take cognizance on his own, with or without any complaint by a private party, of criminal offences.[37] The information or complaint about the offence committed by any individual could be made by any citizen and not necessarily by the person injured or his relatives.[38]The person, who on his own accord detected commission of offences and reported to the King, was known as stobhaka, i.e.informant. He was entitled to remuneration from the King for giving first information. A person who was appointed by the King to detect commission of offences was called Suchaka, i.e. Investigation Officer. The special responsibility of the King in the matter of controlling crimes, detection of crimes and punishing the offenders was stressed in the

[35] *Ibid*
[36] Tripathi Rahul, Supra note, 5
[37] Wilkin WJ. *Hindu Mythology*, 2, 90 -91.
[38] *Ibid*

Manu Smriti that contained the following guidelines for the King: Persons who commit offences or who conspire to commit[39]

i. offences are generally found in assembly houses, hotels, brothels, gambling houses, etc.; The King must post soldiers and spies for patrolling such
ii. places and in order to keep away thieves and antisocial elements; and He should appoint reformed thieves who were formerly
iii. associate with such doubtful elements and through them offenders must be detected and punished.

2.6. Jails

Like the institution of the state police, that of the state jail also begins with the pre-Mauryan period. It was provided that a jail should be constructed in the capital providing separate accommodation for men and women and it should be guarded.[40] It was also prescribed that the prisoners should be employed in useful work. The policy of taking a sympathetic view, as regards persons found guilty of offences and punished with imprisonment imposed on them, was also laid down in the ancient Indian law. The Dharmamahamatras were charged with the duty of protecting prisoners from molestation and releasing the deserving ones. The Arthashastra gives a detailed account of jail administration.[41]

2.7. Punishments

The dandaniti, i.e. punishment policy, is one of the elaborately dwelt upon subjects in ancient India as it was intimately connected with the administration of the State. Manu emphasized the importance and utility of punishment saying: "Punishment alone governs all created beings, it protects them and it watches over them while they are asleep." As per Manu, Yajnavalkya and Brihaspati there were four kinds or methods of punishment during ancient India, namely, admonition, censure, fine and corporal punishment.[42] Corporal punishments included death penalty, cutting off the limb with which the offence was committed, branding on the head some mark indicating the offence committed, shaving the head of the offender and parading him in public streets.

[39] Wilkin WJ, *Supra* note 37, pg 93-94.
[40] Kumar, Dr. Surendra , *Supra* note 25, pg 45.
[41] Tripathi Rahul, Supra note, 15, pg.32.
[42] *Ibid*

The nature and types of punishments were very cruel, inhuman and barbarous. The Manu Smriti and some other Smritis describe that the punishment was awarded according to the Varna of the offender as well as of the victim.[43] For example, the Gautam Smriti, the Manu Smriti and the Yajnavalkya Smriti prescribed that a Kshtriya or a Vaisya abusing or defaming a Brahmana was to be punished respectively with a fine of 100 panas and 150 panas while a Sudra was punished by corporal punishment[44]. This shows that lower the Varna of the offender the more severe the punishment. But, the Katyayana Smriti provided that if a Kshatriya was guilty of an offence the quantum of penalty imposed on him would be twice of the penalty imposed on a Sudra for the similar offence. The Manu Smriti has also a similar provision which provides that higher the varna of the offender greater the punishment. This indicates that there were contradictory provisions regarding punishment in different Smritis.[45]

Besiedes this, Offences and misconduct committed by police officers, Jail Superintendent and other public servants were taken very seriously and severe punishments were prescribed. It was provided that the judges who passed unjust order, or took bribes, or betrayed the confidence reposed in them, should be banished. From the foregoing, it is seen that the institutions of the criminal justice administration had taken their roots during the Vedic period in India. The system gradually developed and during the Mauryan period a well - defined criminal justice system had come into existence as described in the Arthashashtra.[46]

[43] Kumar, Dr. Surendra , *Supra* note 25, pg. 92
[44] Tripathi Rahul, Supra note, 15, pg. 35
[45] *Ibid*
[46] Wilkin WJ, *Supra* note 37, pg 94.

3. CRIMINAL JUSTICE SYSTEM: A PARADIGM SHIFT FROM CRIME TO CRIMINAL

Administration of justice is one of the most essential functions of a state. The transformation of the police state into a welfare state has changed the role of the state into both prevention of commission of crime as well as a protector of its subject/people's dignity, life and human rights.[47] The principle of rule of law is the bedrock upon which the constitution of a nation is built. The changing attitude of the society from deterrent and retributive punishment to reformative punishment is a reflection of the changed role of the State.[48] The cumulative effect of such basic transformation of state's attitude towards crime is a society that shuns all forms of atrocities and brutalities and takes a holistic approach to human life and dignity[49]

The criminal justice system is an apparatus that a government employs to enforce standard of conduct required by that government of people subject to its authority. It is consciously contrived and deliberately implemented mechanism that has been brought into increasing play in attempts to deal with crime paradox.[50] The system represents a continuum of three separate, but interlinked and interdependent subsystems: police, prosecution, courts and corrections, each with their specific tasks, procedures and philosophy. The system undertake law enforcement by launching prosecution of the persons apprehended by the police for violent conduct, adjudicates upon the question of their innocence or guilt, administers punishment if needed, and provide for the correction and rehabilitation of the persons adjudged legally guilty. In its manifold functions the system peruses vigorously the protection and preservation of social interests through the prevention and control of crime and delinquency.[51]

The criminal justice administration is a legacy of the British system. It has four subsystems. Those being the;

- Legislature - Parliament
- Enforcement - Police Adjudication,
- Courts
- Corrections - Prisons

[47]Vibhute K.I, Criminal Justice, *A Human Rights Perspective of the Criminal Justice Process in India*, 49, 213-214, (J.I.L.I., 2007).
[48]*Ibid*
[49] Srivastava S.P., *Criminal Justice Administration in India*, 95, (Indian Journal of Criminology, Vol.15, 1987).
[50]*Ibid*
[51] Vibhute K.I., Supra note 47, pg 215.

Apart from the Legislation authority, other three are the main functioning agencies for executing the Criminal Justice System in the society. While the police may be organizationally separated from courts and corrections, all other components of criminal justice administration are functionally inter-related. The criminal justice system deals with police, bar, bench and correctional services and hence in aggregative form; all the four sub-systems got a nomenclature of criminal justice administration. However, the success of the Criminal justice system depends on co-ordination among these three wings with one another.[52]the Criminal Justice System keeping centralizing on the present topic consists of three main parts:

1. Police- whose task is to enforce the laws correctly;
2. Courts- to hold a fair criminal trial where the question of guilt is decided with the help of lawyers and witnesses and finally;
3. the Prisons- consisting jails or prisons. In other words, Police department, Courts and Prison administration are the three main pillars on which the Criminal justice system is based upon.[53]

However, it is a common perception that administration of criminal justice in our country is deteriorating day by day and laymen are losing faith in the entire system due to obvious reasons. It is therefore; repeatedly felt that there is an urgent need to review the entire criminal justice system, especially investigation of crime by the police and the prosecuting machinery due to which conviction rates are declining at a very rapid pace.[54] This has also been attributed to the lack of continuous and effective coordination amongst the law enforcement agencies, i.e. the police, magistracy, judiciary and correctional administration in general, and the police and prosecuting agencies in particular.[55]

The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. The accused is presumed to be innocent and the burden is on the prosecution to prove beyond all reasonable doubt that he is guilty. The accused also enjoys the right to silence and cannot be compelled to reply. This right is guaranteed by Constitution of India in the form of fundamental right1 and also a universally recognised right of the accused under Art. 14 of the International Convention on Civil and Political rights.

[52] Srivastava S.P., Supra note 49, pg 96.
[53] *Ibid*
[54] *Ibid*
[55] Singh, Indra Jeet: Indian Prisons: *A Sociological Enquiry*, 44 (Concept Publishing Company, Delhi, 1992).

3.1. Evaluation and Reforms in the Correctional Procedures

In this age of scientific development no one can afford to close his eyes to the modern discoveries in the field of the social sciences, as they relate to the field of correction.[56]Research was a continuing process. In the field of corrections, where institutions have a very long standing with a very wide range of programmes, evaluation of the various programmes is a continuing need to find out the directions and nature of future reforms and improvements.[57] Evaluation of Schemes and programmes is all the more necessary today, as our country is passing through an emergency, and economic crisis of large dimensions.

Money spent on setting up proper machinery and carrying out evaluation of programmes in force would in the long run prove to be economical, for it can point out the programmes which consume money without achieving any correctional end or serve any other purpose or end.[58]

In one of the researches conducted by the author in the State of Uttar Pradesh, he came across an interesting finding. Working on the 'Differential Personality Pattern of Convicts' amongst the two groups of convicts showing conforming and non-conforming behaviour. He came across a startling fact that 69 per cent subjects in the conforming sample were illiterate while in the non-conforming sample only 46 percent were illiterate, that is, non-conformist subjects had more literacy. What then was the correlation of literacy to conforming or nonconforming behaviour in the jails was an important question. Those findings further indicate that at the primary education level, there were only 17 per cent conformist convicts as against 28 per cent non-conforming convicts.[59]

Similarly at the Higher Secondary levels, there were only 11 per cent conforming convicts as against 28 per cent amongst the non-conforming, convicts. These figures go to show a positive correlation between literacy and non-conforming behaviour in the jails.In the Indian Jails there is an increasing emphasis on imparting education in the 3 Rs to the prisoners. While it is not in the least suggested that programmes of education of prisoners in the jails should be abandoned whole-sale, at the same time it is strongly suggested that further research projects should be carried out to find out the impact of literacy and education on the

[56] Robert D. Pursley; *Introduction to Criminal Justice*,33 (Macmillan Publishing Company, New York)
[57] Roy, Jaytilak Guha, *Prisons and Society: A Study of Indian jail System*, 64, (Gyan Publishing House, New Delhi).
[58] *Murder in Police Custody: Model Town*, People's Union for Democratic Rights, Delhi, September 1990.
[59] Singh, Indra Jeet, *Supra* note 55, pg 45.

convicts. This finding of the author is corroborated by Daniel Glaser in his recent research publication "The Effectiveness of Prison and Parole System"[60] where he has statistically shown that "for most prisoners the usual involvement in prison education is associated with post-release failure'. Support to this suggestion is given by Howard B. Gill from another angle when he says about the, education in prisons; "Since much criminality is learned behaviour, effective corrections must be greatly concerned with re-education of criminals and unless research can give some clues as to what specific types of education in what specific type of criminal cases are most effective, it will have failed in one of its major objectives." [61]

Traditionally, prisons signify isolation of offenders from society. In earlier days emphasis was laid even on the isolation of prisoners from one another. It was believed the rigorous isolation of offenders was productive of reforms as it enabled them to think of their past and to repent. Experience, however showed that man was a social being and his isolation only made him worse. Again, prison was also essentially a place of safe custody and so high walls all around had to be a characteristic feature of prisons. As a result, prisons were considered somewhat mysterious institutions; the high walls conceal what occurs behind them.

Although intrigued by them, the common man took little interest in prisons. Some people thought that prisons confined men who are different from others, belonging to the race of criminals. There is also the view held in some quarters that prisons were either luxurious establishments or place for torture.[62] Prisons are not isolated institutions but are a part of our social system and it is necessary that they should not only be understood by the community properly but should also arouse public interest and support. The physical plant of the jail which consist of living conditions such as food, clothing, medical attentions and shelter is being gradually improved and brought to the levels of the facilities which a citizen justifiably expects in a welfare state.[63]

It will, however, be incorrect to say that improvements that have been or are being made in this direction are by any standard luxurious. They are just adequate to produce an atmosphere conducive to learning new habits and values and to create in the prisoner, the will to improve himself and become a law abiding citizen. The traditional gulf between the staff and the

[60]Daniel Glaser , *The Effectiveness of a Prison and Parole Syste,* 34, (American Sociological Journal, Vol. 72, May 1967).
[61] Datir RN. *Prison as a Social System, with special reference to Maharashtra State*,76, (Mumbai: Popular Prakashan, 1978).
[62] Datir RN, *Supra* note 61, pg 77.
[63]Daniel Glaser, *Supra* note 60, pg 35.

prisoners has now been bridged by developing good inter-personal relationship between them. They now feel as one given to the common task of improvement of the man in their charge.[64] This is being achieved by intensive in-service career training of the jail personnel and it is gratifying to observe that the staff is now taking a professional view of their difficult task of correction. the old philosophy of segregation of the criminal from the community is thus being replaced by that of involving society actively in the correctional processes.[65] All the new penal practices revolve around the theory of associating the offender with the community, in conditions as compatible with the needs of his custody, as possible.

3.2. Challenges for Contemporary Corrections

With more offenders being injected into the criminal justice system, corrections on the one hand has been east into a leading role in the crime control process. But on the other hand, it is facing a number of problems. The purpose of this article is to discuss four major challenges currently before corrections, and to suggest that unless these challenges are met successfully, the future of corrections as a viable "People-changing" enterprise is indeed dismal. First, public attitudes toward corrections are generally unfavorable, and as a result correctional programs do not have widespread support. Second, corrections itself is disorganized, lacks clear direction, and does possess and overall plan. Third, the field continues to be ruptured by splits and divisions. Factions exist not only within the field, but also between it in and other segments of the criminal justice system as well. Finally, corrections continues to be plagued by numerous sacred cows that have persisted since the emergence of the "New penology".[66]

3.3. Public Reactions to Crime and Corrections

There is widespread belief that crime, violence, and related problems have been caused by a general breakdown morals, parental laxity and permissiveness , and a loss of respect for authority. Findings from national surveys corroborate this. From example in 1965 Gallup found that when a nationwide sample was asked what it considered to be responsible for theincrease in crime, most of the reasons mentioned had to do directly with moral character

[64] *Ibid*
[65] Singh, Indra Jeet, *Supra* note 55, pg 48.
[66] Datir RN, *Supra* note 61, pg78.

of the population rather than with changes in objective circumstances or with law enforcement.[67]

In recent moths public reaction to crime and violence has become more extreme. Many segments of the population are calling for stiffer penalties for law violations and are pressuring for antiriot legislation. Many feel that the courts have gone too far in protecting the criminal and that rights of the law-abiding citizen have been neglected. The corrections segments of the system is there for been expose to a number of strains. On the one hand due to the rise in the offender population, great pressures are being exerted on corrections to change offender in to law-abiding citizens. But on the other hand the public is unwilling to standing squarely behind corrections and support its programs.[68]

The public's concern over the crime problem has resulted in the increased efficiency of our law enforcement apparatus. But it has not looked beyond this apprehension stage toward the field of corrections.[69] There is a relatively little public concern over the question, "What is done with the law violator once he is apprehended ? This attitude is a short-sighted one, for it is well known that the great majority of persons who enter the criminal justice systems leave into one again walk the streets. because there has been relatively little public interest in correcting the offender, the technical efficiency of corrections has not increased has the same rate as it has for law enforcement. Most authorities would agree that increase in the number of arrests over the fast decade reflects not only and actual increase in crime, but also and increase in law enforcement's efficiency in detecting crime and apprehending criminals. But on the other hand, there has been no corresponding increase in corrections ability to prevent offender from committing new crimes.[70]

It my also be concluded that because of the rising offender population, the public would berelatively well-informed about corrections. But unfortunately, such is not the case. In addition, it might also be due to corrections failure to adequately publicize itself and to take strong stands on important issues as law enforcement does. But in either event, it is evident that the public does not no a great deal about corrections, and the information that it does possess is either fragmented and incomplete or based on traditional stereotypes.[71]

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[67] *Ibid*
[68] Singh, Indra Jeet, Supra note 55, pg 21.
[69] Daniel Glaser, *Supra* note 60, pg 39.
[70] Datir RN, *Supra* note 61, pg 79-80.
[71] Daniel Glaser, *Supra* note 60, pg 40.

The public not only does not have a great deal of information about corrections, but it also has an unfavorable attitude toward it. Negative orientations towards corrections are reflected in a number of ways. First, the public does not have a high degree of confidence in corrections in general.

The public's reluctance to support correctional programs stems from two sources. First, support means more expenditures. There is fierce competition for the allocation of limited public funds, and it is well known that correctional programs receive low priorities on federal, states , or local budgets. Comparing expenditures in the field of corrections with those of law enforcement reveals the public's priories in allocation of its funds.

Second, the public's reluctance to support correctional programs is related to its attitudes toward offenders. The average person views the offender as one who has "broken the faith" and who, there for, can no longer be trusted. There are moralistic overtones in this attitudes. The public fears offenders, both real and imagined, and once it is known that a particular person has committed if crime the fear tends to have an isolating effect. Labelling the person as a "criminal" or "delinquent" transforms him from one who is basically law-abiding and trustworthy to one who is to be feared and avoided. Tannenbaum described this process as the "dramatization of evil" which results isolating the offender from the main stream of community life.[72]

Once convicted of a crime, the offender loses not only his civil rights, but he is also denied due process considerations while in the correctional system. When he has served his time and has paid his debt to society, theoretically he is allowed to return to the main stream of community life. But this is not the case, however, and the stigmapersists. In many states the offender loses a number of civil rights permanently. Also it is well known that the exoffender discriminated against in finding suitable employment, either on the basis of official policy or informal practice.[73]

3.4. Correctional Social Works

Social work today, has definitely gone a long way in accomplishing recognition and status in spite of its being one of the nascent professions in the world. Its spectacular growth and

[72] Singh, Indra Jeet, Supra note 55, pg 45.
[73] Datir RN, *Supra* note 61, pg 81.

development as a profession, is largely attributed to its effective methods and techniques. In the brief span of its existence, it has found a front place in the social and humanitarian sciences which are devoted to the cause of systematic and scientific understanding of human problems and the ways and means of their welfare and betterment.[74]

The idea of self-reformation, self-help and self-dependence which is the ultimate objective of social work. Its function is to create that healthy climate in society and the development of those innate human potentialities which may increase the probability of better individual adjustment. The ethical and conceptual base of social work as a humanitarian science lies in the importance it attaches to the inherent dignity of the individual.[75] Every individual irrespective of considerations of caste, creed, colour and status, is entitled to the benefits which social work provides for the common good. Social work has passed that stage of itsdevelopment when it was mere charity, philanthropy, voluntary, social service and other forms of unremunerative selfless services rendered for the welfare of vulnerable down trodden, poor, ignorant, weak and helpless sections of the society. That obsolete concept of social work has been replaced by a scientific body of knowledge and skills which do not believe in creating parasites, but people who with a little or more aid become self-dependent.[76]Social work in fact is an enabling profession which helps the helpless individual to help himself. The effectiveness of social work skills, methods and techniques is judged by its process which liberates the individual from crippling attitudes, personal and social obstacles and inhibitions and finally makes him fully competent to look after his own welfare.

Modern social work is both scientific discipline and a profession. It is brought into practice in six different forms which are all based upon a common core of knowledge and skill, which is called "generic social work"[77]. These six well-known processes of social work are social case work, social group work, community organization, social welfare administration, social welfare research and social action. Like other social and natural sciences, social work too has been affected by modern trends of specialization and, therefore, we find many more specifications in the field of social welfare. All these processes and methods of social work find their application separately or jointly in the following specialized fields-Labour Welfare and Personnel Management, Rural Welfare and Community Development, Family and Child

[74] Singh, Indra Jeet, Supra note 55, pg 84.
[75]*ibid*
[76]Daniel Glaser, *Supra* note 60, pg 60.
[77] Singh, Indra Jeet, Supra note 55, pg 81.

Welfare, Medical; and Psychiatric Services and Correctional Services for the treatment, redemption and reformation of criminals and delinquents. [78]

Correctional Social Work is a new development which stands in conformity with the present day philosophy of penal reforms. Modern penology based on humanitarian considerations has changed its philosophy of deterrent punishment and has found immense significance in two more scientific methods and techniques of criminal correction and rehabilitation. A powerful change is observable in the ideas, thoughts, notions and jurists. For a very long time leaders in the field of law, police administration, penal treatment, parole and probation have urged the need for rehabilitation of offenders and a revitalization of courts and correctional institutions to effect it. Since rehabilitation means successful treatment, there is little place for punishment unless it is incorporated into a general and integrated programme of rehabilitation. Correction, therefore, is an emerging trend with much fruits to bear.

"The field of correction involves the operation of prisons, reformatories, training school for boys and girls and the administration of probation and parole systems. These correctional agencies are charged with two fold objectives: custody of offenders committed to their care and that of providing such treatment as will direct their behaviour into more law abiding channels.[79] The achievement of these objectives requires the skill of trained custodial administrators in combination with the services of many professional groups including psychiatrists, social workers, psychologists, educators and chaplains. [80]

The field of correction offers immense opportunities for the application of social work potentials and skills. "Social work augmented by the contributions of medicine, psychiatry and an enlightened judiciary, offers to correctional workers exceptional promises in reshaping today's prison philosophy and procedures.[81] Correctional social work, therefore, is that body of knowledge which aims at providing services to the emotionally and socially maladjusted children and youths who violate the laws of society and are adjudged as criminals or delinquents. These correctional services are based on two fold objectives

a) change of the deviant outlook and behaviour of the individual through helping process to achieve greater social and personal satisfaction and adjustment,

[78]Datir RN, *Supra* note 61, pg 74.
[79]Daniel Glaser, *Supra* note 60, pg 61.
[80] Singh, Indra Jeet, Supra note 55, pg 81.
[81] Datir RN, *Supra* note 61, pg 73.

b) mitigation, moderation or change of the environment of circumstances which lead to criminality through the provision of various preventive or prophylactic measures.

The application of social work methods, skills and techniques and the growing importance of a social worker in a team of professional experts engaged in the field of correction, is indicative of its gradual recognition and acceptance in the field of criminology and penology.[82]

Although treatment rather than retribution in a correctional setting is not new, no significant headway has so far been made in the under standing of the vital human elements of the problem. It is heartening to note that "a healthful, virile climate seems to be emerging in the field of corrections.[83] The sterile performance record of our institutions continues under the severe examination of public criminologists, psychologists and welfare officials who are determined not to perpetuate the errors of past through their lack of modern knowledge or failure to educate the tax payer who is the key to establishing facilities aimed at the solution of many of the problems.[84] This sweeping decision to shift the emphasis from the social problems presented by the existing correctional institutions to treating the person who has a problem, has been neither a free nor a new decision. The decision was forced by the realization of human and economic wastage that followed in the wake of punitive approach inconsonant with rehabilitative efforts and displaying a complete disregard for human needs.[85]

The attack on the focus of correctional practices has been long and persistent.Crime and delinquency is more a problem of personal deviation than social deviation. It is a product of the individuals own reaction towards the environment, his adaptability and conformity in the existing social and legal frame work of society.[86] Any planned programme for the treatment of rehabilitation of offenders can only successful when the criminals or delinquents are treated as individuals rather than as a class of distrusted, disrespected and dangerous people. Since the skills and techniques of social work are replace with humane attitudes like acceptance respect worth, dignity, integrity, self-expression and selfdetermination of the

[82] *Ibid*
[83] Singh, Indra Jeet, Supra note 55, pg 85.
[84] Daniel Glaser, *Supra* note 60, pg 61.
[85] *Ibid*
[86] Singh, Indra Jeet, Supra note 55, pg 85

individual along with the recognition of his inherent strengths and weakness, social workers in their endeavour are bound to change criminals for the better.[87]

"From the point of view of social work it seems necessary to help children and adolescents to avoid breaking rules, whether or not they are brought before a court or are pronounced delinquents. Social work assists young people in their efforts to abide by the rules of social conduct required by tradition or statute. These efforts include the development of social attitudes and modes of behaviour which are not necessarily embodies in legal provisions.

Social workers under all correctional settings whether institutional or non-institutional believe that the success of any treatment or rehabilitation programme for the criminals or delinquents depends upon how it reacts upon their personality, their mode of behaviour and their way of thinking and feeling. They know from experience that provision of help to those who are less amenable to controls "is a method of help which can achieve adjustment of attitudes whereby such people can become more satisfactory both to society and to themselves. This process of help is often misinterpreted and people often believe that "social workers always give, whether it be goods, money, advice or correction and the individual in need merely takes it. Perhaps indeed this does sometimes still happen, but in its fullest sense social work with individuals demands joint endeavour.[88]

Under all correctional settings the task of social workers is to understand and study the personal social, and economic background of the offenders and to devise a programme of treatment which may lead to their healthy adjustment in society as a constructive, useful and law abiding citizen after the period of their conviction is over. In their bid to prevent crime and to reform the convicted offender their area of activity is destined to be very wide. The phenomenon of crime is highly complicated and an attempt to prevent it, according to a social work scheme needs be an integrated programme of case work, group work, and community organization methods, skills and techniques.[89]

[87]Datir RN, *Supra* note 61, pg 62.
[88]*Ibid.*
[89] Singh, Indra Jeet, Supra note 55, pg 85-8).

4. CORRECTIVE TECHNIQUE: RATIONALE AND MEANING

The criminological and penological literature contains two principal conceptions of "correctional techniques."[90] The older conception considers as correctional techniques those general systems and general programs used for handling criminals and assumed to be somehow reformative. Thus, imposition of either physical or psychological pain, in any of a variety of settings, continues to be viewed as a general system for correcting criminals. Similarly, one rationale for introducing and maintaining general programs such as probation, parole, and imprisonment has been that these programs are or will be more "correctional" than the programs used in the past. A newer conception of "correctional techniques,"[91] however, places more emphasis on the specific methods used in attempts to change individual criminals. While descriptions of such methods are by no means as precise as descriptions of medical techniques, an analogy with clinical medicine is made, with the result that utilizing the methods is called "treatment" or "therapy."[92] Thus, within a parole or probation organization, the agents may help offenders find jobs, order them to stay out of saloons, or counsel them on psychological problems of adjustment. Because each of these maneuvers is assumed to have some efficacy in changing criminals into noncriminals, each is viewed as a treatment or correctional technique. Similarly, prisoners may be enrolled in prison schools, ordered to work, given vocational counseling and training, or engaged in individual or group psychotherapeutic interviews. These specific programs also are viewed as techniques.

4.1. Concept and Rationale

The term ‘Correction‘ is more aptly applied to refer the rehabilitation of the offender. It is a generic term which implies _to correct‘, _amend‘ or _put right‘ the criminal behavior. It is concept of “self engineering chain” where the person is actor as well as reactor, an active

[90] Rothman, D.J., Conscience *and Convenience: The Asylum and Its Alternatives in Progressive America*, 45, (Boston: Little, Brown, 1980).
[91] Sechrest, L., S. White, and E. Brown,*The Rehabilitation of Criminal Offenders: Problems and Prospects*, 87 (Washington, D.C.: National Academy of Science, 1979).
[92] Cullen, F.T., and Gendreau, P., *AssessingCorrectional Rehabilitation: Policy, Practice, and Prospects*, 3, 298, (Criminal Justice 2000)

participant in the development of self.[93] Some believes that it is a revolving door[94]. Jeremy Bentham, in his book, Principles of Legislation[95], said that a penal system ought not to be thought cruel because it includes a great variety of punishment. The multiplicity and the variety of punishment prove the industry and the cares of legislature. The more we study the nature of offences and of motives, the more we examine diversity of characters and circumstances, the more we shall feel the necessity of employing different means to counter act them. Variety in punishment is one of the perfections of a penal code.

Rob White in his writing[96] discussed the conceptual foundation of rehabilitation in great detail. He also discussed various correctional and rehabilitative techniques. He was of the view that rehabilitation is based on two approaches i.e. justice approach and welfare approach. Punishment in most of the countries derives it philosophy from either of these two approaches. The third approach of rehabilitation emanates somewhere between these two and emphasizes on restorative justice. The main philosophy of community correction includes two different orientations.[97] **Community incapacitation** in which the main emphasis is on concept of community safety and offender control. This involves intensive monitoring and supervision of offenders in community settings. The aim of community corrections, from this perspective, is to keep offenders under close surveillance and to thereby deter them from committing the offence again. **Community rehabilitation** in which efforts are made to change offender behavior in positive ways as well as improving community relationships by use of supportive, participatory measures. The aim of community corrections, from this point of view, is to prevent recidivism through behaviour modification via some type of therapeutic or skills-based intervention. The emphasis is on personal development and enhanced capabilities.[98]

4.1.1. Concept of Rehabilitation and Reformation-

Criminologists as well as Sociologists differ greatly in their conception of Crime or deviance.[99] None is unquestionably true. All definitions attempt to serve more or less some specific purposes. As this study concerned mainly with reformation of prisoners so we may

[93] Donald T. Shanahan, *The Administration of Justice: An Introduction,* 317-318, (Holbrook Press Inc., Boston).
[94] Travis C. Pratt, Jacinta M. Gauet.al.,*Key Ideas in Criminology and Criminal Justice*,Sage Publications. Inc., 2011, (Visited on March 11, 2020) http://www.sagepub.com/upm-data/36811_6.pdf.
[95] Jeremy Bentham, *TheTheory of Legislation* ,Lexis Nexis Butterworths, New Delhi, 2007).
[96] Rob White, *Community Corrections and Restorative Justice*, 16,Current Issues in Criminal Justice, (Visited on March11, 2020).:http://www.austlii.edu.au/au/journals/CICrimJust/2004/11.pdf.
[97] *Ibid*
[98]*Ibid*
[99] P Gidds. *Conceptions of Deviant Behaviour, The Old and the New*, 9-14, (Paczfic Sociological Review-Spring 1996).

focus in the criminologists who postulated that an offender can be reformed. The criminologists who believe in the theory of reformation looked crime as deviance, which is frequently defined as rule breaking. Those who believed that an offender can be reformed and rehabilitated, they gave the definition of deviance in their own ways. Thorsten Sellin helds that, any act that violates the conduct norms of the group is deviant[100]

Albert. A. Kohen considers that deviance is any act that violates the institutional "expectations which are shared and recognized as legitimate within the social systems".[101] Walter Miller views deviance as any behaviour which goes against in rules of dominant culture.[102] Still another sociologist Cavan suggests that only those acts which violate in most conventional norms are to be considered deviant.[103] Thus, assumption in each of these definitions is that we may apply some known commonly accepted standard in determining what is deviant and what is not. To consider the concept of deviance the sociological school of Criminologists observe the factors like who does the behaviour, how it is done and under what circumstances are taken into account in deciding what is deviant behaviour. The approach of this School of Criminologists in defining deviance looks not at the legal rules but at the way a particular behaviour is reacted to by others. Charles E. Fraizer observed "Deviance is behaviour that violates the standard of the person performing the act, the perceived standards of some persons or some group that is important to that actor or both".[104] This is a definition that puts the emphasis on the actor's own perceptions of the quality of his conduct.

Most theorist of deviance ultimately based their ideas to a consideration of deviance as it forms a stable part of an individual's action pattern. Our purpose in the consideration of deviant behaviour focuses on two aspects.

I. First, the emergence and abandonment of deviant behaviour patterns.
II. Second, how social forces believed to induce deviance work in the private walls of deviant actors.

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[100] Thorsten Sellin, *Culture Conflict and Crime*, 42-44, (New York, Social Science Research Council, 1938).
[101] Albert A. Cohen. *The Study of Social Disorganisation and Deviant Behaviour*, 461-484 (Sociology Today, New York, 1959)
[102] Walter Miller: *Lower Class Culture as a Generation Milieu of Gang Delinquency*. 5-19 (Social issues. 14, 1958).
[103] Cavan. R.S., *The Concepts of Tolerance and Contra Culture as Applied to Deliquency*, 243-58 (Sociological Quarterly, 2011).
[104] Charles E. Fraizer, *Theoritical Approaches to Deviance- An Evaluation*, 145-50 (The World Press Pvt. Ltd. Columbus. 1976).

Deviance as seen by vanous theorists proceeds through three phases:-

i) Emergence

ii) Patterning

iii) Change

Emergence refers to the first instances of deviant behaviour. **Patterning** refers to the point when any particular form of deviance becomes a normal part of individual behaviour tendency. **Change** means change or abandonment of deviant behaviour. **Patterns** refers to the point the actor discontinues the deviant behaviour. The third area of this work deals with how, deviant behaviour changes in real world cases and particularly in the Prison. The Central thesis of this theoretical approach is that deviance is a result of negative social control and that deviant behaviour can be changed by socializing process.

The Concept of Reformative Theory- According to this theory, the object of punishment should be the reform of the criminal, through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime, he does not cease to be a human being.[105] He may have committed a crime under circumstances which might never occur again. Therefore, an effort should be made to reform him during the period of his incarceration. The object of punishment should be to bring about the moral reform of the offender. He must be educated and taught some art or industry during the period of his imprisonment so that he may be able to start his life again after his release from jail.

While awarding punishment the judge should study the character and age of the offender, his early breeding, his education and environment, the circumstances under which he committed the offence, the object with which he committed the offence and other factors. The object of doing so is to acquaint the judge with the exact nature of the circumstances so that he may give a punishment which suits the circumstances.[106] The advocates of this theory contended that by a sympathetic, tactful, and loving treatment of the offenders, a revolutionary change may be brought about in their characters. Even the cruel hardened prisoners can be reformed and converted into helpful friends with good words and mild suggestions.[107]

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[105] *Ibid*

[106] Jahangir M. Sethna, *Society and the Crime*, 4, 301-302,(WorldCat member libraries worldwide 1986).

[107] V.R. Krishna Iyer, *Justice in Prison: Remedial Jurisprudence and Versatile Criminology*, 7, (National Prison Policy - Constitutional Perspective and Pragmatic Parameters 1981).

Severe punishment can merely debase them. Man always kicks against pricks. Whipping will make him balk. The threat will result in resistance. Prison hell may create the spirit of defiance of God and man. Hanging a criminal is merely an admission of the fact that human beings have failed to reform the erring citizen. Corporal punishments like whipping and pillory destroy all the finest sentiments and tenderness in man. Mild imprisonment with probation is the only mode of punishment approved by the advocates of reformative theory.[108]

According to the view of *Salmond*[109], if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places. There are many incorrigible offenders who are beyond the reach of reformative influences and with whom crime is not a bad habit but an instinct and they must be left to their fate in despair. But people criticize; the primary and essential end of criminal justice is deterrence and not reformation.[110]

The reformative theory is also known as rehabilitative sentencing. The purpose of punishment is to "reform the offender as a person, so that he may become a normal law-abiding member of the community once again. Here the emphasis is placed not on the crime itself, the harm caused or the deterrence effect which punishment may have, but on the person and the personality of the offender."[111]

The Reformative theory is supported by criminology. Criminology regards every crime as a pathological phenomenon a mild form of insanity, an innate or acquired physiological defect. There are some crimes which are due to willful violation of the moral law by normal persons. Such criminals should be punished adequately to vindicate the authority of the moral law.

In terms of the theory, offenders largely commit crime because of psychological factors, personality defects, or social pressures. Sentences are consequently tailored to the needs of the individual offender, and typically include aspects of rehabilitation such as community service, compulsory therapy or counseling. The pre-sentencing report by a probation officer

[108]Shankar Dass, *Punishment and the Prison: Indian and International Perspectives,* 58, (Sage Publications, New Delhi 2000).
[109] G.Robinson & I. Crow , *Offender Rehabilitation Theory Research & Practice,*214, (Journal of social Defence, New York 2009).
[110] Dass S., *Supra* note 108, pg59.
[111] *Ibid*

or psychologist plays a substantial role in assisting the judicial officer to arrive at an appropriate sentencing decision.

According to the supporters of the Reformative theory, punishment is not imposed as a means for the benefit of others. Rather, punishment is given to educate or reform the offender himself. Here, the crime committed by the criminal is an end, not a means as in the Deterrent theory. This view is commonly accepted in the present time.[112] Punishment is inflicted on a criminal for his reformation. This theory does not justify capital punishment. Punishment is inflicted only to educate or reform the criminal himself. Punishment does not always make reform in a criminal. On the other hand, kind treatment sometimes produces a better result than punishment. It may be more favorable to the reformation of the criminal.

Forgiveness can change the nature of the criminal and give the scope of repentance and reformation to the criminal. It is clear that the reformative theory does not justify capital punishment. It supports the reformation of the criminal. According to this theory, a crime is committed as a result of the conflict between the character of a man and the motive of the criminal.[113]

One may commit a crime either because the temptation of the motive is stronger or because the restraints imposed by character is weaker the reformative theory wants to strengthen the character of the man so that he may not become an easy victim to his own temptation this theory would consider medicine. According to this theory, crime is like a disease so you cannot cure by killing.

For this reason, a punishment like imprisonment should be given to criminal and all prisons should be transformed into residences where physical moral and intellectual training should be given in order to improve the character of criminal.[114] A crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraints imposed by character is weaker.

This theory would consider punishment to be curative or to perform the function of medicine. According to this theory, crime is like a disease. This theory maintains that you can cure by

[112] Jahangir M. Sethna, *Supra* note 106, pg 200.
[113] *Ibid*
[114] Dass S., *Supra* note 108, pg 60.

killing. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society.

It must be noted that the reformative theory shows a radical departure from the earlier theories and seeks to bring a positive change in the attitude of the offender so as to rehabilitate him as a law-abiding member of society. Thus punishment is used as a measure to reclaim the offender and not to torture him. This theory condemns all kinds of corporal punishments.[115]

The major thrust of the reformist theory is rehabilitation of inmates in penal institutions so that they are transformed into law-abiding citizens. It focuses greater attention on humanly treatment of prisoners inside the prison.[116] It suggests that instead of prisoners being allowed to idle in jail, they should be properly taught, educated and trained so as to adjust themselves to normal life in the community after their release from penal institution.

This purpose may be achieved through the agencies of parole and probation which have been accepted as modern techniques of reforming the offenders all around the world. Thus the advocates of this theory justify prisonisation not solely for the purpose of isolating criminals and eliminating them from the society, but to bring about a change in their mental attitude through effective measures of re formation during the term of their sentence.In ***Narotam Singh v. State of Punjab***[117] the Supreme Court has taken the following view-

"Reformative approach to punishment should be the object of **criminal** law, in order to promote rehabilitation without offending community conscience and to secure social justice."

Psychology & Jurisprudence: A View on Relationship- Psychology as a branch of knowledge is concerned with the working of the human brain or mental faculty.[118] Since Jurisprudence and law are necessarily concerned with human action and it is the human mind which controls human action, inter-relation between psychology and jurisprudence need not be over emphasized. Particularly in dealing with crimes the psychology of the offender is generally taken into consideration. Again, psychology plays a dominant role in the study

[115] AIR 1978 SC 1542
[116] Jahangir M. Sethna, *Supra* note 106, pg 303.
[117] AIR 1978 SC 1542
[118] Jahangir M. Sethna, *Supra* note 106, pg 303.

of **Criminology & Penology**.[119] The psychology of the offender is also one of the crucial factors in **deciding the nature of the punishment of the convicted person.** The modern reformative techniques of punishment are essentially devised for the treatment of offenders according to their psychological traits[120]. Such as:-

- Probation
- Parole
- Indeterminate Sentence
- Admonition
- Pardon

That apart, the legal concepts pertaining to the faculty of mind and they, therefore, form a part of the study of psychology as also the jurisprudence, Such as:-

- Negligence
- Intention
- Motive
- Mens Rea
- Recklessness
- Rashness
- Other Cognate Mental Conditions

There is a school of jurists which hold the view that the sanction behind all laws is a psychological one. Jurisprudence is concerned with man's external conduct & not his mental process, but penology has benefited from the knowledge made available by Psychological Researchers.

Socialization Approach to Reformation: The basis of socialization approach is formed by three important theoretical traditions in the Sociology of deviance. These are -- the cultural transmission, the anomie and the culture conflict. All these theories portray deviance as those who come to intemalize values that encourage their deviance. We will consider different

[119] H.K.khadish ed. Enetjclopedia of Crime and Justice(1986). Macmillan Free Press. NewYork, P. 1198
[120] *Ibid*

theories separately and then combine their common tenets which make up the socialization process.[121]

In discussing how the emergence, pattering and change of deviant behaviour may be explained by each of the theories, the theoretical positions of these three phases of deviance are not explicit in the theories, but that will not be any problem for our purposes. Where theoretical positions were not clearly spelt out in the works of the sociologists, we have to infer a logically consistent statement to feed the particular phase of deviance being considered. This is most frequently necessary for the change phase of deviance which is our focussing area.

Cultural Transmission Theory- In the 1920s out of studies by sociologists at the University of Chicago, theories of the cultural transmission tradition was started and continued through the 1950s. The Central nation of this theory was that deviant behaviour was learnt in the transfer of culture to the individual from his social setting. Values favourable to deviance are prominent and considered normal by a group of people in the society.

Shaw and Mckay

Perhaps the clearest statement on the cultural transmission theory comes from Clifford R. Shaw and H.D.Mckay. Shaw developed this theory in the following way: "Through participation 1n the activities of - (his or her) social world, beginning in such intimate group as the family, the play group, and the neighbourhood, the original activities of the individual are conditioned and organized and come to assume the character of well-defined attitudes, interests and behaviour trends"[122]

Thus Shaw believed that a powerful influence" tends to create a community spirit which not only tolerates, but actually fosters, in gradual formation and crystallization of deviant behaviour traits".[123]

At this point, Shaw considered deviant behaviour to be fixated" or in other terms deviant behaviour was an aspect of the personality. All the works of Shaw and Mckay postulate that deviance comes to be fixated in the individual's behaviour tendency and personality.

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[121] Reckless W.C *Criminal Behaviour*, 220, (Henry Holts and Company, New York, 1930).
[122] Clifford R. Shaw: *Natural History of a Delinquent Career*, 224, (Chicago, University of Chicago Press, 1931).
[123] *Ibid.* PP.225-229

However, both Shaw and Mckay believed that change was not impossible. They believed change of individual behaviour could be achieved.[124] The most important ingredients of change phase, in their view, involved two things:-

i) The removing individual from the environment that produced the deviant behaviour;

ii) The establishment of new associations m conventional social groups.

Through involvement in conventional groups and isolation from deviant groups the deviant would take on new values and new behaviours consistent with conventional standards.

Sutherland

Edwin. H.Sutherland's work represents the most systematic and successful formulation of a theory in cultural transmission known as theory of differential association. According to this theory an individual's association with others are differently distributed in the direction of those with values favouring deviant behaviour, the individual will acquire deviant values and engage in deviant behaviour. Behaviour becomes patterned as deviant if the "frequency", "duration", "Priority" and "Intensity" of associations are weighted heavily in the direction of contract with values favourable to rule violation. As Sutherland and Donald R. Cressey put it, a "person inevitably assimilates the surrounding culture unless other patterns are in conflict"[125]

According to this theory if one's associations are weighted more heavily toward definitions favourable to compliance v.rith the rules, conventional behaviour pattern will develop and change in the behaviour could be discernable. Thus, in this theory as well as in Shaw and Mckay, the process through which the individual and patterns deviant behaviour are no different from the process whereby others begin and pattern conventional behaviour.[126]

Sutherland's proposition on changing deviant behaviour patterns can be seen best by examining the work of his student and collaborator, Donald R. Cressey. In Cressey's attempt to apply differential association theory to the idea of change m deviant behaviour patterns three points are clear, change entails[127];

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[124] Clifford R.Shaw H.D.Mckay and J.F.Mcdonald, *Brothers in Crime,* 340-49 (Chicago, University of Chicago Press, 19380.
[125] Jahangir M. Sethna, *Supra* note 106, pg 304.
[126] Chaturvedi, A. N., *Rights of Accused under Indian Constitution,* 176 (Deep and Deep Publications, New Delhi, 1984)
[127] *Ibid*

(i) Some form of desocialisation process whereby the individual disavows internalised deviant values;

(ii) Assimilation of the deviant into law-abiding non-deviant groups and society; and

(iii) Resocialisation in terms of non-deviant values.

Mertons

According to Mertons, deviant behaviour may be regarded as a Symptom of a disorganised society. Thus, Mertons postulates that when the cultural system is not co-ordinated with the social system, society becomes mal-integrated. Here the Cultural System in a society means goals and prescribed means of achieving the goals common to all members of the society. Mertons argued that monetary and material success may be treated as universal goal in American cultural system. On the other hand, social system in any society consists of prescribed means for achieving goals. As an explanation of deviant behaviour, Mertons said that when all members of a society share the same goals but the legitimate means for achieving the goals are not equally available to all, society becomes malintegrated and high rates of deviant be expected. [128]

Therefore, reformation of a deviant needs removal of this malintegrated society. Obviously, the lower socio-economic groups have less accessibility to the various means to success in life. For Mertons it is essentially socialization that is at the root of individual deviance and individuals develop a psychological bents toward deviant modes of behaviour. So in our case, reformation of a prisoner requires change of social system which is mal-integrated.[129]

Cohen

The view of Albert Cohen is, generally speaking, a restatement of Morten's view. Cohen also believed that where opportunities for achieving goals are blocked to an individual, deviance is likely. They will substitute goals and values with which they can live more comfortably and thus they may justify and demand deviant behaviour. According to Cohens, deviant behaviour becomes pattern as deviant values of the sub-culture based on these values. These deviant values are internalized through socialization in differential association with members of the sub-culture.

[128] Merton, R., *Social Theory And Social Structure*. 1, 5-10,(Simon and Schuste 1968).
[129] *Ibid*

Thus, according to Cohens change of individual deviant behaviour patterns would require at least de-socialization, removal from the sub-cultural support of deviance and resocialization :in terms of non-deviant values[130]

Cloward and Ohlin

Amending Merton and Cohen, Richard Cloward and Lloyd Ohlin formulated a theory in the anomie tradition. According to their view the deviance tend to be persons who have been misled to expect oppmiunities because of their own percept potential ability to meet the formal Criteria for success. The deviance feel capable but when the system fails to fulfil their expectations by providing opportunities for being evaluated as a success they feel it as an injustice.[131]

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Their response to injustice leads to deviance. This feeling of injustices operates to weaken motivations for accepting the legitimacy of official societal norms. In turn, weakened motivation permits the individual to accept alternative values and patterns of conduct, normally a deviant role model. Clearly then the factors contributing to the patterning of deviant behaviour are developed by social support of a sub-culture of deviant peers.[133] Therefore, change of individual deviance would entail de-socialization, removal from group support and resocialization.

Culture Conflict Approach- The last theory to be considered as a part of socialization approach is culture conflict formulated by Walter Miller in 1958. This theory explained Crime and delinquency in the line of cultural transmission and anomie tradition of Merton. Throsten Sellin's theory of Crime causation developed in 1938 may be said to be the first

[130] Albert k. Cohens, *Supra* note 101, pg 28 and 69.
[131] Cloward and Ohlin, *Delinquency and Opportunity: A Theory of Delinquent gangs*, 117 (New York Press 2017).
[132] *Ibid*
[133] *Ibid*, pg 118-126

statement of the culture conflict thesis.[134] The Central notion of culture conflict theory is that behaviour pattems of all forms are leamt within district cultural groups. But some behaviours become defined as criminal or deviant. However, the most important culture conflict theory was formulated by Walter Miller.

Miller

The primary tftesis is that the major motivation to delinquent behaviour engaged in by members of lower class comer groups involves a positive effort to achieve conditions or qualities valued within their own significant culture. Thus, Miller's theory suggests that deviance are motivated to their misconduct by desires to achieve certain conditions of qualities rewarded in their cultures. The lower class boys, Miller studied, were socialized in a habitant with standards and expectations that demanded certain characteristic behaviour. To take an example, it is a value in the lower class for youths to be toughed. In order to demonstrate toughness, lower class youths may fight frequently and over small matters. The dominant middle class value system defines fighting as generally undesirable.

The behaviour designed to achieve reward within the lower class culture is reached to as deviant by middle class dominated institutions. The patterning of deviant behaviour in Miller's theory follows directly from being socialized into the lower class culture, which is an autonomous subculture that happens to be a variance with the dominant culture. Unlike Cohen's, Cleward and Ohlin's deviant, Miller's does not reject or react to the dominant system in patterning forms of deviance.[135]

Therefore, any successful change from deviant behaviour patterns would first require specific de-socializing efforts involving in devaluation of internalized values. In addition, removal of the deviant from the cultural milieu that supported deviant behaviour would be essential to permanent change. Finally, the individual would have to be re-socialized in terms of the values of the dominant culture.

Morals and ethics- In ancient times, there was no distinction between Law & Morals. However, later on, *Mimansa* made a distinction between obligatory & recommendatory rules and thus distinction came to be made in actual practice. By the time the commentaries were

[134] Throsten Sellin, *Culhtre Conflict and Crime* (New York Social Science Research Council,1938).
[135] Walter Miller, *Lower class culture as a generating gang of diluents*, 14, 5-19 (Journal of Social Issues,1958).

written, the distinction was clearly established in theory also. The rules were purely based on morals[136].

The **doctrine of "factum valet"[137]** was recognized. That doctrine means that an act which is in contravention of some moral injunction should be considered valid if accomplished in fact. In its decision, the Privy Council made a distinction between legal & moral injunctions. The same is the case with the Supreme Court of India.[138] Morals or Ethics is a study of the supreme good. Law lays down what is convenient for that time and place. Both have a common origin but they diverge in their development. Morals are considered to be of universal value but the law is dynamic and varies from place to place. Morals are applied after taking into consideration individual cases whereas the application of the law is Uniform.

A study of the relationship between law & morals can be made from three angles:

- Morals as the basis of law.
- Morals as the test of positive law.
- Morals as the end of the law.

Some way morality is an integral part of law. Morality is "secreted in the interstices"[139] of the legal system and to that extent is inseparable from it. This view point says that law in action is not a mere system of rules but involves the use of certain principles such as equity & good. Law & Morals act and react upon and mould each other. In the name of justice, equity, good faith & conscience, morals have infiltrated into the fabric of law. Moral considerations play an important part while making law, and exercising judicial discretion.[140]

Morals act as a restraint upon the power of the legislature**.** No legislature will dare to make a law which is opposed to the morals of society. All human conduct and social relations cannot be regulated and governed by law alone and very many relations are left to be regulated by morals & law does not interfere with them. Morals perfect the law. According to jurists,

[136] Jahangir M. Sethna, *Supra* note 106, pg 206.
[137] *Ibid*
[138] Convention against *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (UN General Assembly, 1984)
[139] Reckless W.C, *Supra* note 121, pg 221-222.
[140] *Ibid*

morals have become a very important subject of study for good law-making**. Morals also exercise a great influence on International law.**

Equity- The ultimate object of every legal system is to secure justice. Aristotle tried to explain justice by categorizing it as:-

According to **Salmond**[141]**,** the law exists for the promotion of justice within the framework of the law. He defines law as "the body of principles recognized and applied by the state in the administration of justice". He further said, "the law consists of the rules recognized and acted on by the court of justice".[142]

4.1.2. Justice: Indian Perspective

The ancient Indian concept of *Dharma* was analogous concepts consistent with righteousness, truth, morality, & justice. The ideal and object of the law were to promote justice. Law was governed by Dharma. The victory of good over evil, justice over injustice, was accepted as an innumerable universal rule. Even though the concept of equality & respect for human dignity is recognized in the Vedic texts, Hindu society was marked for its unequal & class character, which resulted in discrimination.[143]

The *Manusmriti*[144] reflected the social realities of the time. The modern concepts of rule of law and equality before the law were introduced along with secularization of administration of justice during the British Period. The Constitution, which was framed after independence embodies a concept of justice deeply influenced by the ideals of Western liberal democratic thought.

The Preamble speaks about justice-social, economic & political. The Fundamental Rights, which guarantee basic rights, the Directive Principles, which guide law-making & executive policies spell out how the three-dimensional concept of justice must be attained in the Indian context.

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[141] Jahangir M. Sethna, *Supra* note 106, pg 201.
[142] *Ibid*
[143] Reckless W.C *Supra* note 121, pg 34
[144] Tripathi R., *Supra* note 15, pg 80.

4.1.3. Modern Trend

The Reformative methods have proved useful in case of juvenile delinquents, first offenders & women. Sex-psychopaths also seem to respond favorably to the reformative method of punishment. More recently, the reformative theory is being extensively used as a method of treatment of mentally depraved offenders. This present trend is to treat the offender rather than to punish him.This is done by classifying offenders on the basis of age, sex, the gravity of the offense and mental depravity. Thus clinical method pre-supposes punishment as a kind of social surgery since criminal is essentially a product of conflict between the interests of individuals in the society. In recent years, the supreme court of India has awarded compensation to victims who suffered due to torture or negligence by the prison or jail authorities.[145] **Gandhi ji s**aid**, "Hate the sin and not the sinner".** It should be a guide in the administration of criminal justice.

In the words of **Justice Krishna Iyer**: "a Holistic view of sentencing and a finer perception of the effect of imprisonment give short shrift to draconian severity & self-defeating. Perhaps the time has come for Indian Criminologists to rely more on *Patanjali Sutra* as a scientific & curative for crimogenic factors than on the blind jail term set out in the Penal code & that may be why Western researchers are now seeking Indian Yogic ways of normalizing the individual & the group."[146] Mr. Justice Krishna Iyer focuses on certain elemental factors which are of great significance for criminology thoughts particularly so far as our country is concerned to him the Gandhian diagnosis is the key to the pathology of delinquency & therapeutic role of punishment. It treats the whole man as a healthy man & every man is born good and so the modern principles of penology and reform and rehabilitation of the offender ought to guide and inform the Indian criminal courts.

The spirit of correctional philosophy in criminology is rightly described by Justice Krishna Iyer, "Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him, restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the

[145] Sebastian Hongrey v. Union of India AIR 1984 SC 1026
[146] Mahajan,V.D. : *Jurisprudence & legal Theory*, 5, 147 (S. Chand, Delhi.2007).

criminal behavior of many innocent convicts. Law must rise with life and jurisprudence responds to humanism."[147]

In **Sunil Batra**[148], Karuna (Mercy) is treated as the mainspring of jail justice which would obviate torture some behavior which spoils the reformatory and correctional process. According to Krishna Iyer, "fair treatment will enhance the chance of rehabilitation by reactions to arbitrariness."

Modern times understands the need to reform the criminal & he commits crimes because of social; inequalities & injustice i.e. poverty, illiteracy, squalor & disease. The offender is to be treated as a sick man to be healed rather than as a malefactor to be chastised. Further Socialization of the offender would eliminate the factors which motivated him to commit the crime & he gets a chance of leading a normal life in society.

The reformative theory made a special focus on greater attention on humanly treatment of prisoners inside the prison. This purpose may be achieved through the agencies of parole & probation which have been accepted as modern techniques of reforming the offenders all around the world. The modern view is that "the mainspring of criminality is greed and if the offender is made to return the ill-gotten benefits of crime, the spring of criminality would dry up".[149]

The Apex Curt in **D.K. Basu v. State of West Bengal**[150] held that custodial torture or death in the lockup strikes a blow at the rule of law and therefore, the court even recommended a change in the law of evidence to throw the onus on the police or jail authorities as to how a prisoner in their custody came to meet the death under suspicious circumstances[151].

The Court has provided monetary compensation to the victims of police excesses in several cases[152]. In the case of Ashok Kumar, who succumbed to injuries sustained while carrying a load at the behest of the Roorkee Sub-jail authorities, the National Human Rights

[147] *Ibid*
[148] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675
[149] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675
[150] D.K. Basu v. State of West Bengal 1997 Cr.L.J. 743
[151] Joginder Kumar v. State of U.P. 1994 Cri L.J. 1981
[152] State of U.P. v. Ram Sagar Yadav, AIR 1985 Sc 416

Commission directed U.P. State government to pay One Lakh rupees to his parents as compensation & issued guidelines that an under-trial cannot be put to hard task.

Kautilya regarded the object of punishment as reformatory. Reformative punishment may mean either that the offender is reformed while being punished or that he is reformed by the punishment itself *qua* the punishment[153].

4.1.5. Postulation of Prisoner's Reformation

As correctional systems have become larger and more complex, haphazard, the reformation of the prisoners requires a careful planning with detailed objective criterion to reach the goals. It requires a good planning and operational standard available in transnational ways. No profession wants to be extremely regulated and conform to any set forms of actions. Correctional service is treated as professional one dealing with human beings. So it requires a flexible strategy.[154] Current trends and views of corrections have mostly based on researches written more in the hope of influencing the future than as portrayed the present state of affairs. In view of those prescriptions few authorities, both legislative and administrative, have adopted recommendations for pnson reforms, but most of them have been slow up to implement those recommendations.

The thrust of this chapter was to raise the issue of prospects for prisoner rehabilitation carried on inside prison walls. The penal institution is an unlikely locate in which to endeavour to provide offenders with the skills and resources through which they might refrain from criminality[155]

4.2. Specific Methods

Unemployment, poverty and declining opportunities continue to directly affect the physical and psychological well-being of people in our communities. Such social problems are entrenched at a spatial level, and are increasingly concentrated in specific locations within our cities. This is sometimes referred to as a process of ghettoisation.[156] The social costs of marginality are inevitablu translated into the economic costs of crime. The social costs of

[153] Jahangir M. Sethna, *Supra* note 106, pg 203.
[154] Encyclopedia of Criminal Justice, Khadish(ed) Op.Cit, P.12.12.
[155] Don C. Gibbons, *Society, Crime and Criminal Careers*, 12, (Prentice Hall India Pvt. Ltd., New Delhi 1973).
[156] Singh Makkar S.P., *Correctional Objectives of Prison: A Critique on Justice Krishna Iyer's Correctional Meditation* (39 PULR 143 1992).

marginality are also transformed into behaviour that is officially defined as anti-social and dangerous.[157] All of this is bound to have an impact on the self image of marginalised people and their effort at self defence in a hostile environment. There is, indeed, a strong link between the socio economic status of individuals (and communities) and the incidence of criminal offending.[158] Offenders who are deepest within the criminal justice system, especially in prisons, disproportionately come from disadvantaged situations and backgrounds featuring low socio-economic status and highly volatile family relationships.

The literature in this area demonstrates that disadvantaged background id disproportionately linked to the following.

- Offending behaviour
- Engagement in anti social conduct
- Heightened perception of threats to safety and increased fear of crime
- Greater incidence of victimization

The process accompanying the relationship between disadvantaged socio-economic status and the incidence of offending indicate the following trends-

- The homogenisation of offender, which results as they pass through the gatekeepers and filters of the criminal justice system, such that the most disadvantaged (who essentially share the same social characteristics) and those who occupy the most places within prison
- The multi directional influence of factors such that (for example) unemployment leads to crime, crime lead to unemployment, and the reciprocal and exacerbating influence of such factors on each other.

Theoretical explanations for the link between socio economic status and yje incidence of offending point to:

1. **Structural factors[159]-** such as the overall state of the economy, levels of unemployment generally, welfare provison and so on, and how the dynamics of the labour market are reflected in the warehousing capacities of the prison.

[157] Donald T. Shanahan, *Supra* note 9, pg 317.
[158] *Ibid*
[159] Singh Makkar S.P. *Supra* note 156, pg 23.

2. **Situational factors**[160]**-** relating to the personal characteristics of offenders relative to their opportunities in the competition for jobs, and how marginalisation and the attractions of the criminal economy contribute to offending.
3. **Factors relating to social disorganisation**[161]**-** as manifest at family and community levels, as for example when the intergenerational effects of the unemployment-criminality nexus translates into less knowledge about ordinary work and concentrations of similarity placed people in the same geographical area.

In summary, there is a complex but demonstrated relationship between low socio-economic status and offending. This relationship is reinforced under contemporary corrective services regimes insofar as prisons and community corrections do not have adequate resources, trained staff, effective programs and variety of services to counter the social disadvantages that weigh so heavily on those who feature the most within the criminal justice system.

By adopting the newer, more restricted conception of "correctional techniques,"[162] we do not necessarily avoid the methodological difficulties involved when general systems and programs are taken as the unit of observation. Statements regarding the effectiveness of specific procedures which are assumed to implement some general system for handling criminals, such as punishment, or which are part of some general program, such as imprisonment or parole, are subject to reservations which are identical to those placed on statements about the systems and programs themselves. This is evident from the fact that we can only assume that a specific technique such as "psychotherapy" or "strict discipline" is or is not corrective. Currently, academicians and the members of professions involved in correctional work ordinarily assume that any real correctional technique is nonpunitive in nature. Only a generation ago, it was common to assume that a specific correctional technique was a method for implementing society's punitive reaction to crime, but the popular assumption at present is that a technique for inflicting punishment cannot be corrective. Because of this assumption, we are rapidly coming to substitute the word "treatment" or "therapy" for the word "correction" or "reformation."[163] Saying that a method is a treatment or therapeutic technique is, then, simply a way of saying that the users of the technique do not make the traditional assumption that intentional infliction of pain is corrective. Psychotherapy, vocational education, counseling, and even direct financial

[160] *Ibid*
[161] *Ibid*
[162] Donald T. Shanahan, *Supra* note 9, pg 318.
[163] Singh Makkar S.P. *Supra* note 156, pg 129.

assistance are viewed as "corrective" principally because they are nonpunitive, not because they have been demonstrated as effective methods for changing criminals into noncriminals. There is no scientific evidence that any nonpunitive correctional technique of this kind is either more or less effective than were punitive techniques such as "teaching discipline," "instilling fear of the law," and "breaking the will."[164] The paucity of scientific data on effectiveness or ineffectiveness of specific methods for dealing with individual criminals is not owing merely to oversight or lack of scientific interest in evaluation. On the contrary, many taxpayers have sincere interests in determining whether or not their money is well spent, and social scientists have keen interests in evaluating the effectiveness of techniques which are consistent, or even inconsistent, with some theory of crime causation they might hold. Explanation of our lack of clear conclusions about various techniques is difficult and complex. Perhaps we have few clearly-evaluative studies for the same reason that we have no crime statistics which are clearly valid: We cannot afford to let them appear.[165]

In the criminal justice process, risk assessment is the process of determining an individual‘s potential for harmful behaviour toward himself or herself or others. They further classified risk as static and dynamic risk. The concept of “need” is related to ―risk‖ in the sense that individuals whose needs are not met might be said to be at risk of a harm of some sort. Need are categorized as criminogenic and non-criminogenic needs.[166] It is the basic concept in corrective and rehabilitative techniques which lays emphasis on evidence based application of correctional techniques. They also developed an assessment tool for this purposes[167] correctional and rehabilitative techniques

4.3. Core Problems

For the sake of brevity researcher will, for the present purposes, merely identify the key problems of corrections rather than tackle them in any kind of depth. The primary problem

[164] Donald T. Shanahan, *Supra* note 9, pg 320.
[165] *Ibid*
[166] Singh Makkar S.P. *Supra* note 156, pg 212-219.
[167] Andrews, D.A., and J. Bonta, *The Psychology of Criminal Conduct*, Cincinnati: Anderson Publishing Company, 1998 Available at: http://marisluste.files.wordpress.com/2011/07/riska-modelis-2.pdf (Visited on June 10, 2014).

relates to the phenomenon of imprisonment. Basically, the problem is that prisons, as institution, fail. Prisons fail in a number of significant ways.[168]

- The fail to prevent future offending/recidivism.
- They fail to protect and preserve human dignity
- They fail to address the causes of crime.
- The fail to deal with the consequences of crime.
- They fail to acknowledge the complexities of criminalisation and victimisation, offender and victim nexus.
- They fail to facilitate autonomy and self determination

The failure of prison also, necessarily, means that much of what happens in post release situation also fail. That is, what occur in the prison, and the impact of imprisonment itself, have negative effect on what subsequently lies ahead for the offender, and for those who work with the offender within a community setting.[169] The challenges, therefore, is to figure out a way to make prisons 'work' successfully (across various evaluation criteria), to come with realistic and positive alternatives to imprisonment (which has major implications for community-level resources), and to consider correctional project in its entirety to bring about a major social change. In the words of Focult (1977) "for a century and a half the prison had always been offered ad its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming the perpetual failure. The realization of corrective project is the only method of overcoming the impossibility of implementing it.[170] The principle aim should be to change the behaviour of the prisoner in a positive way; by method that involve classifying them according to specific individual needs and traits; in a regime that rewards progress towards rehabilitations; that involves work as an obligation and a right; that includes education and general social improvement; supported by suitable professional staff; and with access to help and support during and after imprisonment. Such demands resonate today much the way they did almost two centuries ago at the birth of the modern prison.[171]

Second core problem of the correction is that, generally speaking, it does a bad job of dealing with the fact that offenders are usually simultaneously both offenders and victim. In other words, those most likely yo be subject to intervention be the state and prosecuted as criminals

[168] Donald T. Shanahan, *Supra* note 9, pg 328.
[169] *Ibid*
[170] Robe White, *Supra* note 96 pg 34.
[171] Singh Makkar S.P. *Supra* note 156, pg 99.

are also among the most vulnerable, marginalised and victimised group of the society, for example:

- Young women (and men) suffer at the hands of others, then are brutalised by uncaring and unforgiving system of justice when they 'act out' (either through illicit drug use or by engagement in criminal activity such a assault or sex work).
- Many who suffer from co-morbidity end up enduring the harsh realities of punishment system, but not dealing with their mental illness or substance abuse while in the hands of the state.

The fact is that the vast majority offender who area actually processed by the state and branded as criminals have comples needs and face a wide range of complicated social, economic and political issues. The expression 'the rich get richer and the poor get prison' (Reiman 1998)[172] is factually accurate, but nonetheless needs to be fleshed out by consideration of myriad obstacles that most offenders have had to grapple within their lives.

Consider the fact that women despite comprising over half of the population, constitute a small percentage of the prison population. Given the relatively low number of women who are incarcerated, female prisoners tend to be housed together regardless of official 'security' state (for example, high, medium, or low).[173] Temporary programmes and services tend not to cater the specific needs of women as women, insofar as the system as a whole has a masculine bias in its structure. Historically where there have been women specific programs, these were more than likely yo be built upon conservative and limiting assumptions regarding proper women's work (for example as domestic servants and housekeepers) and ideal notion of 'femininity' (for examp,e act in a more passive ways and ideal to dress in particular ways). Hence to cater special needs of female offenders once they are in system requires the introduction and evaluation of wide range of programs dealing with issues such as sexual and other forms of abuse, employment, education and personal empowerment.

Failure of prison is in part simply a reflection of the failure of the criminal justice system to accommodate social justice issues within its purview. Punishment is seen as a central driver of the system (even if modified by language that stresses rehabilitation, treatment and reparation). Consideration of the social circumstances and life opportunities of the punished has rarely been of paramount importance, even if courts, police and corrective series

[172] Robe White, *Supra* note 96, pg 39.
[173] Donald T. Shanahan, *Supra* note 9, pg 320.

occasionally allude to such in their deliberations and interventions policies. Yet, even if based on pragmatic considerations, it is evident that addressing the failure of corrections is fundamentally a matter of addressing the underlying causes and structures of lamination, the struggle for subsistence and having to endure the pains of abuse and ignorance.

For example, if we look at the treatments meted out to the convicts in the correctional institutions the experience is disheartening. There have been only half-hearted efforts even in such institutions. The convicts have not been treated as human beings.[174]They are not being fed properly[175]. Their rights are being infringed [176] every moment. Even when they are released after their term, they are again arrested on some flimsy ground.[177] The stigma attached to them in the first instance help the authorities to hook and book them for the crimes the perpetrators of which cannot be apprehended due to the authorities' inefficiency.[178] Even those who are trained in some trade, on their release, hardly find a job. Once the stigma is attached no public or private undertaking employs an ex-convict.? No after-care service worth the name is available now for the exconvicts in India. Being unable to find a job and thus unsuccessfull in getting a place in the society the man again chooses the deviant path because there will be no respect left in him for law and its institutions. He automatically becomes a jail-bird.[179]

Sometimes the existence of parole system and remission of sentences on several grounds are mentioned as appropriate measures to cushion the impact of imprisonment on the convict. Thus they are taken as having been inspired by the desire for rehabilitation. But they in fact seem to be the children of other circumstances, such as inadequacy of space in jails, lack of funds and other administrative problems.[180]

Under some circumstances the judge has been given some leeway to fix a punishment having rehabilitative value." And some judges do award sentences with the idea of rehabilitating the

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[174]*Ibid*

[175] The recent unfortunate incidents in Bihar jails and the subsequent steps taken by the highest court of India might be recalled. They are too current fore detailed examination here. American situation, (Hill & Wang, Struggle for Justice 1471 and Karl Menninger, The Crime of Punishment (1968).

[176] The problems attending on judicial discretion in sentencing are too numerous for enumeration. However, the recommendation made in the 47th Report of Law Commission against judicial discretion is not appreciated. SK. N. C. Pillai, *Minimum Sentence vi-a-vis Justice*, 369 (C.U.L.R. 1979).

[177] In this connection the Supreme Court's judgement in Somnath Puri v. State of Rajasthan, AIR. 1972 S.C. 1490, further this decision is a death-blow to the effectiveness of probation.

[178] Singh Makkar S.P. *Supra* note 156, pg 319.

[179] Robe White, *Supra* note 96, pg 89.

[180] Pillai K. N. C., *Minimum Sentence vi-a-vis Justice*, 369, (C.U.L.R. 1979).

convict. But at present, it appears that adequate opportunities to see whether the punishment have had any rehabilitative effect on the individual are not available[181] to the judge.

The case is not different with the police. They seem to be under the impression that their sole aim is crime prevention and making the offenders available to the courts for trial. It is doubtful whether they are made aware of the fact that rehabilitative techniques if vigorously enforced, may ultimately serve to prevent crimes. As the result of such measures are not immediately discernible, the police seem to concentrate on the immediate results of deterrent measures. And the public do expect such quick results 'to be achieved by the police. Both the police and the public are thus content with the current image of police maintaining law and order by enforcing laws with deterrent measures[182]. This ad-hocism prevents the police from examining the efficiency of rehabilitation. It is strongly felt that lawyers and police should play an active role in creating respect for law in the minds of the people. If the people who come in contact with the criminal justice process - and they mainly come in contact with the police frequently - are disappointed with the attitude of these functionaries, law and in turn the societal machinery would be looked down upon by the common man and we cart never achieve rehabilitation worth the name 'in such a situation, If the police and the lawyers can create respect for law in the minds of the offenders by their positive attitudes, we may be serving not only rehabilitation but deterrence and prevention as well. A deliberate and concerted move for deterrence and prevention as well.

[181] Now the judge who takes over the position of the judge who passed the sentence is often consulted according to informal information. But this is stipulated by executive orders. It should be statutory.
[182] Robe White, *Supra* note 96, pg 90.

5. CORRECTIVE TECHNIQUES IN INDIA

Today, the main objective of the criminal justice administration is not merely to punish the offender but to effect changes in his behaviour in the over all interest of the society. This calls for correctional agencies to decriminalize and reform the offenders to make them fit for society and not to dehumanize them by giving harsh and inhuman treatment. Any failure on their part to bring the offenders on the right path again will make the whole process a futile exercise and the main purpose of the criminal justice administration will be defeated. The role of the correctional services, therefore, becomes very crucial. The correctional system of India mainly consists of prisons, probation and parole.

The Law Commission in its 42nd Report did not recommend any change in the nature of punishment. It didn't find favour for banishment and externment. Compensation to victim and duty to make amends were not suggested. Taking motivation from Soviet experience, it recommended for inclusion of corrective labour but by way of a separate legislation. Section 76A was recommended to include public censure for certain offences. With regard to the minimum sentence, it recommended that it should be resorted to only in exceptional cases[183]. It also recommended certain changes in Section 64-69, 71 and 75 of Indian Penal Code, 1860 and the insertion of new Section 55 to specify that imprisonment for life shall mean imprisonment with hard labour.[184]

In India, attempt was made to include modern correctional techniques by proposing The Indian Penal Code (Amendment) Bill, 1978 which provided for community service, public censure, disqualification for holding office and payment of compensation. These punishments didn't find favour by Law Commission.[185] The Bill lapsed due to the dissolution of Lower House and since then the law is static and no further attempt was made to widen the scope of punishment under Section.[186]

It cannot, however, be said that Indian criminal justice system is totally devoid of reformative approach. There are ample provisions which clearly reflect it. At the pre-trial stage, bail provisions, compounding of offences and plea bargaining etc. At the post trial stage, Section 360 and 361 of Code of Criminal Procedure, 1973 provides for admonition to first time

[183] The same view was endorsed by the Law Commission in its 156th report.
[184] Law Commission of India, 42nd Report on Indian Penal Code (June, 1971).
[185] Law Commission of India, 156th Report on The Indian Penal Code Vol-I, 15- 41 (April, 1992).
[186] Ratan Lal v. State of Punjab AIR 1965 SC 444; Punch v. State of Orrisa 1993 Cri LJ 953

offender for an offence punishable with imprisonment less than 2 years. Conditional discharge is also provided for. Section 357-359 of Code of Criminal Procedure, 1973 provides for compensation to victims of crime.

5.1. Role of Judiciary

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 psychatric 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.

Justice Krishna Iyer, in *L. Vijayakumar v. Public Prosecutor*,[187] stressed the need to keep first offenders who were young, however, grave the nature of their offence may be, away from the hardened criminalss 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 Giyarsuddin v. State of A.P.*[188] 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."[189]

The Supreme Court in several cases has stressed the need for therapeutic outlook for the criminal courts referring to Section 248(2) of the new Criminal Proceedure 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

[187] .I.R. 1978 S.C. 1485.
[188] A.I.R. 1977 S.C. 1926.
[189] Giyasuddin and Vijayakuma

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*[190], 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 moral education to convicts inside the prison, recommendation for providing transcendantal 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 vidictiveness and deterrence.

In *Sunil Batra v. Delhi Administration*,[191] Justice V. R. Krishna Iyer canvassed for positive experiments in rehumanisation like meditation, music, arts of self-expression, games, useful work with wages, prison fastivals, 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 characteristcs 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 complaintbox 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*.[192]

It is significant, in this respect to note that in *Rajendra Prasad v. State of U.P*.[193] 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 Prisons are not congenial for

[190] A.I.R. 1977 S.C. 2236.
[191] A.I.R. 1978 S.C. 1675
[192] A.I.R. 1980 S.C. 1579.
[193] A.I.R. 1979 S.C. 916, per V. R. Krishna Iyer,

reform and rehabilitation. It may be relevent 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.

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.[194]

The role of the victim comes into prominence is in situations where the Criminal Procedure Code permits a premature end to the trial. Section 320 of the CrPC deals with compounding of offences, wherein the victim is allowed to withdraw the case filed by him or her. This is allowed only with respect to certain offences, enumerated in the said section. Under certain circumstances it may be advisable to allow the compounding of offences and to drop the criminal proceedings if there is a settlement between the accused person and the victim of the crime. Sometimes, the Public Prosecutor or the complainant may consider it expedient to withdraw from the prosecution; and the court may allow such withdrawal and put an end to criminal proceedings. Under certain circumstances, the Magistrate himself may consider it desirable to stop the proceedings, and the Code, subject to certain safeguards, allow it to be done. A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court. The compoundable offences are mostly non-cognizable offences are not compoundable. Then again, the offences which are compoundable only with the permission of the court are mostly cognizable offences, though all cognizable offences are not so compoundable. On the other hand, deals with the situations where the State can withdraw from prosecuting the offender.[195] The section implicitly makes room for such considerations by enabling the Public Prosecutor to withdraw from the prosecution of any person with the consent of the court. The withdrawal from prosecution under the section may

[194] Charlev Sobraj v. Superintendent, Central Jail, Tihar, A.I.R. 1978 S.C. 1514
[195] Section 321 of Criminal Procedure Code 1973.

be justified on broader considerations of public peace, larger considerations of public justice and even deeper considerations of promotion of longlasting security in a locality, of order in a disorderly situation or harmony in a faction milieu, or for halting a false and vexatious prosecution.[196] The section provides for "the withdrawal from the prosecution" and not "the withdrawal of the prosecution". Withdrawal from a prosecution means retiring or stepping back or retracting from the prosecution, in other words, withdrawal of appearance from the prosecution or refraining from conducting or proceeding with the prosecution. However, when the court consents to such withdrawal from the prosecution, the accused person shall be discharged or acquitted in accordance with the provisions of clauses (a) and (b) of Section 321.[197] The usage of this provision has been quite controversial as Section 321 does not mention whether a complainant or any other person can oppose the application of the Public Prosecutor seeking permission to withdraw from the prosecution.

The Supreme Court has laid down the guidelines that the State needs to follow when withdrawing from prosecution. The issue that arises is whether the victim has a right to oppose such withdrawal by the State. The Supreme Court gives answer to this issue was in the case of *Abdul Karim v.State of Karnataka*.[198] In this case, the State sought to withdraw serious charges under the Terrorist and Disruptive Activities (Prevention) Act, giving in to the demands of a brigand who had kidnapped a popular movie star. The father of one of the policeman killed by the brigand approached the Supreme Court, seeking its intervention in this case. The State did not challenge the locus standi of the petitioner and hence the court ruled on the merits of the case and laid down guidance in that regard. The Andhra Pradesh High Court in *M. Balakrishna Reddy v. Home Dept*.[199], has held that a third party who has suffered as a result of the offence shall have the right to prosecute if the State withdraws the prosecution. Thus the court implicitly recognized the right of the victim to oppose applications filed by the State for withdrawal from prosecution.

Therefore to sum up every criminal court must ensure that constitutional standards for criminal proceedimgs and dure process are met. If the defendant pleads guilty, the court makes sure that thr action of the defendant in pleading guilty, the court makes sure that the action of thr defendant in the pleading guilty id understood by im and is voluntarily made. If he pleads not guilty, the case proceeds to trial. If the defendant elects not to have a jury, the

[196] Subhash Chander v. State (Chandigarh Admn.), (1980) 2 SCC 155.
[197] Public Prosecutor v. Mandangi Varjuno, 1976 Cr LJ 46 (AP).
[198] AIR 2001 SC 116.
[199] 1999 Cr LJ 3566 (AP)

court will hear the trial and make the decision as to the defendant's guilt. If there is a jury, the judge supervises all proceedings, makes rukings on evidence and procedural matters, and instructs the jury about the law that applies to their deliberations. A defendant found not guilty is, of course, released (unless there are other charges pending on which to hold him). A defendant found guilty is the ready for sentencing.

5.1.1. Judicial Initiatives in Prison Justice-

The Indian system of prison administration was restructured and modified by the judiciary. Many of the rights assured to prisoners were incorporated into the Indian legal system by the judiciary.

Krishna Iyer, J. was the person who advocated strongly for orienting reformative treatment of prisoners. In all his judgments he tried to incorporate reformative values into the prison administration. The concept of crime was also redefined by the judges of his time. It was observed that[200]:

"Crime is a pathological aberration that the criminal can ordinarily be redeemed that the state has to rehabilitates rather than avenge. The sub-culture that leads to anti-social behavior has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times."

The above judgment conveys the right influence of international human rights doctrine over the Indian judiciary. The Court in the Giasuddin emphasized on the Gandhian approach of treating offenders as patients and therapeutic role of punishment. Krishna Iyer, J. delivering the judgment also pointed out that the judge must use a wide range of powers in reformatting the criminal before him. Thus the concept of reformation was planted even out of the four walls of prison by this judgment.

Free from torture and cruel treatment: Supreme Court in many instances made it clear that the prison treatment should not cause any kind of torturous effect over the inmates. Even the practice of separate confinement and solitary confinement was deeply discouraged by courts

[200] Mohammed Giasuddin v. State of Andhra Pradesh, A.I.R. 1977 S.C.1926

in many instances. The court clearly pointed out that the prison authorities cannot make prisoners to solitary confinement and hard labor.[201]

As to ensure the prison practices the Supreme Court in this judgment also directed the district magistrates and sessions judges to visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances.[202] They were to make expeditious inquiries and take suitable remedial action. Thus the concept of judicial policing was recognized by the Supreme Court through this judgment.

Discussing on the same premise the court vehemently criticized the practice of using bar fetters unwarrantedly. The court held the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast, would certainly be arbitrary and questionable under Art. 14. Thus putting bar fetters for a usually long period, day and night, and that too when the prisoner is confined in secure cells from where escape is somewhat inconceivable without any due regard for the safety of the prisoner and the security of the prison is not justified. Judicial interferences of this kind coined many rights for the prisoners which will not be unless ever possible. **Krishna Iyer, J. at this instance remarked[203]:**

"*Society must strongly condemn crime through punishment, but brutal deterrence is fiendish folly and is a kind of crime by punishment. It frightens, never refines; it wounds never heals.* "

The message of reformation through prison treatment has to be there in every measure adopted by the authorities. The human right to be safe in prisons as mandated by the international human rights law is being incorporated into Indian law by judicial initiatives. International law gives widest possible protection to the prisoners from torture and that kind of protection can only be accommodated by the legislature.

Freedom of speech and expression:- Prisoners alike others can access many human rights made in the Universal Declaration of Human Rights and international covenants. Indian judiciary had also recognized the right of a prisoner to enjoy the right to freedom of speech

[201] Shankardass R.D., Supra note 108, pg 192.
[202] Mohammed Giasuddin v. State of Andhra Pradesh, A.I.R. 1977 S.C.1926
[203] Shankardass, R.D. *Supra* note 108, pg 192.

and expression. It is interesting to note that the judiciary took such a view before the Kesavanada Bharathi judgment came and the evolution of the concept of justice as fairness.

Alongside this, it is worthwhile in discussing the judicial declaration of the right of the press to interview prisoners. This judgment has certain implications over the right of prisoners in exercising their right to freedom of speech and expression. A Writ Petition filed under **Art. 32** by the Chief reporter of Hindustan Times Smt. Prabha Dutt seeking a writ of mandamus or order directing the respondents Delhi Administration and Superintendent, Tihar jail to allow her to interview two convicts Bill and Ranga who were under a sentence of death, whose commutation petition to the President was rejected.[204]

The Court held the restricted right to interview the prisoners subject to their willingness to attend the same. The freedom of press person to interview an under trial prisoner will not be alike that of the prisoner sentenced to death. Supreme Court remarked that the right to interview a prisoner will not become an exclusive right as in the case of life convict and it should be decided on merits depending on each case.

5.2. Corrective Administration

Post sentencing stage includes parole, commutation and remission of sentence (Article 72 and 161 of the Constitution of India, 1950). Finally, the best example of corrective and rehabilitative approach is set by Juvenile Justice (Care and Protection of Children) Act, 2015.[205]

The criminal jurisprudence dealing with the imposition of sentence has undergone a drastic change with the enactment of the Probation of Offenders Act, 1958 which is a milestone in the progress in the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of the criminal law is more to reform the individual offender than to punish him.[206]

5.2.1. Reform in Prison Labour Scheme:

The objectives of 'prison labour' have varied from time to time. **TheIndian Jail Reforms Committee of 1919-20** recommended that the main objective of prison labour should be the

[204] Reported in Hindustan Times dated December 17, 2005
[205] *Supra* note 202.
[206] State Tr. P. S. Lodhi Colony, New Delhi v. Sanjeev Nanda (2012) 7 SCC 120.

prevention of further crime by the reformation of criminals, for which they were to be given instruction in up-to-date methods of work enabling them to earn a living wage on release.The other objectives were to keep the offenders use fully engaged to prevent mental damage and to enable them to contribute to the cost of their maintenance.[207]

Work was allotted to prisoners on the basis of their health, length of sentence prior knowledge of a trade, and the trade which was most likely to provide a living wage on release. After independence, punitive labour such as extraction of oil by manual labour was abolished and more useful programmes were introduced Co train offenders as technicians.[208]

Some effort has also been made during the last three decades to train prisoners largely drawn from among agriculturists in modern methods of agriculture and animal husbandry but, for want of land, only limited progress could be made in this direction.[209]

Initially, payment of wages to prisoners was opposed on the ground that they were already a burden on the State. Gradually, the need for providing some motivation to prisoners was realized and it was considered that some monetary reward would develop interest in work and provide the necessary incentive, more so if the prisoner was allowed to use the earnings on himself or his family. After independence, in some of the open prisons, prisoners are paid wages at market rates out of which they pay to State their cost of maintenance. There is now a growing realization that such liberal system of wages would provide greater incentive for higher and better production.

Maharashtra was the first State to introduce in 1949 a very comprehensive system of wages.

The Apex Court in ***State of Gujarat & another v. Hon'ble High Court of Gujarat***[210]observed,

"Reformation and rehabilitation is basic policy of criminal law hence compulsory manual labour from the prisoner is protected under Art. 23 of the Constitution. Minimum wages must be paid to prisoners for their labour after deducting the expenses incurred on them".

5.2.2. Role of State Welfare Officers in Reformation of Prisoners:

In some States welfare officers have been appointed but their number is nominal. They keep in touch with the prisoners and help them to adjust to their new situation. They also help

[207]S. Sanyal, *Prison and Prisonization of Inmates*, 16(63) Social Defence 1981, (Last visited on January 12, 2020).https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=82804

[208]*Ibid*

[209]Kunwar Vijay Pratap Singh, IPS, in a Training Programme for Jail Officers on, *Prison Administration System: Undertrials and Free Legal Aid*, held at Gumtala Central Jail, Amritsar, Punjab, 8-9/10/2006.

[210](AIR 1998 SC 3164)

prisoners in maintaining family ties. They have thus a very important role in the rehabilitation of offenders.[211]

The shift of emphasis from deterrence and custody to reformation and rehabilitation of offenders has necessitated recruitment for prison services of men with humanity, integrity and a sense of social service. They have to have a stable temperament, energy, tact and patience and ability to get on well with others.

5.2.3. Reformation of Under-trials:

The under trial prisoners are rightly not obliged to work under the law but remaining unemployed is not only against their own interest but also a national waste. A policy of persuasion rather than coercion to engage under trial prisoners in work was thus advocated and if they chose to work they were to be paid wages. But in practice when they opt to work, they are employed on prison services and are in lieu thereof given laboring diet and no wages.[212]

Recently, the criminal law has provided that the period of detention as under trial shall be counted towards the sentence of imprisonment. This will mitigate some hardship but will not by itself encourage under trials to volunteer for work.[213]

Quite a large number of under trial prisoners are detained in jails for long periods as they are unable to afford fees of lawyers to defend them. In recent years the government has given some attention to this problem and efforts are being made to give free legal aid to the poor. If this facility is extended to a large number of poor persons, it would not only in the long run result in the shortening of the period of detention of under trials but might in some cases result in acquittal also.

5.2.4. Reformation of Women Prisoners:

The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep tem mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents. Particularly, the women, who fall prey to sex offences, should be treated with sympathy and their illegitimate children should be assured an upright life in the society. The idea of setting up separate jails for women provides the free environment for providing special treatment to them. The first women jail was established in Maharashtra at Yarwada.

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[211] S. Sanyal, *Supra* note 207.
[212] Singh,K.V.P., *Supra* note 209.
[213] *Ibid*

5.2.5. Reformation of Juveniles Offenders:

For the reformation of juveniles, correctional institutions, like Special homes (under the Juvenile Justice Act, 2000), certified schools and borstals are constituted for providing the special treatment, medical care, education, accommodation and vocational training to juveniles. Particularly, the States of Gujarat, Maharashtra and Tamilnadu have done a commendable work in direction of encouraging Borstal system through a well planned strategy. The young offenders in these States are released on license or parole after they have served at least two-thirds of commitment in a certified correctional school. These States have also established After-care Associations and Children Aid Societies to rehabilitate and reform the juvenile offenders.

Young offenders are kept in separate institutions known as Borstal Schools so that they do not come in contact with adult criminals.[214]

The penologists suggested Borstal treatment for the adolescent delinquents. Borstal system was found in England from the village named Borstal in Kent. At the age of 16, the period of childhood comes to an end, and next is the stage of adolescence. According to the penologists it is the important age of transformation, changes come so fast to them that many cannot resist themselves. Out of confusion, obsession, curiosity etc. many individual indulge in crime. So, to keep such perverted youths under control Borstal system was introduced.[215]

There are some Borstal institutions in some states of India where adolescent delinquents are kept to train them and treat them. But unfortunately these institutions are set in traditional pattern, so inadequate to deal with psychological and psychiatrical treatment of the delinquents. From the study the investigator finds that there is absence of vocational trainings. There is much have to be done to make Borstal treatment a strong and potential weapon to fight crime among the adolescents and to return them back to the mainstream of the society as responsible citizens

Children are recognized worldwide as supremely assets of the state. the longer term of the state lies within the hands of the kids, WHO are recognized because the supremely assets of the state however as a result of the indifferences of our society all told spheres, these future stake holders aren't cited properly that results in kid delinquency. Children or delinquency is Associate in nursing alarmingly increasing downside inflicting a supply of concern all told

[214]*Frequently Asked Questions on the Juvenile Justice (Care and Protection of Children) Act, 2015*, Centre for Child and the Law, National Law School of India University, 2018.
[215]*Ibid*

over the globe.[216] Children need to be the topic of prime focus of development designing, research, and welfare in Asian country however sadly, it's not been therefore. Despite the Constitutional vision of a healthy and happy kid protected against abuse and exploitation, and a National Policy for youngsters, the bulk of kids in Asian country still live while not a cared, protected and substantive childhood[217]

India could be a soul to world organization Declaration on the Rights of the kid, 1959 that outlined and recognized varied Rights of the kids namely: the proper to health and care, the proper to protection from abuse, the proper to protection from exploitation, right to protection from neglect, right to info, right to expression and right to nutrition etc. are outlined as basic rights of kids by the Convention of the rights of the kid.[218] Consequently, Asian country has adopted a national policy on kids in 1974 for achieving the on top of aforesaid rights for its kids. The primary central legislation on Juvenile Justice was passed in 1986, by the Union Parliament, thereby providing an even law on juvenile justice for the complete country. Before these laws there were many other laws regarding the same matter were in existence in every country all over the world. But those were not same or uniform.[219] So the primary uniform law on juvenile justice but failed to lead to any dramatic improvement within the treatment of juveniles. He law continued to electrify plenty of concern, in human rights circles, pertaining not able to the method juveniles were treated in detention centers selected as special homes and juvenile homes.

Juvenile Justice (Care and Protection) Act, 2015

Juveniles in India are categorized in two groups, one which comprise of CINOCAP (Child In Need Of Care and Protection) and the other CICWL. (Children in Conflict with Law) In both cases children means a person who is below the age of 18 years.[220] The Juvenile Justice policy in India is structured around the constitutional mandate prescribed as per Articles 15(3),39(e) and (f),45 and 47 and also the UN Convention on the rights of the Child (CRC) and UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules). The problematic children can be classified as vagabonds, orphans, destitute, beggars, truants, mischievous children and children who are in conflict with law (girl /boy below the age 18

[216] Witerdyk AJ, *Juvenile Justice System: International Perspectives* (Models and Trends 2004).
[217] Sharma RN, *Criminology and Penology* (Surjeet Publications 2008).
[218] Mahrukh A., *Child and Protection and Juvenile Justice System: for Juvenile in conflict with Law* (Children India Foundation 2006).
[219] Government of India (2000) Supreme Court cases', Bhoop Ram V. state of Up, (1989) and Arnit Das V. state of Bihar.
[220] Witerdyk AJ, *Supra* note 216.

years and who has committed an offence).This is the category which needs to be attended so that the future of the country is in safe hands, as it is said that the future of one's country is in the hands of its youth. Corrections may be institutional or non-institutional.[221]

The goals of corrections include

a. Reformation
b. Humanization
c. Recognition of the rights
d. Reorientation of institutions
e. Introduction of scientific methods etc.

The JJ Act 2015 caters to the basic needs of children through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach and disposal of matters in the best interest of children and for their rehabilitation through process provided and institutions and bodies established under the act.[222]

The JJ Act has also categorized offences committed by children into three categories as listed below:

1. Heinous offences is defined under Section 2 (33) as "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more;
2. Petty offences is defined under Section 2 (45) as "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;
3. Serious offences is defined under Section 2 (54) as "serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years;

With the passage of the JJ Act, 2015, the possibility of children between the ages of 16 and 18 years being tried as adults for heinous offences has arisen. This means that a separate set of reform and rehabilitation measures will have to be taken for such children. Further, it is important to identify the parameters on which the level of reformation of a child offender who has,

[221] Mahrukh A, *Supra* note 216.
[222] American journal of Social Sciences, Arts and Literature, Vol 3, No. 3, April 2016. Available online at http://ajssal.com

committed heinous offence, will be assessed, so as to minimize the element of bias or prejudice, after the child has attained the age of 21 years.[223]

The Act also focuses on restorative justice practices that are different from criminal justice practices. Section 18.[224] of the JJ Act, 2015 states.

Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

a) allow the child to go home after advice or admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian;
b) direct the child to participate in group counseling and similar activities;
c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;
e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;
f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's wellbeing for any period not exceeding three years;
g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

[223] Mahrukh A, *Supra* note 216.
[224] Government of India (2000) He Juvenile Justice Act, 1986' and He juvenile Justice (Care and protection) Act, 2000' Publication Division, New Delhi.

Further, If an order is passed under clauses (i) to (vii) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or
(ii) attend a vocational training centre; or
(iii) attend a therapeutic centre; or
(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
(v) undergo a de-addiction programme.

Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences There are two orders listed at 1 and 2 in Section 18 mentioned above that are suitable for using restorative practices and long term rehabilitation

The process of rehabilitation includes a network of different professionals. These professionals have to undertake this difficult task within a limited time frame.[225] All our strategic interventions are aimed to improving the rehabilitation process for the children in conflict with law For successful rehabilitation and re-integration of children in conflict with law it becomes necessary to develop a multi- dimensional approach.[226] Prevention of juvenile crimes, proper timely interventions can help strengthen the rehabilitation process. Focus should be given on addressing all the needs of a child's life: emotional, physical, relational, intellectual, creative and spiritual. We must shift our attitudes from need based approach to rights based approach while rehabilitating children in conflict with law.[227]

Rehabilitation Measures-

Rehabilitation is a crucial step to put the survivors/victim and children in conflict with law back in the society as well as to prevent recidivism.[228] This cannot be completed without maintaining follow up to assess their socio economic and educational status. Rehabilitation measures also have to be different for children in conflict with law who are in institutional care and the ones who are been released from the institution.[229] While child care institutions need to take steps to ensure rehabilitation of the child when he/she is in its care, probation officers/social workers also

[225]Ted Wachtel, Terry O'Connell and Ben Wachtel, Restorative Justice Conferencing, , *Real Justice& the conferencing handbook*, International Institute for Restorative Practices, 2010
[226] Maharukh A, *Centre for Child and the Law,* Handbooks for Advocates working with CICLs, National Law School of India University, 2018
[227] *Ibid*
[228]*Ibid*
[229] Witerdyk AJ, *Supra* note 216.

have to make sure that the process of rehabilitation is not interrupted when the child re-enters in the community.[230]

There are multiple factors which need to be considered when one imagines the situation of a child in conflict with law. These include socio-psychological, family and peer-related influences. CCLs require rehabilitation and re-integration in to the society in the form of sponsorship, foster care and aftercare. The UN Convention on the Rights of the Child (the CRC) which India has ratified in 1992, recognizes the importance of diverting young offenders from the formal processes of the criminal justice system. By becoming a party to the CRC, India has voluntarily undertaken to introduce appropriate diversionary measures for juvenile offenders and to ensure that such measures comply with a number of minimum standards.[231]

Rehabilitation for children in conflict with law rests on the principle of restorative justice which seeks to restore the balance of a situation disturbed by crime or conflict rather than just simply meting out punishment for an offence committed. It means taking responsibility to make things right insofar as possible, both concretely and symbolically.[232] As our fore parents knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability. For many of us, it reflects values with which we were raised. In restorative justice, offenders are encouraged to understand the harm they have caused and to take responsibility for it. Dialogue-direct or indirect - is encouraged and communities play important roles. Restorative justice assumes that justice can and should promote healing, both individual and societal.

5.3. Programmes to boost the reformation tendencies in prisoners:

There are some programmes as initiated by various State governments for the reforms of the prisoners as follows:

5.3.1. Educational Facilities

The prison administration has provided facilities for education of inmates by getting affiliated with the Indira Gandhi National Open University and the National Open School. There are also computer-training centres for the inmates.[233] The most important aspect of the education system in Jail is that educated prisoners voluntarily teach less educated prisoners. An illiterate prisoner can look forward to being literate if his stay is more than a week. Library facility has been provided with the support of non-governmental organizations. Vocational classes in

[230] Maharukh A, *Supra* note 216.
[231] *Ibid.*
[232] Sharma RN, *Supra* note 217.
[233] *Ibid*

English/ Hindi typing and Commercial Arts are conducted by Directorate of Training & Technical Education and certificates are issued to successful students.

5.3.2. Prisoners' Panchayats

Prisoners' bodies called "Panchayats" are constituted to help prison administration in the field of education, vocational education, legal counselling, kitchen, public works etc. Co-operative canteens at many prisons have been running successfully and the profits made are used for the recreation and welfare of prisoners. Prisoners are encouraged to participate in the management of their welfare activities. Sense of responsibility is inculcated in the prisoners to prepare them for social integration after release.

5.3.3. Vocational Training

Training on pen manufacturing, book binding, manure making, screen printing, envelope making, tailoring and cutting, shoe-making etc. are regularly provided to the inmates. These training programmes have not only resulted in learning of different trades but also provided monetary gains to the prisoners. For the post-release rehabilitation of the prisoners, the Social Welfare Department of State Govt. provides loans for setting up self-employed units.

5.3.4. Yoga and Meditation

The concept of introducing Yoga and meditation in the jail has created history and has received wide accreditation by various national and international human rights organization. For cleansing and disciplining mind, yoga and meditation classes are conducted in a big way with the help of various voluntary organizations. In the year 1994 Tihar Jail created a history by organizing a Vipassana Meditation camp[234] for more than one thousand prisoners.

5.3.5. Facility for Psychological Treatment

The prison authorities have started special psychological treatments for prisoners. Creative Art Therapy, which is psychotherapeutic in nature, is used in several settings. In respect to prison setting, the therapy serves as a reformatory process. in several ways. Firstly and most importantly, it helps the inmates to express, channelise and ventilate their anger, grievances and feelings. One has to keep in mind that anyone convicted or otherwise exiled from the rest of the world is initially bound to have tremendous anger, aggression, and sense of helplessness, hopelessness and emotional problems. Therefore, by practicing Creative Art, the individual is able to release his pent up emotions and realise his worth.

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[234]Kutty, I.M., *Vipassana Meditation on Sleep Organisation and its Implications for Wellbeing* (2000-2012) ByDept. of Neurophysiology, NIMHANS Bangaluru, Vol. 27, No.2, 10 February, 2017. A monthly publication of the Vipassana Research Institute, (Visited on March 18, 2020) https://niranjana.dhamma.org/Niranjan/newsletters/english/en2017-02.pdf.

5.3.6. Prisoners' Grievance Cell

A prisoner grievance cell is working effectively under the charge of Petition Officer and immediate remedial steps are taken on the complaints/ grievances of the prisoners. Prisoners have been provided facilities to write complaints and send them to senior officers either through fixed complaint boxes located at convenient places or through the mobile petition box meant for petitions addressed to D.G. / Addl. I.G. (Prisons), which is taken to all the enclosures everyday. Jail Superintendent, Deputy Superintendent and even senior officers have frequent meetings with the prisoners openly where prisoners' grievances are listened carefully and solutions provided.

5.3.7. Community Participation

As a part of community participation in the reformation and social integration of prisoners after release, a large number of respectable members of non-governmental organisations, retired Major Generals, Eminent Psychiatrists, Psychologists, Principals and Teachers of various educational institutions have been conducting various activities in the jail. These programmes have very sobering and positive impact on the psyche of the prisoners, who have been shown the positive and constructive approach to life after interaction with them. NGOs' participation is mainly concentrated in the field of education, vocation and counselling. Apart from the formal education with the NGO support, the classes in various languages like Urdu, Punjabi, German, French etc. are also held. Some of the NGOs have trained selected prisoners on various trades and have been bringing job for them against payment of remuneration. They also rehabilitate these prisoners after their release.

5.3.8. Periodical Visit of Medical Officers:

The reform initiatives taken up in Jail shows that force is always not necessary to control and correct the prison inmates. The manner in which the prison administration has taken up the system of rehabilitation, it becomes important for other prisons of the nation to follow suit. The central as well as state governments must also take the initiatives to take actions so that this system of rehabilitation is encouraged, promoted and practiced.

5.4. Role of Non-custodial Methods in Reformation of Prisoners:

The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological approach has ushered in new forms of sentencing whereby the needs of the community are balanced with the best interests of the

accused: compensation, release on admonition, probation, imposition of fines, community service is few such techniques used. About 80 per cent of convicted prisoners are sent to jails for short periods not exceeding three months, which only expose them to moral contamination and result in economic hardship and distress to their dependents.

There is thus need for greater use of existing alternatives to imprisonment such as warning, probation, suspension of sentence, fines, release on personal bond etc., and also for introducing other alternatives of a non-custodial nature such as service to the community, payment of compensation to the victim of crime etc. Such punishments will involve the positive cooperation of the offender which is likely to be effective in his reformation. The addition of such punishment will add a new dimension to the penal system which will emphasize the idea of reparation to the community. Some of the main non-custodial measures are follows:

5.4.1. **Probation**:

The ***Central Correctional Bureau*** observed the year 1971 as ***"Probation Year"***[235]all over the country. Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies.

'*Hate the crime not the criminals*'[236]. This line by Mahatma Gandhi is the thrust of the reformation of the criminals. Not looking to criminals as inhuman, the probation system puts forward the changing nature of modern society where it presently looks into the fact that probation system aims at rehabilitating the offender to the norms of society i.e. into law abiding member.

In modern age we believe in reformative method of criminal justice system. We know very well criminals are not born but circumstances turns them So many jurist think criminals can make reform and have opinion if criminals find proper treatment without any hard punishment they can improve their attitude towards the society. In the words of Sutherland and Cressey probation is well step in this direction, in which offenders are supervised by any prominent officers without sending jail them. Probation is the status of a convicted offender

[235] Kadish S.H., *Encyclopaedia of Crime and Justice*, (2 Ed.), The Free Press, 1983, Vol. Ill, P.1247
[236]Chakrabarty N.K., *Probation Services in the Administration of Criminal Justice*, New Delhi: Deep and Deep Publication, (1999) p20

during a period of suspension of the sentence in which he is given liberty conditioned on his good behavior and in which the state by a personal supervision attempts to assist him to maintain good behaviour.'[237]

According to this definition probation is not pardon any type. There are three elements in probation

- Inspection It is necessary to inspect of criminals under release of probation law.
- Direction of goal In this period of inspection offenders are advised to actual direction about his behavior and work.
- Aiding State Government try to provide all type of help to released offenders on probation if state government thinks about its need. [238]

Probation supervision began in the 19th century in the United States and the United Kingdom as an initiative of church-based voluntary groups interested in the reform of criminals. In England and Wales, probation has its origins in the work of police-court temperance missionaries of the late 19th century, who provided informal supervision of offenders at the request of magistrates.[239] In the United States, probation developed from the work of a temperance activist in Boston in the 1840s, who persuaded judges to release drunkards, and later some other minor offenders, into his care.

Probation as we know it today thus began with courts using their common law powers to bind over offenders into the care of charitable volunteers. A professional probation service based on statute did not begin to develop until the late nineteenth and early twentieth centuries.

These charitable origins have had a strong influence on the nature of probation. *Probation refers to the conditional release of one convicted of a crime into the community during a period of supervision under anassigned probation officer*.[240]

The roots of current probation work practice can be found in the spirit of voluntarism, often underpinned by a strong Christian conviction, which characterised much social work at the

[237]Jon F. Klaus, UNICRI, *Commonwealth Secretariat, Handbook on Probation*, 8 (Rome/ London, Publication No. 60, (1998)
[238]Kadish S.H., Supra note 172, pg 872.
[239]Chakrabarty N.K, *Supra* note 174.
[240]Jon F. Klaus, *Supra* note 173.

turn of the century.[241] The guiding purpose of probation was, as originally conceived, to 'advise, assist and befriend' offenders who were in more need of help than punishment. Probation orders were not penalties in themselves, but alternatives to punishment; and the purpose of probation was to give offenders the chance to respond to a bit of straightforward commonsensical advice and guidance.

Definition of Probation

A Probation is the post pone meant of final judgment or sentence in a criminal case, giving the offender opportunity to improve his conduct and to real just himself to the community on conditions imposed by the court and under the guidance or supervision of an officer of the court.[242] Probation is the status of a convicted offender during the a period of suspension of the sentence in which he is given liberty conditioned on his good behavior and in which the state by personal supervision attempts to assist him to maintain good behavior "Sutherland".[243] Probation implies either suspension of execution of punishment or imposition of sentence during the good behavior of the offender.

Compensation, release on administration, probation imposition fines, community service are few such techniques used through this research the advantages of probation are highlighted along with how it could be made more effective in India. The term probation is means to test or to prove. It is a treatment device developed as a non-custodial alternative which is used by magistracy where guilt is established but it is considered that imposing of a prisoner sentence would do no good. Imprisonment decreases his capacity to readjust to the Norman society after the release and association with proferional aelinanent often has undesired effects.

The statement that probation is not punishment is misleading however much preferred by delinquents, good probation may involve restrictions upon freedom and be irksome to refrain from disapproved behavior or to perform required acts which may irksome and even painful to the probationer.[244]

Therefore, probation means conditional suspension of imposition of a sentence by the court, in selected cases, especially of young offenders, who are not sent to prisons but are released on probation, on agreeing to abide by certain conditions. Probation has been described by the Economic and Social Council of the United Nations as one of the most important aspects of

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[241]Albrecht, H.J.,*United Nations Interregional Crime and Justice Research Institute*: *Promoting probation internationally*, (Rome/London' publication no.58 Dec.1997).
[242] *Ibid*
[243]Khatri,B D. *Law of Probation in India*, 111(Lucknow: Eastern Book Company, 1980).
[244]Kadish S.H., *Supra* note 172

the development of rational and social policy.[245] Provincial Governments of C.P. and Berar, Madras, U.P., Bombay, West Bengal and Hyderabad had enacted Probation laws for their respective areas during the period 1936 to 1954. However, having realized the need of a central comprehensive law on probation, the Indian Parliament passed the Probation of Offenders Act, 1958. Section 19[246] of the Act provides that section 562, Cr.P.C. (section 360 of the new Cr.P.C.) ceases to apply to the states or parts thereof in which this Act is brought into force.

Rationale-

That many offenders are not expert or dangerous criminals but are weak characters who have surrendered to temptation, or through misfortune or improvidence, have been brought within the operations of the police and the Courts. In assigning this type of offender to the care of a probation officer, the Court not only saves him from the stigma and possible contamination of prison, but also encourage his own sense of responsibility for his future: if he co-operates with the probation officer, he will be able to continue his normal life and his record will still be clean.[247]

Such a practice not only assists the offender and has a social value to the community but, by relieving the prisons of large numbers of first offenders, short term prisoners, and other classes of quasicriminal offenders, it results in economy and allows the prison service to apply themselves to their true function that of segregating or providing treatment for the vicious and dangerous criminal

Merits of Probation System

It helps to the accused who is under probation to follow law and rehabilitation in society. It's importance described under the following points : Under probation system, accused can be saved them dangerous atmosphere of prison where joining of habitual offender. It is parable to the first offender to influences his evils on the other hand, he can be saved to state prisoner by the society in which procedure in heart inferiority complex and he any again commits crime and join illegal activation for society.[248]

Secondly, probationary accused feels control of probation officer in which society did not opposite his offence only provided a one chance to reform him if the commits misuse this chance them he will penalize and will send to Jail. Thirdly, under probation accused is under

[245]Khatri, B.D., *Supra* note 180
[246]*Ibid*
[247]Khatri, B.D., *Supra* note 180
[248]Paranjpe, N.V. Dr., *Criminology and Penology*, etd. 2000, Chapter Probation of Offenders.

deterrence which is bounded to make well decipema to him who is probationary released offenders.[249]

Finally, During this period of probation it helps to accused to collect such value which is convenient to live his life to provide freedom which is essential for a good citizen of society. Great benefit of probation that accused can relate his family and the can participate his responsibility of his family and he can earn money to livelihood for his family to do any employment work or to do any occupation. In probation, probationary accused do his self rehabilitation in society be self efforts in which self dependency and self motivated persons are improve him.[250]

Probation of Offenders Act

Before passing the Probation of Offenders Act, 1958 there was no central legislation containing provisions for reform, rehabilitation and supervision of the offenders released on probation as section 562 of criminal procedure Code[251] merely provided for release of the offenders. Passing of the Probation of Offenders Act indicates that something more was required than just letting a person off, in order to reform and rehabilitate him. Section 3[252] of the Act provides that when any person is found guilty of having committed an offence-theft, dishonest misappropriation of property, cheating or any offence punishable with imprisonment for not more than two years, or with both, under the Indian Penal Code[253] or any other law, and no previous conviction is proved against him, the court may release him after due admonition.

Section 4[254] of the Act empowers the court to release any person found guilty of having committed an offence not punishable with death or imprisonment for life on probation of good conduct. The person being released on probation has to enter into a bond to appear and receive sentence when called upon during such period, not exceeding three years, and in the meantime to keep the peace and be on good behaviour.

As per the provisions of section 6[255] when any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to

[249]*Ibid*
[250]*Ibid*
[251]Sheik Mahaboob, In re, A.I.R. 1942 Mad. at p. 532(1): 55 L.W. 355: 1945 M.W.N. 377:20 I.C. 524
[252]Guhar v. State of M.P., (2007) 1 S.C.C. (Cr.) 395 at p. 398
[253]Khatri, B.D., *Supra* note 180
[254]*Ibid*
[255]The Probation of Offenders Act, 1958 (20 of 1958)

imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4. If the court decides to pass any sentence of imprisonment on the offender, it shall have to record its reasons for doing so.

Section 14[256] of the Act deals with the duties of the probation officers. It provides that a probation officer shall, subject to such conditions and restrictions, as may be prescribed—

a) inquire, in accordance with any direction of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
b) supervise probationers and other persons placed under his supervision and where necessary, endeavour to find them suitable employment;
c) advise and assist offenders in the payment of compensation or costs ordered by the court; and

advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4. The Supreme Court, in Rattan Lal v. State of Punjab,[257] has observed that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.
he probation system plays a very important role in the

5.4.2. Parole and after care released preioners

The parole system is an excellent way to allow prisoners to rehabilitate and get in touch with the outside world. Parole is a legal sanction that lets a prisoner leave the prison for a short duration, on the condition that she/he behaves appropriately after release and reports back to the prison on termination of the parole period. It must be noted that a parole is different from a "furlough". While parole is granted to a prisoner detained for any offence irrespective of the duration of imprisonment, a furlough is only granted to prisoners facing long sentences, five years or more. Furlough is matter of right, but parole is not. However, an abuse of the system is a drag on the country. The urgent need of the hour is for police officials to acknowledge

[256]The Probation of Offenders Act, 1958 (20 of 1958)
[257]Kadish S.H., *Supra* note 172 pp. 231-39.

that the parole system is being misused and find ways to ensure that parole laws are properly enforced in prisons across the country.

One of the most important but controversial devices for reducing pressure on prison institutions is the selective release of prisoners on parole. Parole has a dual purpose, namely protecting society and at the same tome bringing about the rehabilitation of the offenders. The parole system is an excellent way to allow prisoners to rehabilitate and get in touch with the outside world. Parole is a legal sanction that lets a prisoner leave the prison for a short duration, on the condition that she/he behaves appropriately after release and reports back to the prison on termination of the parole period. The conditional release from prison under parole may begin anytime after the inmate has completed at least one- third of the total term of his sentence but before his final discharge.[258]

Release on parole is a part of the reformative process and is expected to provide opportunity for the prisoner to transform himself into useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not, in any way, change the status of the prisoner.

Parole is a penal device which seeks to humanise prison justice. It enables the prisoners to return to the outside world on certain conditions. The main object of the parole as stated in the Model Prison Manual are

a) To enable the inmate to maintain continuity with his family life and deal with family matters
b) To save the inmate from the evil effects of continuous prison life.
c) To enable the inmate to retain self confidence and active interest in life[259]

It must be noted that a parole is different from a "furlough". While parole is granted to a prisoner detained for any offence irrespective of the duration of imprisonment, a furlough is only granted to prisoners facing long sentences, five years or more. Furlough is matter of right, but parole is not.[260] However, an abuse of the system is a drag on the country. The urgent need of the hour is for police officials to acknowledge that the parole system is being misused and find ways to ensure that parole laws are properly enforced in prisons across the country.

[258] Samshuddin v. State of Haryana, 2004(2) R.C.R. (Cr.) 362 at p. 363 (P. & H.).
[259] Bhikhabhai Devshi V. State of Gujarat, AIR 1987 Guj. 136.
[260] Ramesh Dass v. Raghu Nath, A.I.R. 2008 S.C.

Taking inspiration from Anglo-American developments in the correctional field of penology, the Indian penologists were convinced that India also cannot tackle its crime problem by putting criminals in prison cells[261]. The institution of open prisons seems to be viable alternative to harsh imprisonment system. The whole thrust in these open-prison institutions is to make sure that after release the prisoners may not relapse into crimes and for this purpose they are given incentives to live a normal life, work on fields or carry on occupation of their choice and participate in games, sports or other recreational facilities. These are the minimum-security prisons. In this liberal remissions are given to extent of 15 days in a month.[262]

Prisons are basically deprived of certain goods and services, liberty of heterosexual relationship and security. Therefore, a special social structure and dynamics operate in prison where a set of inmate code develops which gives them some status of their own and other deprived concerns to a certain extent. From the study it reveals that in the prison structure only two relationships prevails which control the behaviour of the inmates.[263] They are inmate – inmate relationship and staff-inmate relationship, the first is more positive than the second. So, there are creations of some device of rehabilitating offenders to normal life in society through an intensive after-care programme such as open-prison, parole, reformatories etc

The problem of social rehabilitation of prisoners is, with the passing of years, assuming larger dimensions in almost every country of the world. This is so because the moral consciousness of human being is more actively manifest in the anxiousness of society to secure the redemption and rehabilitation of those who by committing less serious offences, have strayed away for the time being from the normal walks of social life. The social rehabilitation of prisoners may be achieved by any of the following ways[264] –

- Parole; or
- After care of released prisoners

Parole is an administrative scheme under which a convict is released after serving some part of the sentence awarded to him and the release is not the result of any court decision. If an offender released on parole is found to have improved and has abstained from criminal

[261] Banwari v. State of Haryana, 2004(2) R.C.R. (Cr.) 106 at p. 107 (P. & H.)
[262] *Ibid*
[263] Guhar v. State of M.P., (2007) 1 S.C.C. (Cr.) 395 at p. 398
[264] Ramesh Dass v. Raghu Nath, A.I.R. 2008 S.C.

conduct, he gets remission of the rest of the sentence and for sometime at least a part of the sentence.[265] Parole shares some of the characteristics of probation. Both have to be selective, based on a thorough study of the personality and environment factors of the offenders, and both envisage provision for guidance and supervision. However, there are basic differences between probation and parole. To release on probation is a judicial decision whereas parole is purely an administrative action. Another point of difference is that in probation, the offender, after being found guilty, is released without sending him to jail but in case of parole a convict is released after serving some part of the sentence awarded to him.[266]

The principles which emerged out from parole are as follows may be as follows

a) Careful diagnosis of the prisoners;
b) Selection for parole of only those inmates the study of whom
c) shows that they will probably do well on release;
d) Selection for parole of only those whose release will not
e) outrage the sense of justice of the community from which
f) they came;
g) Proper employment should generally be secured before a
h) convict is paroled;
i) Placement on proper surroundings;
j) The institution must prepare for parole;
k) Co-operation with private and public social agents;
l) Populas states should have a full time paid Parole Board, or if
m) an unpaid Board, a full time staff;
n) This Board should be composed not of political appointees but of men of intelligence and integrity having experience in such matters;
o) The responsibility of parole should rest upon this board;
p) Parole success is connected with the extension indeterminate sentence;
q) Parole officers must be numerous enough and sufficiently trained to give adequate supervision;
r) Discharge of paroles should be entirely in the hands of the Parole Board.

The State Governments have their own rules on parole. However, with a view to preserving a basic uniformity of approach in the country a set of Model Parole Rules have been framed by

[265]Ibid.
[266] Rattan Lal v. State of Punjab, A.I.R. 1965 S.C. 444

the Central Advisory Board on Correctional Services.[267] In the development of the scheme of parole in India, the Supreme Court's decision in the case of Md. Giasuddin v. State of Andhra Pradesh[268] is a milestone. In this case the apex Court inter alia directed the Government to release the appellant on parole.

The Court observed: "We have given thought to another humanizing strategy, viz., a guarded parole release every three months for at least a week, punctuating the total prison term. We direct the State Government to extend this parole facility to the appellant, Jails Rules permitting, and the appellant submitting to conditions of discipline and initiation into an uplifting exercise during the parole interval…The State will not hesitate, we expect, to respect the personality in each convict in the spirit of the Preamble to the Constitution and will not permit the colonial hangover of putting people behind the bars and then forget about them." Thus, in post-independence period efforts have been made to bring about qualitative improvement in the working of correctional services. The above description of various components of the present criminal justice system of India shows that most of the major criminal laws such as the Indian Penal Code of 1860, the Police Act of 1861, and the Indian Evidence Act of 1872 are still in force with some peripheral amendments.

Except some significant changes such as separation of the judiciary from the executive and abolition of jury system, even the new Code of Criminal Procedure of 1973 is a replica of the old Cr.P.C. of 1898[269]. The structure of police and its working style has not changed much. However, establishment of police commission rates in some of the States has certainly been a welcome development and has enhanced performance parameters. With the Constitution coming into force, the higher judiciary has taken a new role of interpreting the Constitution and declaring laws keeping the spirit of the Constitution in view. The constitutional provision for appeal to the Supreme Court incertain criminal matters as of right is certainly an innovative reform introduced by the Constitution in the judicial system of India.

Considerable developments have been made in the correctional services in post-independence period. The retributive theory of punishment has given way to reformative and rehabilitative theories. Separate prison establishments have been opened for women and young prisoners. Prison reforms have laid emphasis on improving the conditions in the jails.[270] To sum up, even though efforts have been made to effect radical transformation, yet we find ourselves

[267]Kadish S.H., *Supra* note 172 pp. 264-73
[268]A.R.Antulay v. R.S.Nayak, A.I.R. 1988 S.C. 1531
[269] Sec. 360(1) of the Code of Criminal Procedure of 1973
[270]A.R.Antulay v. R.S.Nayak, A.I.R. 1988 S.C. 1531

clogged in transition. Consequently, the indelible legacy of the British era sustains. Thus, most of the criminal laws, procedures, institutions, and principles evolved during the British period still govern the functioning of various components of the criminal justice system of India.

5.4.3. Open Prisons and Community Sentencing:

Criminologists have expressed different views about the definition of open prison some scholars have preferred to call these institutions as open air camps, open jail or parole camps. The United Nations Congress on prevention of crime and Treatment of offenders held in Geneva in 1955, however, made an attempt to define an open prison thus[271] –"An open institution is characterized by the absence of material and physical precautions against escape such as walls, locks, bars and armed guards etc. and by a system based on self discipline and inmate sense of responsibilities towards the group in which he lives." In India, there are open-air prisons which look to the reformation and rehabilitation of their inmates. "Trust begets trust" should be the guiding principle and if properly managed, these places can win over persons who might have been anti-social once and ensure freedom from recidivism.

The deplorable state of the criminal justice administration system in India has been highlighted time and again with several possible measures being suggested to remedy the same. However, even within these discussions, the possibility of the introduction of community sentence as a restorative justice reform has not been given much consideration. At the same time, various jurisdictions have successfully tested community service as a form of alternative sentencing. Notably, community service not only reduces the burden on the system of incarceration, but also disburdens the state exchequer. While there is ample literature debating other alternatives to custodial sentencing, community sentencing in India remains a relatively unexplored domain.

With over a staggering 2,17,55,186 criminal cases pending,[272] the criminal justice administration system continues to be sluggish in India. Even a single day in several prisons across India can be a harrowing experience for any individual.[273] Evidently, the psychological

[271] Paranjape N. V, *Criminology and Penology*, 7, 178 (Central Law Agency, Allahabad,1991).
[272] National Judicial Data Grid, Summary Report of India (Visited on March 10, 2020) http://njdg.ecourts.gov.in/njdg_public/main.php (Last visited on March 10, 2020).
[273] Shivendra Srivatsava, *Exposed: UP's hell prison where inmates suffer vicious torture and corruption*, INDIA TODAY, (visited on March 7, 2020) https://www.indiatoday.in/india/story/exposed-ups-hell-prison-whereinmates-suffer-vicious-torture-and-corruption-339802-2016-09-07 (Last visited on March 20, 2020); Dhrubo Jyoti & Roshni Nair, *Tales from former inmates: What life is like in a women's jail in India*, Hindustan

effects of incarceration on inmates are long-term on account of the pain, deprivation, isolation, and extremely unusual norms of living that they bear.[274] Given that the conditions in prisons are hostile and stressful, and the prisoners are subjected to an often harsh and rigid institutional routine, the process of institutionalisation or prisonisation of the inmates occurs in response to the extraordinary demands of prison life.[275] This process of integration into the prison culture due to its deep relation with societal deprivation can manifest itself in chronic manners in inmates.[276] As a consequence, during their sentence, inmates may suffer from emotional withdrawal, depression, hyper-vigilance, display suicidal tendencies, engage in substance abuse or showcase other symptoms of post-traumatic stress disorder.[277] Such psychological effects cumulatively impede their post-incarceration rehabilitation and interfere with their successful re-integration into a social network and employment setting, and resumption of their familial relationships.[278]

Thus, the inhumane conditions in prisons and the exposure to hardened criminals can lead to the release of damaged individuals after the completion of their sentences.[279] Even after the release of the offender, the stigma of serving a prison sentence persists, and the society shuns them as an outcast.[280]

Several forms of alternatives to custodial sentencing like open prisons, parole, probation, vocational training, and rehabilitation centres have been sought to be introduced in India to improve the criminal sanction system, but community sentencing has arguably not been subject to due contemplation. [281]The only provision for it in India exists for juveniles under Section 18(1) (c) of the Juvenile Justice (Care and Protection of Children) Act, 2015which provides for community service for child offenders, if the Juvenile Justice Board deems fit. Developments at the policy level have also remained limited, with the Social Justice Department of Kerala only recently having planned to bring new projects aiming at

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Times, (visited on March 26, 2020) https://www.hindustantimes.com/india-news/tales-from-former-inmates-what-life-is-like-in-awomen-s-jail-in-india/story-UBBSj0N5yz2VskZpqgGiLK.html.

[274] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, From Prison To Home Conference Working Paper (2002).

[275] *Ibid*

[276] S. Sanyal, *Prison and Prisonization of Inmates*, 16(63), Social Defence 1981, (Last visited on March 12, 2020) https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=82804.

[277] Shivani Tomar, The *psychological effects of incarceration on inmates: Can we promote positive emotions in inmates*, (16 Delhi Psychiatry Journal 2013).

[278] *Ibid*

[279] *Ibid*

[280] Jason Schnittker & Andrea John, Enduring Stigma: *The Long-Term Effects of Incarceration on Health*, 48(2) (Journal Of Health And Social Science 2007).

[281] Juvenile Justice (Care and Protection of Children) Act, 2015, §18(1)(c)

reintegration of first-time offenders into mainstream society[282] and allowing for offenders involved in petty offences sentenced to three years imprisonment or fine or both to engage in community service in lieu of custodial punishment.[283]

Later, the 156th Law Commission Report in 1997 also discussed the proposed amendment of Section 53 of the Indian Penal Code45 to include community service as one of the sanctioned forms of punishments, and deliberated upon Clause 27 of the Indian Penal Code (Amendment) Bill, 1978, seeking to define the contours of community service.46 Ultimately, it opined that the open air prison system was preferable as a correctional measure in comparison to community service,[284] thereby effectively refusing to endorse the introduction of community service as a criminal sanction.

Despite these aforementioned unsuccessful legislative attempts, the judiciary has continued to be proactive in attempting to interpret community sentencing as a form of punishment for criminal actions, through the exercise of its discretionary powers. It is to be noted that there is no specific provision on community service in India and all orders for the same are passed in exercise of the discretionary power vested in the court to pass any other order as it may deem fit as High Courts, in the exercise of their power under Section 482 of the Code of Criminal Procedure, can make any orders to meet the ends of justice.

Recently, a lower court in New Delhi ordered community service, observing that imprisonment may not always serve the desired purposes, especially when the accused is a firsttime offender, given that harsh views may ruin his entire future while also taking away from his chances of reformation.[285] The position taken by the lower court perhaps draws from the dictum of Pappu Khan v. State of Rajasthan,[286] in which the Supreme Court observed that a welfare state cannot afford a large non-productive prison population as it imposes a heavy burden on the state exchequer. Therefore, the Apex Court expressed that it is in the interest of the State to reform prisoners by teaching them techniques and skills which would ensure a

[282] R.K. Roshni, State's convict probation system showing results, THE HINDU, March 4, 2019, (Last visited on January 22, 2020). https://www.thehindu.com/news/national/kerala/states-convict-probation-system-showingresults/article26432687.ece.
[283] Shan A.S., *Serve less time in prison - serve community instead*, THE NEW INDIAN EXPRESS (October 26, 2019).
[284] Ayesha Arvind, *Delhi's petty criminals work off their debt to society as courts catch on to community service*, DAILY MAIL, October 7, 2013, (Last visited on February 24, 2020) http://www.dailymail.co.uk/indiahome/indianews/article2447171/Delhis-petty-criminals-work-debt-society-courts-catch-community-service.html#ixzz54bQ4W7gB).
[285] Pappu Khan v. State of Rajasthan, 2005 Cri LJ 4732 SC.
[286] *Ibid.*

source of livelihood to them after they are released from jail.[287] Further, in Babu Singh v. State of Uttar Pradesh,[288] the Supreme Court held that restorative devices through means of community service, meditative drill or study classes should be innovated upon to help redeem the offender.

It can therefore, be argued that the judiciary has, to a degree, recognised the benefits of community sentencing. However, like other jurisdictions, legislation is still required for more extensive use of this alternative.

At this juncture, it is suggested that a discussion juxtaposing the system of open prisons already prevalent in India, with community sentencing, shall be fruitful. The basic difference between the two is that while community sentencing is an alternative to custodial sentencing,[289] open jails are part of the post-custodial reforms. The idea behind community sentencing pertains to not being confined behind any perimeters but rather performing unpaid work of social importance to undo the loss caused to the society by the acts committed by the offender.[290] This arguably also serves towards removing the stigma attached to individuals having served prison sentences, and subsequently avoiding other problems associated with incarceration, as discussed in Part I.

In open prisons, depending on the nature of the prison, the state has the added responsibility to either provide lodging, employment or both, which in itself is a cumbersome and expensive process.[291] Unlike open prisons, no physical infrastructure is required to be set up by the government to house the offender and his family in community sentencing. Rather, the offender continues living with his family and reports for the assigned work and performs the same under the supervision of an appointed officer.[292]

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[287] Babu Singh v. State of Uttar Pradesh, 1978 SCR (2) 777

[288] *Parliamentary Office Of Science And Technology*, Parliament Of United Kingdom, Alternatives to Custodial Sentencing, May 2008, (Last visited on February 3, 2019) https://www.parliament.uk/documents/post/postpn308.pdf.

[289] *Ibid.*

[290] Mengesha, S., *Ministry of Justice, Unpaid Work / Community Payback Service Specification and Operating Manual for Community Payback: Delivering the Sentence of Unpaid Work (2010)*, (Last visited on March 7, 2020). https://www.justice.gov.uk/downloads/offenders/probationinstructions/pi_02_2010_unpaid_work_community_payback_service_specification.pdf.

[291] Bhopal: *MP's 6th open jail inaugurated in Bhopal*, THE FREE PRESS JOURNAL, March 7, 2019, (Last visited on March 14, 2019) https://www.freepressjournal.in/bhopal/bhopal-mps-6th-open-jail-inaugurated-in-bhopal.

[292] *Ibid.*

It is also to be noted that while there are a different set of rules adopted by each open jail, most of them, although permit prisoners to leave prison grounds, restrict their physical movement beyond a designated area,[293]and require inmates to report for evening roll calls.[294]Community sentencing generally does not entail any such elaborate regulation, and the few which are prescribed generally for reporting and performing the said service. In open prisons, the onus of finding employment lies on the prisoner himself, who may often find it difficult to get employed because of his status as an offender and the rules and conditions imposed as a part of their sentence.[295] On the other hand, in case of community service sentences, courts require offenders to work on projects which are identified as having social importance.[296]

Further, since many offenders come from underprivileged backgrounds, community service can also act as a means of providing training to them and acquiring new skills,[297] while residents of open prisons would largely have to depend on their existing skills to gain employment outside the prison premises. Therefore, given these relative benefits of community sentencing over the system of open prisons, which is being readily embraced as an alternative to the rigorous custodial imprisonment regime,[298] it is argued that the time has come to reconsider the feasibility of adopting community sentencing as a form of punishment in India.[299]

The need for a change of attitude towards the treatment of prisoners has been growing since independence. With the advance of knowledge of human behaviour, the part played by psycho-social environment in the development of the criminal is being recognized. Treatment

[293] This open prison allows inmates to live with family and go out to work!, INDIA TODAY, September 14, 2018, available athttps://www.indiatoday.in/education-today/gk-current-affairs/story/open-prison-indore-1340052-201809-14 (Last visited on March 14, 2019)
[294] *Ibid*
[295] Department of Corrections,Annual Report 2009-2010.
[296] *Ibid*
[297] Royal Borough of Greenwich, Offenders are helping to make a difference with community payback, March 18, 2020, (Last visited on March 20, 2019) https://www.royalgreenwich.gov.uk/news/article/1387/offenders_are_helping_to_make_a_difference_with_commun ity_payback.
[298] SC tells states to consider setting up an open prison in each district, HINDUSTAN TIMES, December 12, 2017, (Last visited on March 14, 2020) https://www.hindustantimes.com/india-news/sc-tells-states-to-consider-setting-up-an-open-prison-ineach-district/story-tnLIiuOT6tAKlso8wKamUJ.html.
[299] Shelley Turner & Chris Trotter, Best *practice principles for the operation of community service schemes*: a systematic review of the literature in Monash University Criminal Justice Research Consortium, Melbourne (2013).

of offenders in open conditions, as similar to outside world as possible, is one of the new ideas which have come into practice recently.[300]

The 'Open Prison' means any open place or area fixed permanently under any order of the state government for the detention of prisoners. The object is to save lifers and long term prisoners from ill effects of prison life and continuous exposure to criminal culture of closed prisons having traditional walls. The concept of 'open prison' is based on containment of the offender with balanced deterrence so that his mental outlook is not impaired.

Community service as a form of alternative sentencing has proved to be effective in various jurisdictions around the world. If such orders are implemented effectively, the services of the offenders can serve as a valuable resource for governments. With the resultant decongestion of prisons and the utilisation of offenders for providing services to the public, a reduction of burden on the state exchequer can be reasonably expected. Additionally, community service orders would not only avoid the stigmatisation related to imprisonment, but also assist in the quick assimilation of offenders back into the society. Understandably, there may be various obstacles in the efficient integration of community service orders within the broader sentencing policy of a nation. In particular, a proper legislation would be required for the execution of community service based sentences in India. Evidently, for such a legislation to be enacted and implemented, it is essential that the organs of the government adopt a positive attitude towards non-custodial approaches to criminal justice.

In the open camps, the adjustment level of the prisoners is supposed to be better because of the facilities provided to develop a healthy interpersonal relationship and the free environment. There may be also some therapeutic approach in the open camps to rectify the maladjusted behaviour of the inmates. The work programmes in a rather free atmosphere according to their tastes, educational and recreational facilities and the attempt of re-orientation help the prisoners to develop a higher adjustment level. The main aim and object of open air prison is to allow the inmates to know the culture of rehabilitation and to resocialize themselves with lessor amount of restrictions.

Therefore, taking inspiration from Anglo-American developments in the correctional field of penology, the Indian penologists were convinced that India also cannot tackle its crime problem by putting criminals in prison cells. The institution of open prisons seems to be viable alternative to harsh imprisonment system. The whole thrust in these open-prison

[300] *Ibid*

institutions is to make sure that after release the prisoners may not relapse into crimes and for this purpose they are given incentives to live a normal life, work on fields or carry on occupation of their choice and participate in games, sports or other recreational facilities. These are the minimum-security prisons. In this liberal remissions are given to extent of 15 days in a month. The State of Uttar Pradesh was first to set up an open air camp attached to Model Prison at Lucknow in 1949. Other States, like Andhra Pradesh, Assam, Gujarat, Punjab, Kerala etc. are also set up open-air camps.

5.4.4. Remission:

Prisoners get remissions periodically for good conduct and work. Special remissions are also given for specific special services. The sentences are reviewed from time to time according to various rules and the prisoners are released before time if they satisfy the prescribed conditions.

5.4.5. Work Release:

Work release is considered to be a very effective reformation tool in modern criminal justice. In this method, the prisoner is allowed to work for pay in the society for part time basis. This gives him an opportunity to mix up with the society in a normal manner without any limitations. The control of the prison authorities in, however not completely taken away since he has to work within the permitted parameters and during non-working hours, he has to return the concerned correctional institution. The correctional authorities collect his earnings and which are paid to the prisoner on the completion of sentence. However it differs from parole as inmates continues live in and subject to control of jail authorities except the working hour. This helps the prisoner to adjust in the situation at the work place after the release

6. CORRECTIVE MEASURES IN INDIAN PRISON SYSTEM

The prisons, reformatories, borstal institutions and other institutions of like nature are included in state list under the Constitution of India. The legal base for prisons is section 4 of the Prisons Act which requires the state governments to provide accommodation for prisoners in their territories, in prisons which, as per section 3[301], means any jail or place used permanently or temporarily for the detention of prisoners. Further, under section 417 of the Code of Criminal Procedure, 1973, a State Government may direct in what place a person liable to be imprisoned or committed to custody is to be confined.[302]

6.1. Prison System in India

Broadly speaking, the existence of prisons in our society is an ancient phenomenon since vedic period where the anti-social elements were kept in a place identified by the rulers to protect the society against crime. Prisons were considered as a '*House of Captives*' where prisoners were kept for retributory and deterrent punishment[303].

John Locke, the great English political theorist of seventeenth century expressed that men were basically good but laws were still needed to keep down 'the few desperate men in society'.[304] The aim of the society as expressed in its criminal law is to safeguard its own existence to maintain order and to make it possible for all citizens to lead a good life, free from molestation of others.[305] The law enforcement agencies have been given the powers by the society to curtail the freedom of its citizens by taking them into custody in connection with their deviant conduct.[306]

In India, the early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The structure of the society in ancient India was founded on the principles enunciated by Manu and explained by Yagnavalkya, Kautilya and others. Among various types of corporal punishments – branding, hanging, mutilation and death, the imprisonment was the most mild kind of penalty known prominently in ancient

[301] Vidya Bhusan, Prison Administration in India, S. Chand Publication, Delhi, 1970, p.2
[302] *Ibid.*
[303] *Ibid.*
[304] Johnson Norman, The Human Cage in Correctional Institution, Carter Glasser and Wilkins (Ed.), 1997, p. 4.
[305] Sharda Prasad , Criminal Justice Reforms, Indian Journal of Criminology, Volume 33 (1&2), July 2005, Pg 35.
[306] *Ibid.*

Indian penology.[307] The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order. These prisons were dark dens, cool and damp, unlighted. There was not proper arrangement for the sanitation and no means of facility for human dwelling. Fine, imprisonment, banishment, mutilation and death sentence were the punishments in vogue. Fine was for the most common and condemned person who could not pay his bill to bondage until it was paid by his labour.[308] Though the Indian law gives a little description of jail life, even then historical account gave a clear picture after the analysis of the available data. A few Smiriti writers supplied some information concerning with the jail.

A broad overview of the international obligations and guidelines id provided in this sub heading, with respect to the care of prisoners, and summarise the various steps taken towards prison reform in India. We then provide a brief overview of prisons in India. We also deal with the general problems of Indian prisons, which undoubtedly play an important part in understanding the challenges in providing mental health services to prisoners and to staff in prisons.

6.2. International Obligations and Guidelines

The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners.[309]

The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs.[310] The standard rules give due consideration to the

[307] Rangarajan LR, Supra note, 16.
[308] Prasad S., *Supra* note 305, Pg 32.
[309] Easton Susane & Piper C.: *Sentencing and Punishment, the quest for justice* : Oxford University Press, 2005.
[310] A.N.Chaturvedi, *Rights of Accused under Indian Constitution*, Universal Law Publishing Co., 1994, p.24

separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions.[311] The under- trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988).[312]

On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that "no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defence. "It recommends that corporal punishment, by placing in a dark cell and all cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action"[313] in the jails.

6.3. Prison Reforms

The history of prison establishments in India and subsequent reforms have been reviewed in detail by Maha worker (2006). A brief summary of the same is presented below[314].

The modern prison in India originated with the Minute by TB Macaulay in 1835[315]. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846.

The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In

[311] *Ibid.*
[312] Easton Susane & Piper C., *Supra* note 309, pg 34.
[313] *Ibid.*
[314] Suresh Bada Math, *Mental Health and Substance Use Problems in Prisons: Local Lessons for National Action.* Publication, National Institute of Mental Health Neuro Sciences, Bangalore.
[315] Macauley, cited by A.N.Chaturvedi, *Supra* note. 310 p.24.

addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care.[316] In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

Before the 1700's, governments seldom imprisoned criminals for punishment. Instead, people were imprisoned while awaiting trial or punishment. Common punishments at that time included branding, imposing fines, whipping, and capital punishment (execution). The authorities punished most offenders in public in order to discourage other people from breaking the law. Some criminals were punished by being made to row the oars on ships called galleys.

During the 1700's, many people including British Judge Sir William Blackstone criticized use of executions and other harsh punishments. As a result, governments turned more and more to imprisonment as a form of punishment.

Early prisons were dark, dirty and overcrowded. They locked all types of prisoners together, including men, women, children, dangerous criminals, debtors and the insane. During the late 1700's, the British reformer John Howard toured Europe to observe prison conditions. His book The State of the Prisons in England and Wales (1777) influenced the passage of a law that led to the construction of the first British prisons designed partly for reform. These prisons attempted to make their inmates feel penitent (sorry for doing wrong) and became known as penitentiaries.[317]

In 1787, a group of influential Philadelphians, mostly Quakers, formed the Philadelphia Society for Alleviating the Miseries of Public Prisons (now the Pennsylvania Prison Society). [318]They believed that some criminals could be reformed through hard work and meditation. The Quakers urged that dangerous criminals be held separately from nonviolent offenders and men and women prisoners be kept apart. These ideas became known as the Pennsylvania

[316] *Ibid*
[317] Johnson Norman, Supra note
[318] *Ibid.*

System, and were put into practice in 1790 at Philadelphia's Walnut Street Jail. This prison is considered the first prison in the United States.[319]

The Pennsylvania System was the first attempt to rehabilitate criminals by classifying and separating them on the basis of their crimes. As a result, the most dangerous inmates spent all their time alone in their cells. In time, however, the system failed, chiefly because overcrowding made such separation impossible.

The contemporary prison administration in India is a legacy of the British Rule. Lord Macaulay, while presenting a note to the Legislative Council in India on December 21, 1835, for the first time, pointed out the terrible inhumane conditions prevalent in Indian prisons and he termed it as a shocking to humanity. He recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently, on 2nd January, 1836, a Prison Discipline Committee was constituted by Lord William Bantick for this purpose.[320]

Sir John Lawrence, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently **Second Commission of Enquiry**[321] to look into prison management and discipline was appointed by Lord Dalhousie. The commission in their report did not dwell upon, the concept of reformation and welfare of prisoners. It, instead, laid down a system of prison regimentation occasioned with physical torture in the name of prison discipline. However, the commission made some specific recommendations in respect of accommodation, diet, clothing, bedding, medical care of prisoners only to the extent that these were incidental to discipline and management of prisons and prisoners.

A Conference of Experts[322] was held in 1877 to inquire into the prison administration in detail. The conference resolved that a Prison Law should be enacted which could secure uniformity of system and to address such basic issues which were to be reckoned for deciding term of sentence. In pursuance to the resolution passed in this conference, a draft Prison Bill was actually prepared but finally postponed due to unfavourable circumstances.

The Fourth Jail Commission[323] was appointed by Lord Dufferin in 1888 to inquire into the prison administration. This commission reiterated that the uniformity could not be achieved without the enactment of a single Prisons Act. Again, a consolidated Prisons Bill was

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[319] *Ibid*
[320] Fawcett, Sir Charles, *The First Century of British Justice in India*, 1934
[321] Misra, B.B.: The *Central Administration of East India Company,* 315-16, (Indian Branch, 1959).
[322] Fawcett, Sir Charles, *Supra* note 319, Pg 312-13
[323] *Ibid*

prepared providing some rigorous prison punishments such as gunny clothings, imposition of irons on hands and feet, penal diet, solitary confinement and whipping. This Bill was circulated to all local Governments by the Home Secretary to the Government of India on 25th March, 1893 with a view to obtaining their views. It was later presented to the Governor General in Council and ultimately Prisons Act of 1894 came into existence which is the current law governing management and administration of prisons. It has remained into force for over 112 years including 58 years after our independence. It has hardly undergone any substantial change during all these years despite lot of new thinking having emerged respecting objectives, management and administration of prisons.[324]

6.3.1. Prisons Act 1894

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued even after this. In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator.[325] Several committees and commissions appointed by both central and state governments after Independence have emphasised humanisation of the conditions in the prisons. The need for completely overhauling and consolidating the laws relating to prison has been constantly highlighted. The Government of India Act 1935, resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. State governments thus have their own rules for the day to day administration of prisons, upkeep and maintenance of prisoners, and prescribing procedures.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals.[326] In 1952, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. Accordingly, the Government of

[324] Fawcett, Sir Charles, *Supra* note 319, Pg 312-13
[325] Reckless W.C, *Supra* note 121, Pg 112
[326] Prasad S., *Supra* note 305, Pg 217

India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960.[327] The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

6.3.2. The Model Prison Manual

The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed.

On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.[328]

6.3.3. The Mulla Committee

In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in1983.

6.3.4. The Krishna Iyer Committee

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

6.4. Subsequent developments

Following a Supreme Court direction (1996) in Ramamurthy vs State of Karnataka to bring about uniformity nationally of prison laws and prepare a draft model prison manual, a committee was set up in the Bureau of Police Research and Development (BPR&D). The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003.[329] How many have acted on it is anybody's guess.

[327] Reckless W.C, *Supra* note 121, Pg 78
[328] Paranjape N. V, *Supra* note 215.
[329] *Supra* note 310, pg 105

As in the case of the recommendations of the National Police Commission (1977), which had sought the creation of a State Security Commission and the promulgation of a new Police Act to replace the 1861 enactment, implementing jail reform recommendations rests with the States. The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms.[330]

In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration.[331]

The All India Committee on Jail Reforms (1980-1983), the Supreme Court of India and the Committee of Empowerment of Women (2001-2002) have all highlighted the need for a comprehensive revision of the prison laws but the pace of any change has been disappointing (Banerjea 2005). The Supreme Court of India has however expanded the horizons of prisoner's rights jurisprudence through a series of judgments.[332]

6.5. Consequence of prison structure and function

Physical and psychological torture resulting from overcrowding, lack of space for segregation of sick, stinking toilets for want of proper supply of water, lack of proper bedding, restrictions on movement resulting from shortage of staff, parading of women through men's wards for lack of proper separation, non-production of undertrial prisoners in courts, inadequate medical facilities, neglect in the grant of parole, rejection of premature release on flimsy grounds, and several such afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system (Human Rights Watch 2001)[333].

In many places, non-governmental organisations provide rehabilitation programmes and a few provide aftercare. Some notable examples include the Prison Fellowship International. Most prisoners are ill prepared for release. No steps are taken to minimise their chance of committing re-offences. Programmes to develop a set of values, the ethos of honest labour

[330] *Ibid*
[331] Paranjape N. V, *Supra* note 215
[332] *Ibid*
[333] Bhushan V. *Supra* note 310, pg 102

and to build pro-social ties with the community are essential. Well-established prisons with continuous good leadership generally impart literacy to the illiterate inmate and offer facilities for higher education to those who are already reasonably educated and are willing to improve on their knowledge so that they are usefully employed after getting back to the community.

6.6. All India Jail Committee (1919-1920)

The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920**)**.[334] It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration.

However, the constitutional changes brought about by the Government of India Act of 1935, which resulted in the transfer of the subject of prisons in the control of provincial governments, reduced the possibilities of uniform implementation of the recommendations of the Indian Jails Committee 1919-1920 in the country.[335] the Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept 'Prisons' as a State subject by including it in List II—State List, of the Seventh Schedule (Entry 4).

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve a certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Some of the committees which made notable recommendations on these lines were[336]:-

(i) The East Punjab Jail Reforms Committee, 1948-49;

(ii) The Madras Jail Reforms Committee, 1950-51;

(iii) The Jail Reforms Committee of Orissa, 1952-55;

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[334] *National Policy On Prison Reforms And Correctional Administration,* Bureau of Police Research & Development Ministry of Home Affairs, Government of India New Delhi 2007

[335] *Ibid*

[336] *Ibid*

(iv) The Jail Reforms Committee of Travancore and Cochin, 1953-55;

(v) The U.P. Jail Industries Inquiry Committee, 1955-56; and

(vi) The Maharashtra Jail Industries Reorganization Committee, 1958-59.

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a U.N. Expert on Correctional Work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report 'Jail Administration in India' is another landmark document in the history of prison reforms. He made a plea for transforming prisons into reformation centres and advocated establishment of new prisons. Some of the salient recommendations made by Dr. W. C. Reckless are as under :-

(i) Juvenile delinquents should not be handed over by the courts to the prisons which are meant for adult offenders.

(ii) A cadre of properly trained personnel was essential to man prison services.

(iii) Specialized training of correctional personnel should be introduced.

(iv) Outdated Prison Manuals be revised suitably and legal substitutes be introduced for short sentences.

(v) Full time Probation and Revising Boards be set up for the aftercare services and also the establishment of such boards for selection of prisoners for premature release.

(vi) An integrated Department of Correctional Administration be set up in each State comprising of Prisons, Borstals, Children institutions, probation services and after-care services.

(vii) An Advisory Board for Correctional Administration be set up at the Central Government level to help the State Governments in development of correctional programmes.

(viii) A national forum be created for exchange of professional expertise and experience in the field of correctional administration.

(ix) A conference of senior staff of correctional departments be held periodically at regular intervals.

The year 1952 witnessed a significant break-through in national coordination on correctional work as in that year the Eighth Conference of the Inspectors General of Prisons was held after a lapse of 17 years.[337]

In pursuance to the recommendations made by the Eighth Conference of the Inspectors General of Prisons and also by Dr. W. C. Reckless, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a Model Prison Manual[338]. The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suitable suggestions for improvements to be adopted uniformly throughout the country.

6.6.1. Central Bureau of Correctional Services

In pursuance to the recommendations made by Dr. W. C. Reckless and also by the All India Jail Manual Committee, the Central Bureau of Correctional Services was set up under the Ministry of Home Affairs in 1961 to formulate a uniform policy and to advise the State Governments on the latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory schools, Borstals and protective homes, suppression of immoral traffic, etc.[339] The Central Correctional Bureau observed the year 1971 as "Probation Year" all over the country. The purpose was to create a general awareness amongst the principal branches of the criminal justice system, viz., the judiciary, the police, the prosecution and the correctional administration about the use of probation as an effective non-institutional mode of treatment for the convicts.

In 1972, the Ministry of Home Affairs, Government of India, appointed a Working Group on Prisons which presented its report in 1973. This Working Group brought out in its report the need for a National Policy on Prisons. Its salient features are as under[340]: -

(I) To make effective use of alternatives to imprisonment as a measure of sentencing policy.

(II) Emphasized the desirability of proper training of prison personnel and improvement in their service conditions.

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[337] *National Policy On Prison Reforms And Correctional Administration,* Bureau of Police Research & Development Ministry of Home Affairs, Government of India New Delhi 2007.
[338] *Ibid.*
[339] Reckless W.C, *Supra* note 121, Pg 115.
[340] *National Policy On Prison Reforms And Correctional Administration,* Bureau of Police Research & Development Ministry of Home Affairs, Government of India New Delhi 2007.

(III) To classify and treat the offenders scientifically and laid down principles of follow-up and after-care procedures.

(IV) That the development of prisons and the correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of national planning process.

(V) Identified an order of priority for the development of prison administration.

(VI) The certain aspects of prison administration be included in the Five Year Plans.

(VII) An amendment to the Constitution be brought to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable prison legislation by the Centre and the States, and the revision of State Prison Manuals be undertaken.

In 1964, the Central Bureau of Correctional Services was transferred from the Ministry of Home Affairs to the newly created Department of Social Security, now known as Department of Social Justice and Empowerment under the Ministry of Human Resource Development. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning prison administration and reforms. Its Director was latter designated as Ex-officio Prison Advisor. In 1971, the Bureau was re-organized into the National Institute of Social Defence to review policies and programmes in the field of Social Defence.

6.6.2. Guideline for state and Union Territories

Further, The Government of India convened a Conference of Chief Secretaries of all the States and Union Territories on April 9, 1979, in order to assess the gaps in the existing prison management system and to lay down guidelines for standardization of prison conditions throughout the country. This Conference made a detailed examination of the issues pertaining to prison administration and on the basis of the consensus arrived at the Conference, the Government of India requested the State Governments and Union Territory Administrations[341]:-

(i) to revise their prison manuals on the lines of the Model Prison Manual by the end of the year;

[341] *Ibid.*

(ii) to appoint Review Committees for the undertrial prisoners at the district and state levels;

(iii) to provide legal aid to indigent prisoners and to appoint whole-time or part-time law officers in prisons;

(iv) to enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all its aspects ;

(v) to strictly adhere to the provisions of the Code of Criminal Procedure, 1973, with regard to the limitations on time for investigation and inquiry;

(vi) to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Central Children Act, 1960.

(vii) to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State;

(viii) to create separate facilities for the care, treatment and rehabilitation of women offenders;

(ix) to arrange for the treatment of lunatics in specialized institutions;

(x) to provide special camp accommodation under conditions of minimum security to political agitators coming to prisons;

(xi) to prepare a time bound programme for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval;

(xii) To develop systematically the programmes of education, training and work in prisons;

(xiii) To strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provisions made for upgradation of prison administration by the Seventh Finance Commission are properly utilized;

(xiv) To organize a systematic programme of prison personnel training on State and Regional level;

(xv) To abolish the system of convict officers in a phased manner;

6.6.3. All India Committee on Jail Reforms recommendations

The Government of India has constituted an All India Committee on Jail Reforms under the chairmanship of Mr Justice A. N. Mulla in 1980 the committee submitted their report in 1983. This committee examined all aspects of prison administration and made suitable

recommendation respecting various issues involved. A total of 658 recommendations made by this committee on various issues on prison management were circulated to all States and UTs for its implementation, because the responsibility of managing the prisons is that of the State Governments as 'Prisons' is a 'State' subject under the List II—State List of the Seventh Schedule (Entry 4) of the Constitution of India.[342] The Committee has also suggested that there is an immediate need to have a national policy on prisons and proposed a draft National Policy on Prisons as per the brief details given as under:

Policy recommended that prisons in the country shall endeavour to reform and reassimilate offenders in the social milieu by giving them appropriate correctional treatment[343]. Modalities of the recommendations are as following:-

(i) Incorporation of the principles of management of prisons and treatment of offenders in the Directive Principles of the State Policy embodied in Part IV of the Constitution of India;

(ii) Inclusion of the subject of prisons and allied institutions in the Concurrent List of the Seventh Schedule to the Constitution of India; and

(iii) Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding **reformation and rehabilitation of offenders**.

(iv) There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with **adult and young offenders** – their institutional care, treatment, aftercare, probation and other non-institutional services.

(v) The State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions.

(vi) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new

[342] *Ibid.*
[343] *National Policy On Prison Reforms And Correctional Administration,* Bureau of Police Research & Development Ministry of Home Affairs, Government of India New Delhi 2007.

alternatives to imprisonment such as **community service, forfeiture of property, payment of compensation to victims, public censure, etc., in addition to the ones already existing and shall specially ensure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country.**

(vii) Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.

(viii) In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for **the segregation of different categories of inmates for proper treatment.**

(ix) The State shall endeavour to develop the field of criminology and penology and promote research on the typology of crime in the context of emerging patterns of crime in the country. This will help in proper classification of offenders and in devising appropriate treatment for them.

(x) A system of graded custody ranging from **special security institutions to open institutions** shall be provided to offer proper opportunities for the reformation of offenders according to the progress made by them.

(xi) Programmes for the treatment of offenders shall be individualized and **shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values**.

(xii) The State shall endeavour to develop vocational training and work programmes in prison for all inmates eligible to work. **The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation.**

(xiii) Payment of **fair wages and other incentives shall be associated with work programmes to encourage inmate participation in such programmes**. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society.

(xiv) Custody being the basic function of prisons, appropriate security arrangements shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of human rights of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his residuary rights. It shall be the endeavour of the State to protect these residuary rights of the prisoners.

(xv) The State shall provide free legal aid to all needy prisoners.

(xvi) Prisons are not the places for confinement of children. Children (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons at present shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of non-institutional facilities shall, whenever possible, be extended to such children.

(xvii) Young offenders (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. **There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation.**

(xviii) Women offenders shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.

(xix) Mentally ill prisoners shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners.

(xx) Persons courting arrest during non-violent socio-politicaleconomic agitations for declared public cause shall not be confined in prisons along with other prisoners. Separate prison camps with proper and adequate facilities shall be provided for such non-violent agitators.

(xxi) Most of the persons sentenced to life imprisonment at present have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual's reformation or from that of the protection of society. The term of

sentence for life in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary.

(xxii) Prison services shall be developed as a professional career service. The State shall endeavour to develop a wellorganized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. The status, emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An All India Service namely the Indian Prisons and Correctional Service shall be constituted to induct better qualified and talented persons at higher echelons. Proper training for prison personnel shall be developed at the national, regional and state levels.

(xxiii) The State shall endeavour to secure and encourage voluntary participation of the community in prison programmes and in non-institutional treatment of offenders on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organizations and individuals willing to extend help to prisoners and ex-prisoners.

(xxiv) Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorised to visit prisons and give independent report on them to appropriate authorities.

(xxv) In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a professional non-official registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its branches, and shall provide necessary financial and other assistance for their proper functioning.

(xxvi) Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services.

(xxvii) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated.

(xxviii) The governments at the Centre and in the States / Union Territories shall endeavour to provide adequate resources for the development of prisons and other allied services.

(xxix) Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans.

(xxx) In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status National Commission on Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion.

(xxxi) As prisons form part of the criminal justice system and the functioning of other branches of the system – the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such coordination at various levels.

(xxxii) The State shall promote research in the correctional field to make prison programmes more effective.

The draft of the proposed National Policy on Prisons, quoted above, would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and

comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights,1966.[344]

The question of inducting alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc involves certain amendments in the substantive law. The enactment of the Juvenile Justice (care and protection of children) Act, 2000, has raised the upper age limit of children to be kept away from prisons up to the 18 years in case of boys as well, so as to bring parity with girls.[345]

In pursuance to the directions given by the Hon'ble Supreme Court in a case of Ramamurthy Vs. State of Karnataka[346], 1996, the Government of India has constituted All India Model Prison Manual Committee in November, 2000 under the chairmanship of Director General of BPR&D to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India in order to maintain uniformity in the working of prisons throughout the country[347]. This manual has been circulated to all States/UTs for adoption after the acceptance by Government of India in January, 2004. It would not be out of place to mention here that the draft national policy on prisons as proposed by the All India Committee on Jail Reforms which is enumerated in the preceding account was given due consideration by this committee while preparing the Model Prison Manual under reference.

On 1st December, 2005, Government of India has constituted a high powered committee under the chairmanship of Director General, BPR&D for drafting a national policy paper on Prison Reforms and Correctional Administration on 1st December, 2005 with following terms of reference :-

(I) To review the present status of the legal position and suggest amendments if required on the prison related laws enacted by the Centre and States.

(II) To review the recommendations made by various Committees & cull out tangible recommendations which are required to be implemented by the Centre and the States.

(III) To review the status of implementation of these recommendations with reference to the following: -

[344] Planning Commission, Plans and Prospects of Social Welfare in India, 1951-1961, Government of India, New Delhi, 1963, p.143
[345] Extract from the Report of Indian Jail Committee, 1919-1920, Government Central Press, Simla, p.32
[346] AIR 1999 SC 1739
[347] *Supra* note 345

(a) Physical conditions of prisons

(i) Overcrowding and Congestion

(ii) Hygienic conditions

(iii) Other Basic amenities

(b) Condition of prisoners

(i) Undertrials

(ii) Convicts

(iii) Detenues

(c) Correctional Administration

(i) Programme for welfare of convicts/undertrials

(ii) Rehabilitation after release

(iii) Involvement of Community

(d) Prison Personnel

(i) Overall development of Prison Personnel

(ii) Training

(e) Any other issues related to modernization of prisons and correctional administration

7. SUGGESTIONS

- It should be realized that if jail services in respect of reformative schemes are improved and facilities given, they can do a very important constructive job of rehabilitation. Developmental activities of the prison department, particularly in respect of welfare and production, should be incorporated in the five year plans.
- The need for introducing radical changes in legal and administrative procedures to prevent long detention of under trials has been stressed. Legal aid to needy prisoners is also being given due importance. There is thus a clear trend to reduce the number of under trials and to expedite their trial in recognition of their human rights.
- After-care for prisoners will assume greater importance when correctional programmes in prisons are enforced properly. Both voluntary and statutory after-care will have to be organised in future.
- Although the population of women in prisons is relatively low, their adverse social positions and social disadvantage make them more liable to rejection from families and greater dejection when they are in prison. Further, women are unable to defend themselves, and ignorant of the ways and means of securing legal aid. They are unaware of the rules of remission or premature release, and live a life of resignation at the mercy of officials who seldom have understanding of their problems. Therefore, there is the need for gender-responsive treatment and services.
- There should be a regular transfer of the authorities of a jail. So that these official do not get involved in corrupt and torturing nefarious activities.
- The maintenance of prison establishment is an expensive affair. It is in fact an burden on the public. Therefore the offender should be confined to the prison for only a minimum period which is absolutely necessary for their custody. The elimination of long term sentences would reduce undue burden on prison expenditure. It is further suggested that where the term of imprisonment exceeds one year, a remission of one month or so per year be granted to the inmate so as to enable him home town and meet his relatives. This will help in his rehabilitation and after his release he can face the outside world courageously casting aside the stigma attached to him on account of imprisonment.
- Thought the prisoners are allowed to meet their close relatives at a fixed time yet there is further need to allow them certain privacy during such meeting. The meeting under supervision of prison guards are really embarrassing for inmates as well as the

visitors and many thoughts on the both sides remain unexpressed for want of privacy. The rights of prisoners to communicate and meet their friends, family, relatives and legal advisers should not be restricted beyond a particular limit.

- The present system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for inmates need to be changed. These auspicious days and festivals should be celebrated through rejoicings and other meaningful programmes so that the prisoners can atleast momentarily forget that they are leading a fettered life.
- The existing rules to the restrictions and scrutiny of postal mail of inmates should be liberalised. This shall infuse trust and faith among inmates for the prison officials.
- The prison legislation should make provision for remedy of compensation to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for prisoners right to justice and fair treatment and requires prison officials to initiate measures so that prisoners basic right are not violated and they are not subjected to harassment and inhuman conditions of living.[348]
- The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honourable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended to inmates who are desirous of taking up higher or advanced studies. Women prisoners should be provided training in tailoring, doll making, embroidery etc. The prisoners who are well educated should not be subjected to rigorous imprisonment, instead they should be engaged in some mental cum manual work.[349]
- On completion of term of sentence, the inmates should be placed under an intensive 'After Care'. The process of After Care will offer them adequate opportunities to overcome their inferior complex and save them from being ridiculed as convicts. Many non penal institutions such as Seva Sadans, Nari Niketans and Reformation Houses are at work in different places in India to take up the arduous task of After Care and rehabilitation of criminals.
- There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programmes using the media of press, platform and propaganda will. It will certainly

[348] Sanjay Suri V. Delhi Administration, (1988) Cr. LJ 705
[349] Mohd. Gaisuddin V. State of Andhra Pradesh, AIR 1977 SC 1925.

create a right climate in society to accept the released prisoners with sympathy and benevolence without any hatred or distrust for them. The media men should be allowed to enter into prison so that their misunderstanding about prison administration may be cleared.

- Last but not the least, the existing Prison Act, 1894 which is more than a century old, needs to be thoroughly revised and even re-stated in view of the changed socioeconomic and political conditions of India over the years. Many of the provisions of this Act have become obsolete and redundant. The Supreme Court , in its landmark decision in Ramamurthy v. State of Karnataka[350] , has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;
    a. Overcrowding
    b. Delay in trial
    c. Torture and ill treatment
    d. Neglect of health and hygiene
    e. Insufficient food and inadequate clothing
    f. Prison vices
    g. Deficiency in communication
    h. Streamlining of jail visits and
    i. Management of open air prisons.

[350] (1997) 2 SCC 642

8. CONCLUSION

Research into crime and the criminal is still in its infancy. The immediate need of research is to evaluate the existing methods of treatment and to suggest new approaches towards reformation of criminals. Correctional techniques in criminal justice system is used to reform the offender i.e. Reform the offender as a person, so that he may become a normal law-abiding member of the community once again. Here the emphasis is placed not on the crime itself, the harm caused or the deterrence effect which punishment may have, but on the person and the personality of the offender. The reformative theory is also known as **rehabilitative sentencing**.

By using the non-custodial measures regarding the reformation of prisoners can be done and it does not mean that the value of custodial measures has been undermined. The application of non-custodial measures only can be used by considering some facts, like nature of offence which the prisoner has been committed and age of the prisoners. The value of probation, open prisons, parole and home leave as reformatory measures need to be established.

The purpose of punishment is to Rehabilitate the offender and seeks to bring about fundamental changes in offenders and their behavior. As in the rehabilitation generally works through education and psychological treatment to reduce the likelihood of future criminality. In terms of the theory, offenders largely commit crime because of psychological factors, personality defects, or social pressures. Sentences are consequently tailored to the needs of the individual offender, and typically include aspects of rehabilitation such as community service, compulsory therapy or counseling. This theory favors the humanitarian sentiments of the age. Therefore, punishment is imposed for the welfare of the criminal himself. Therefore corrective techniques aims at transforming the criminal minds in a way that the inmates of the correctional institutions can lead the life of a normal citizen.

It aims at their rehabilitation and conforming to the norms of the society; into the law-abiding member. Such methods further, condemn all kinds of corporal punishments. It looks at the seclusion of the criminals from society as an attempt to reform them and to prevent the person from social ostracism. Though it works stupendously for the correction of juveniles and first-time criminals as relies upon humanitarian modes of punishment in the case of hardened criminals, such methods may not work with the effectiveness.

A recent increased public awareness of alternatives to the classic prison system has created a favorable social climate for the growth of reformative justice in the public domain. The growth of the victim identity and victimization of our society has created satisfactory conditions for public acceptance of the ideas of restorative justice, especially through mass media.

Therefore, the research work conducted by the researcher is in the consonance of the hypothesis made that the criminal justice system has changed its focus from crime to criminal further that the usage of corrective techniques in reforming the criminal is one of the best way in which a crime can be prevented to make society a better place, by opting appropriate measure corrective techniques can be made more effective.

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