Unit-I: Nature of Punishment

Punishment – Definition, Nature and Scope

In criminal law, any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law.

Modern Penologists are whether the conventional forms of punishment should remain the special or most important and primary weapon is restrictive criminal behavior or should be supplemented and even replaced by a much more flexible or diversified combination of measures of treatment of a reformative, restorative and protective nature. Punishment is a considered as a social reaction to crime. It is a human act and involves deliberate infliction of suffering on the wrong doer. It is an institutionalized suffering. Punishment is the reaction to crime, which is a means of social control. Walter Reckless in considering the meaning of punishment, says, "It is the redress that the common wealth takes against an offending member". Punishment, according to Westermarck, is limited to "such suffering as is inflicted upon the offender in a definite way by, or in the name of, the society of which he is a permanent or temporary member. With a view to formulate a sociological rationale of punishment, Jackson Toby brought out in an amplified manner that the society really has no other alternate by which it can control deviations. According to him, punishment, as a social control, has every possibilities of preventing or deterring crime of sustaining the morale of those who conform to the norms of the society and are morally committed to them and rehabilitating offenders.

According to Sir Walter Moberly suggests that punishment presumes that;

- What is inflicted is an ill, that is something unpleasant
- It is a sequel to some act which is disapproved by authority
- There is some correspondence between the punishment and the act which has evoked it
- Punishment is inflicted, that is imposed by someone's voluntary act
- Punishment is inflicted upon the criminal, or upon someone who is supposed to be answerable for him and for his wrong doings

According to Grunhut, three components must be present if punishment is to act as a reasonable means of checking crime;

- Speedy and inescapable detection and prosecution must convince the offender that crime does not pay
- After punishment the offender must have a fair chance to fresh start.
- The state, which claims the right of punishment, must uphold superior values, which the offender can reasonably be expected to acknowledge.

Aims of Punishment

The aim of Punishment is to control crime and to reduce the amount of crime in society. But why do we punish?

1. General Deterrence

- Make punishment swift and severe enough that people in the general population will not want to commit crimes.
- Prevention of criminal acts in the population at large can be gained by the imposition of punishment on persons convicted of crimes.
- Belief that the pain of punishment should outweigh the benefits of crime.

2. Incapacitation

- Keep offender from committing offences by keeping him or her in prison during the time that an offender is in prison, he or she cannot commit crime on the outside.
- Prevention of criminal acts can be gained by restraining the person being punished from committing criminal acts.

3. Specific Deterrence

- Punishment should be severe enough to make the offender not want to commit crimes in the future.

4. Rehabilitation

- There is something wrong with the offender that makes him or her commit crimes
- Treat the offender so that he or she can re-adjust to society and not commit crimes.

5. Retribution / Desert

- Crimes are acts that deserve punishment.

- Has no crime control aim. Focuses exclusively on the past criminal behaviour and punishment is given solely to express condemnation of that behaviour
- Just deserts - idea that punishment should fit the crime and punishment must be equal in proportion to the seriousness of the offence.

6. Equity

The offender should pay back society and victims for their losses; examples restitution payments, payment for court costs, imprisonment costs.

Types of Punishment

There are basically two types of punishment. They are Positive Punishment

Positive punishment works by presenting a negative consequence after an undesired behavior is exhibited, making the behavior less likely to happen in the future. For example- During a meeting or while in class, your cell phone starts ringing, you are lectured on why it is not okay to have your phone on.

Negative punishment

Negative punishment happens when a certain desired stimulus/item is removed after a particular undesired behavior is exhibited, resulting in the behavior happening less often in the future. The following are some examples of negative punishment:

For a child that really enjoys a specific class, such as gym or music classes at school, negative punishment can happen if they are removed from that class and sent to the principal's office because they were acting out/misbehaving.

The types of punishment given are

- Prison
- Death penalty
- Community service
- Young offenders institution
- Fines
- Warnings
- ASBO‟s

Prison - a building to which people are legally committed as a punishment for a crime or while awaiting trial.

The use of imprisonment or incarceration as a form of punishment has been used from the earliest times. It is a legal penalty imposed by the State for the commission of a crime. Imprisonment involves the deprivation of liberty and freedom, and has been seen as an appropriate way of not only punishing offenders, but also as a preventative measure to ensure offenders doesn‟t reoffend in aims of protecting wider society.

- **Death penalty** - punishment by execution
- **Death penalty** - also called **capital punishment**, is when a government or state executes (kills) someone, usually because they have done something wrong.
- **Community service -** is performed by someone or a group of people for the benefit of the public or its institutions. Performing community service is not the same as volunteering, since it is not always done voluntarily. The victims are forced to do community service as a punishment for their mistake.

✓ **Young Offender Institution** is a type of British prison intended for offenders aged between 18 and 20, although some prisons cater for younger offenders from ages 15 to 17, who are classed as juvenile offenders. Typically those aged under 15 will be held in a Secure Children's Home.

✓ **Fines -** A **fine** is money paid usually to superior authority, usually governmental authority, as a punishment for a crime or other offence. The amount of a fine can be determined case by case, but it is often announced in advance. The most usual use of the term, fine, relates to a financial punishment for the commission of crimes, especially minor crimes, or as the settlement of a claim.

✓ **Warnings** - The police or Crown Prosecution Service can give you a caution or warning if you commit a minor crime.

Warnings are given to anyone aged 10 or over for minor crimes - e.g. writing graffiti on a bus shelter. You have to admit an offence and agree to be warned. You can be arrested and charged if you don‟t agree. A warning is not a criminal conviction, but it could be used as evidence of bad character if you go to court for another crime.

- **ASBO - Anti Social Behaviour Order**

An **anti-social behaviour order** - is a civil order against a person who has been shown, on the balance of evidence, to have engaged in behaviour. The orders restrict behaviour in some way, by prohibiting a return to a certain area or shop, or by restricting public behaviour such as swearing or drinking alcohol. An ASBO may be issued in response to "conduct which caused or was likely to cause harm, harassment, alarm or distress, to one or more persons not of the same household as him or herself and where an ASBO is seen as necessary to protect relevant persons from further anti-social acts by the defendant.

The history of early penal systems of most countries reveals that punishments were tortuous, cruel and barbaric in nature. It was towards the end of eighteenth century that humanitarianism began to assert its influence on penology emphasizing that severity should be kept to a minimum in any penal programme. The common modes of punishment prevalent in different parts of the world included corporal punishments such as flogging, mutilation, branding, pillories, chaining prisoners together etc., simple or rigorous imprisonment, forfeiture of property and fine.

Flogging

Of all the corporal punishments, flogging- was one of the most common methods of punishing crimes. In India, this mode of punishment was recognized under the Whipping Act, 1864, which was repealed and replaced by similar Act in 1909 and finally abolished in 1955. The English penal law abolished whipping even earlier. In Maryland (USA) whipping was recognized as late as 1953 although its use was limited only to “wife-bearing”. Flogging, as a mode of punishment is being used in most of the middle- east countries even to this day.

The instruments and methods of flogging, however, differed from country to country. Some of them used straps and whips with a single lash, while others used short pieces of rubber-hose as they left behind traces of flogging. In Russia, the instrument used for flogging was constructed of a number of dried and hardened thongs of raw hide, interspersed with wires having hooks in their ends, which could enter and tear the flesh of the criminal. It has now been discontinued being barbarous and cruel in form.

Penological researches have shown whipping, as a method of punishment has hardly proved effective. Its futility is evinced by the fact that most of the hardened criminals who were subjected to whipping repeated their crime. There is a general belief that whipping may

serve some useful purpose in case of minor offences such as eve teasing, drunkenness, vagrancy, shoplifting, etc., but it does not seem to have the desired effect on offenders charged with major crimes.

Mutilation

Mutilation was yet another kind of corporal punishment commonly in use in early times. This mode of punishment was known to have been in practice in ancient India during Hindu period. One or the both the hands of the person who committed theft were chopped off and if he indulged in sex crime his private part was cut off. The system was in practice in England, Denmark and many other European countries as well.

The justification advanced in-support of mutilation is that it serves as an effective measure of deterrence and retribution. The system, however, stands completely discarded in modern times because of its barbaric nature. It is believed that such punishments have an inevitable tendency to infuse cruelty among people.

Branding

The origin of this type of punishment is found in the biblical times where god brands Cain for killing his brother Able, with a mark on his forehead as a punishment. As a brand of punishment, branding of prisoners was commonly used in oriental and classical societies. Roman penal law supported this sort of punishment and criminals were branded with appropriate marks on the forehead so that they could be identified and subjected to public ridicule. This acted as a forceful weapon to combat criminality. England also branded its criminal till 1829 when it was finally abolished.

The system of branded was not uncommon to the American penal systems also. The burglars were punished by branding letter “T” on their hand and those who repeated this offence were branded “R” on the forehead. In Maryland (USA) blasphemy was punishable with branding the letter “B” on the forehead. In India, branding was practiced as mode of punishment during the Mughal rule. This mode of corporal punishment now stands completely abolished with the advent of humanitarianism in the field of penology.

Stoning

Stoning the criminals to death is also known to have been in practice during the medieval period. This mode of sentencing the offender is still in vogue in some of the Islamic countries, particularly in Pakistan, Saudi Arabia etc. The offenders involved in sex crimes are

generally punished by stoning to death. The guilty person is made to stand in a small trench dug in the ground and people surround him from all sides and pelt stone on him until he dies. Though, it is a punishment barbaric in nature, but due to its deterrent effect, the sex" crimes, especially crimes against women are well under control in these countries.

Pillory

Pillory was yet another form of cruel and barbaric punishment, which was in practice till 19tn century. The criminal was made to stand in a public place with his head and hands locked in an iron frame so that he could not move his body. The offender could be whipped or branded while in pillory. He could be stoned if his offence was a serious nature. At times the ears of the criminal were nailed to the beams of the pillory. Restraining physical movements of the criminal had the most agonizing effect on him and it was believed would surely bring the offender to books.

The system of pillory existed slightly in different form during the Mughal rule in India. Hardened criminals and dangerous offenders were nailed in walls and shot or stoned to death. The punishment undoubtedly was more cruel and brutal in form and, therefore, it has no place in modem penal systems.

Hanging condemned prisoner to death in a public place was common mode of pillory punishment in most part of the world until the middle of the twentieth century.

Fines

The imposition of fine was a common mode of punishment for offences, which were not a serious nature, and especially those involving breach of traffic rules or revenue laws. This mode of punishment is being extensively used in almost all the sentencing systems of the world even today. Fines by the way of penalty may he used in case of property crimes and minor offences. Other forms of financial penalty include payment of compensation to the victim of the crime and payment of costs of the prosecution. Financial penalty may be either in shape of fine or compensation or costs.

The real problem involved in imposition of financial penalties is the quantum of fine or costs- and enforcement of its payment. The usual methods of enforcement are forfeiture of property, and threat of incarceration. Recovery of fines from the source of income of offender may also be one of the best methods of enforcing this penalty.

In fixing the amount of fine or pecuniary penalty financial condition of the criminal must be kept in mind. Imposition of an exorbitant sum by way of fine beyond the means of the offender would be unrealistic and, therefore, frustrate the cause of penal justice.

In India, however, in the matter of recovery of fines the provisions of Section 421 of the Code of Criminal Procedure, 1973 would apply. The Code provides that when a Court imposes a sentence of fine or a sentence of which fine form as a part, it may direct that whole or part of the fine may be paid as a compensation to the victim for the loss or injury caused to him on account of the crime.

In determining the amount and method of fine, the court should take into consideration the financial resources of the defendant and the nature of burden that its payment will impose on him. Normally, court should not sentence an offender only to pay a fine, when any other disposition is authorised by law, unless having regard to the nature and circumstances of the crime and prior history and antecedents of the offender, the sentence of fine alone is deemed Significant for the protection of public interest.

While awarding the sentence of fine, the court must keep in mind the gravity of offence and the financial capacity of the offender to pay the amount of fine. Besides, it is not desirable to impose fine in addition to death sentence or long-term imprisonment, which may be an unnecessary burden on the family of the convicted person.

Security Bond

A security bond for good behaviour though strictly speaking not a punishment, may serve a useful purpose as a form of restraint of the offender. This may entail compulsory treatment or supervision of the offender. The court may „defer5 sentence on some offender conditionally subject to his normal behaviour. This conditional disposal of offender is increasingly being recognized as an effective mode of corrective justice in modem penology.

A greatest advantage of this nominal measure of punishment is that it offers an opportunity- to the offender to become a law abiding citizen and chances of his reformation are better than those who are imprisoned or subjected to institutional sentence. That apart, the family members of the offender are not adversely affected by this mode of punishment, as they not deprived of their breadwinner.

Banishment

The practice of transporting undesirable criminals to far-off places with a view to eliminating them from society has commonly used in most parts of the world for centuries. In England, war criminals were usually transported to distant Austro-African colonies. The term's transportation, banishment, exile and outlawry though similar, have different connotations. The difference however seems immaterial for the present purpose. Exile as a device merged into outlawry with earlier religious element largely supplanted by a political move.

French criminals are transported to French colonies in Guyana and New Caledonia during nineteenth century. This mode of punishment was used only for hopeless criminals, political offenders and deserters. There was no question of these criminals returning alive as they were sure to die labouring in dense fever infested forests of the African land. The French system of deportation was most brutal, cruel and inhumane. The system was abolished after the World War II when free French Government was installed in that country.

Russian countries transported their criminals to Siberian penal camps. The condition of camps was far worse than that was in French Guyana. They were virtually hell on the earth and have been called "House of the Dead" by Dostoevksi. These camps were mostly meant for political prisoners who were completely deprived of their civil rights and were long termers.

The practice of transportation is known to have existed in penal system of British India as well. It was popularly known Kalapani. Dangerous criminals were dispatched to remote island of Andaman and Nicobar. It had psychological effect on Indians because going beyond the seas was looked with disfavour from the point of view of religion and resulted in out casting of the person who crossed the seas. The practice came to an end during early forties after these islands came in occupation of Japanese. It was finally abolished in 1955. It must, however, be noted that the practice of banishment still persists in mini form called "Externment". The object of this method of punishment is to disassociate the offender from his surroundings[1] so as to reduce the capacity to commit crime. This form of punishment has been accepted under the Indian penal system.

Solitary Confinement

Confining the convicts in solitary prison cells without work was a common mode of punishment for hardened criminals in medieval times. Solitary confinement was intended for elimination of criminals from society and at the same time incapacitating them from repeating crimes. The deterrence involved in this mode of punishment was deemed necessary for prevention of crime. The monotony involved in this kind of punishment had the most devastating effect on criminals. Man by nature is known to be a social being hence cannot bear the pangs of separation and living in complete isolation from his fellowmen. Therefore, segregation of convicts into isolated prison cells under the system of solitary confinement resulted in disastrous consequences and the prisoners undergoing the sentence either died untimely or became insane. Besides, they became more furious and dangerous to society if at all they chanced to come out of the prison alive after completing their term of solitary confinement. As a result of these ill effects on prisoners the system of solitary confinement soon fell into disuse and it was finally withdrawn as a measure of punishment.

Commenting on the torture and cruelty involved in solitary confinement, P.K.Sen, observed that it was perhaps the best way to put an end to the criminal without resorting to bloodshed or murder. Significantly, this mode of punishment is known to have found support in ancient penology of India as an effective expiatory measure. It was believed that complete isolation of man provides him better opportunity for penance and remonstrance and the feeling of guilt and self-hatred tends to bring about his reformation speedily.'

The provisions relating to solitary confinement are contained in Sections 73 and 74 of the Indian Penal Code. Section 73 provides that tire Court may order that the offender shall be kept in solitary confinement. For any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole according to the following scale:

1. For a period not exceeding one month if the term of imprisonment does not exceed six months;
2. For a period not exceeding two months if the term the term of imprisonment does not exceed for one year;
3. For a period not exceeding three months if the term of imprisonment exceeds one year.

Section 74 IPC limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one-month. That is to say, solitary confinement

must be imposed at intervals. A sentence inflicting solitary confinement for the whole term of imprisonment is illegal, though it may be for less than fourteen days.

Imprisonment for Life

"Imprisonment for life" has been authorised as a form of punishment under section 53 of the Indian Penal Code as amended by act 26 of 1995 with effect from 1st January 1956. Section of the Indian Penal Code (IPC) clearly points out that in calculating fractions of term of imprisonment, .imprisonment for life shall be reckoned as imprisonment for twenty years. The executive authorities are competent under section 55, IPC or under Section 433 (b) of the Code of criminal procedure, (Cr.P.C.) to commute sentence of imprisonment for life to one of rigorous imprisonment not exceeding a term of fourteen years. Such commuted sentence would entitle life convicts to be set free remissions earned during his incarceration. But in actual practice, it is seen that the prison authorities are illegally detaining the life convicts for a much longer period than the aforesaid maximum 14 years holding that, the nature of sentence of life imprisonment does not alter by the aforesaid provisions of IPC or Cr.P.C. This dichotomy, however, needs to be resolved by Parliamentary intervention through necessary amendments in the existing criminal law.

Imprisonment

Imprisonment presents a most simple penal and common form of sentencing for incapacitating the criminals. It proved to be an efficient method of temporary elimination of criminals apart from being a general .deterrent and an individual deterrent. Conditions of imprisonment in civilized countries have undergone radical changes in recent decades. The minimum-security institutions such as open air prisons and prison hostels are being increasingly used as modified forms of incarceration of offenders;

Despite being a corrective measure, the most intricate problem involved in imprisonment, as measure of punitive reaction to crime is the "Prisonisation" of offenders. The prisoner is confronted with the most crucial problem of adjustment to new norms and values of prison life. He loses his personal identity in the process of adjustment and is converted into a mere impersonal entity.

Yet another setback of imprisonment, as a mode of punishment is its damaging effect of his family relationship of the offender. The offender loses contact with the members of his family and" if he happens to be the only breadwinner, the result is still worse. The members

of his family suffer misery, starvation and financial crisis. Depriving the offender of his family for a considerably long period creates new problem for prison discipline in the form of homosexuality, bribery, corruption, revolt etc.

In India, however, parole and furlough are being extensively used as a part of penal substitutes for mitigating the rigours of prison inmates. The All India Jail Reforms Committee has further observed that the prisoners should be released on furlough after undergoing a specified period of imprisonment so that they maintain contact with their relatives and friends and may not feel uprooted from society and thus saved from the evil effects of prisonisation.

The social stigma attached to prisoners makes their rehabilitation more difficult. Prisoners quite often feel that the real punishment begins after they leave the prison institution. Sir Lionel Fox, the noted prison reformist of Britain introduced Hostel system for inmates to prevent them from stigmatization and ensure them an honorable life in society.

Be that as it may, the fact remains that imprisonment is still one of the most accepted forms of punishment throughout the world, 'With the correctional techniques introduced in prison institutions, it serves as an efficient measure of reforming the criminal and at the time protecting the society from anti-social elements. Thus, it serves the dual purpose of preventive and reformative justice at one and the same time.

Corporal and Capital Punishment

Capital punishment is the infliction of the death penalty upon a person convicted on a serious crime.

Capital punishment is the practice of executing someone as punishment for a specific crime after a proper legal trial.

It can only be used by a state, so when non-state organizations speak of having 'executed' a person they have actually committed a murder.

It is usually only used as a punishment for particularly serious types of murder, but in some countries treason, types of fraud, adultery and rape are capital crimes.

The phrase 'capital punishment' comes from the Latin word for the head. A 'corporal' punishment, such as flogging, takes its name from the Latin word for the body.

Capital punishment is used in many countries around the world. According to Amnesty International as at May 2012, 141 countries have abolished the death penalty either in law on in practice.

Of all forms of punishments, capital punishments is perhaps the most controversial and debated subject among the modern penologists. There are arguments for and against the utility of this mode of sentence. The controversy is gradually being resolved with a series of judicial pronouncements containing elaborate discussion on this complex penological issue.

Forms of capital punishment

Just as men's ideas have differed regarding what crimes should be punishable with this penalty, so also have their ways of inflicting it. Indeed it appears that men have exhausted their ingenuity in the destruction of the condemned criminal. They have

1. Hanged him
2. Burned him
3. Flayed him alive
4. Boiled him in oil
5. Thrown him to wild beasts
6. Crucified him
7. Drowned him
8. Crushed him
9. Stoned him
10. Strangled him
11. Torn him apart
12. Beheaded him
13. Disemboweled him and
14. Smothered him

Forms of Capital Punishment Now In Use

Although men in modern society continue to inflict capital punishment, they now use only a few of its forms, the most important among which are

1. Electrocution

2. Hanging

3. Asphyxiation

4. Shooting and

5. Beheading.

The offences which are punishable with death sentence under the Indian Penal Code include;

(i) Waging war against the state (Sec.121)

(ii) Abetment of mutiny (Sec 132)

(iii) Giving or fabricating false evidence leading to procure one's conviction for capital offence (Sec 194)

(iv) Murder (Sec 302)

(v) Abetment of suicide committed by a child or insane (Sec 305)

(vi) Attempt to murder by life convict, if hurt is caused (Sec 307)

(vii) Kidnapping for ransom, etc. (Sec 364 A)

(viii) Dacoity with murder (Sec 396).

It is significant to note that though the aforesaid offences are punishable with death but there being alternative punishment of life imprisonment for each of them, it is not mandatory for the court to award exclusively the sentence of death for any of these offences. In fact, where the court is of the opinion that the award of death sentence is the only appropriate punishment to serve the ends of justice in a particular case it is required to record "Special reasons" justifying the sentence stating why the award of alternative punishment i.e. imprisonment for life would be inadequate in that case.

The recent penological trend is to give primacy to reformative methods of punishment which were hitherto used merely as supplementary measures. Hungary is perhaps the first country to initiate the reformative educational method for its prisoners. Besides fines, which *Prof. Jescheck* considered to be central sanction of an up-to-date penal policy, the collateral sanctions such as prohibition from pursuing a profession, disqualification of driving, local punishment and confiscation of property are also being extensively used as sophisticated modes of punishment. According to *Dr. Joseph Folvari,* these sanctions (measures) would refrain the perpetrator from committing a further crime and at the same time would put an

end to the possibility of a further criminal act being committed. Needless to say that these measures would be equally effective if adopted in the Indian penal system.

Arguments For and Against Capital Punishment

The following arguments for and against capital punishment should be considered against the background of the broader and more fundamental discussion of the philosophy of punishment.

1. The Argument of Retribution
2. The Argument of Social Solidarity
3. The Argument of Economy
4. The Argument of Protection
5. The Argument of Deterrence

Argument of Retribution

One Argument advanced in favour of capital punishment is that the criminal should die because he has committed a terrible crime and that only his death will satisfy the public and keep it from taking the law into his own hands. The tendency to reduce the number of capital crimes and to make the method of execution as painless as possible is evidence against this argument.

Argument of Social Solidarity

Another argument in favour of death penalty is that an execution constitutes a spectacular exhibition, which unifies society against crime. Here again actual practice does not support the argument. Executions are closed to the general public and no special effort is made to give them publicity. Even serious crimes often attract little attention because of the increasing impersonality of social relationship.

Argument of Economy

Another interesting argument in favour of death penalty is that it is cheaper than the cost of maintaining a prisoner for life or for a long period of time at the tax payer's expense. A careful calculation will disprove this argument. A life termer if given the opportunity, can help to support him contribute to the maintenance of his dependants and if necessary to make payments to the victim and even he can pay the tax to the state. The humanitarian feelings of

the public would not tolerate the economic consideration. One cannot also ignore the fact that the state incurs considerable expense in the conviction, sentencing and execution of a prisoner who is fighting for his life.

Argument of Protection

The fourth argument for the death penalty is that it protects society from dangerous criminals by insuring that they neither commit other crimes nor spread their undesirable hereditary traits. This contention can be met with strong opposing arguments,

1. Heredity alone is not the only cause of criminal behaviour.
2. By improving rehabilitation facilities of correctional institutions and by strengthening the pardon, probation and parole procedure, the prisoner can be made a useful citizen.

Argument of Deterrence

The most frequently advanced and widely accepted argument in favour of the death penalty is that the threat of its infliction deters people from committing offences. It will be apparent at the outside that those who commit murder as a result of psychopathic compulsions or in fits of rage or relatively immune to the deterrent effect of the death penalty. No form of deterrence short of overt physical restraint before the deed could serve to avert such murders. The same is true of those who commit murder as a result of defective personality of highly unfortunate social environment. Nor can death penalty be supposed to act as an effective deterrent in the case of the professional gunman. He realises that his chances of being apprehended for his crime are relatively slight, that the probability of his conviction after arrest is not more than 50 percent, that he runs a fair chance of being released on a technicality in appeal, even if he is convicted and sentenced to death and of is likely to have this sentence ultimately he is pardoned and restored to a life of freedom. Even those who commit murder to settle a deep-seated grudge by the strong pressure to commit murder and the consciousness of a large probability of escaping its application would give little weight for any fear.

This discussion of arguments for and against capital punishment indicates that most people want to keep it in the law. It has become an unacceptable and ineffective method of punishment. Under the impact of humanitarian approach of the increasing impersonality in social relationships and the growing belief in the powers of science it has been largely replaced with imprisonment.

Unit-II: Theories

Theories of Punishment

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments.

'The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.' Punishment has the following features:

- ✓ It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant
- ✓ It is consequence of an offence
- ✓ It is applied against the author of the offence
- ✓ It s applied by an organ of the system that made the act an offence.

The kinds of punishment given are surely influenced by the kind of society one lives in. Though, during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals.

It becomes very important on behalf of the society to punish the offenders. Punishment can be used as a method of reducing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens.

With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Theories of punishment contain generally policies regarding theories of punishment namely:

- ✓ Retributive
- ✓ Preventive
- ✓ Deterrent and
- ✓ Reformative

Retributive Theory

This theory of punishment is based on the principle- "An eye for an eye, a tooth for a tooth". Retributive means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and

transformation. It has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and barbaric.

The person wrongdoer was allowed to have revenge against the wrong doer. The principle of an eye to eye, a tooth to tooth, a nail to nail, limb for limb was basis of criminal administration.

The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory underlines the idea of vengeance and revenge rather than that of social welfare and security. Punishment of the offender provides some kind solace to the victim or to the family members of the victim of the crime, who has suffered out of the action of the offender and prevents reprisals from them to the offender or his family. This theory is based on the same principle as the deterrent theory, the Utilitarian theory. To look into more precisely both these theories involve the exercise of control over the emotional instinctual forces that condition such actions. This includes our sense of hatred towards the criminals and a reliance on him as a butt of aggressive outbursts. Thus the researcher concludes that this theory closely related to that of expiation as the pain inflicted compensates for the pleasure derived by the offender. Though not in anymore contention in the modern arena but its significance cannot be totally ruled out as fear still plays an important role in the minds of various first time offenders. But the researcher feels that the basis of this theory i.e. vengeance is not expected in a civilized society. This theory has been severely criticized by modern day penologists and is redundant in the present punishments.

Sir Walter Moberly states that the punishment is deemed to give the men their dues. "Punishment serves to express and to and to satisfy the righteous indignation which a healthy community treats as transgression. As such it is an end in itself."

As Kant argues in a famous passage: "Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else... He must first of all be found to be deserving of punishment before any consideration is given of the utility of this punishment for himself or his fellow citizens."

"Kant argues that retribution is not just a necessary condition for punishment but also a sufficient one. Punishment is an end in itself. Retribution could also be said to be the

'natural' justification", in the sense that man thinks it quite natural and just that a bad person ought to be punished and a good person rewarded. However 'natural' retribution might seem, it can also be seen as Bentham saw it, that is as adding one evil to another, base and repugnant, or as an act of wrath or vengeance. Therefore as we consider divine punishment we must bear in mind, as Rowell says, the doctrine of hell was framed in terms of a retributive theory of punishment, the wicked receiving their just deserts, with no thought of the possible reformation of the offender. In so far as there was a deterrent element, it related to the sanction hell provided for ensuring moral conduct during a man's earthly life.

Criticism of the Theory

The retributive theory, even in its modified form, is defective, for as Justice Holmes points out, "this passion of vengeance is not one which we encourage, either, as private individuals or as law makers. Salmond points out that "Retribution is in itself not a remedy for the mischief of the offence but an aggravation of it". Punishment involves pain and suffering. The infliction of suffering, if un-redeemed by someone corresponding and compensating good, can only add to the sum total of misery already occasioned by the offence of the criminal. So it cannot be justified if no ulterior good is aimed at and punishment is inflicted merely as an end itself. It is thus clear that retribution is only a subsidiary purpose served by punishment.

Preventive Theory

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. This criminal under this theory is punished with death, life imprisonment etc. This theory has been criticized by some jurists.

Object of punishment is prevention or disablement offenders are disabled from repeating the offences by awarding punishment, such as death, exile or forfeiture of an office. Unlike the former theories, this theory aims to prevent the crime rather than avenging it. Looking at punishments from a more humane perspective it rests on the fact that the need of a punishment for a crime arises out of mere social needs i.e. while sending the criminals to the prisons the society is in turn trying to prevent the offender from doing any other crime and thus protecting the society from any anti-social elements.

Thus one an easily say that preventive theory though aiming at preventing the crime to happen in the future but it still has some aspects which are questioned by the penologists as it contains in its techniques which are quite harsh in nature. The major problem with these types of theories is that they make the criminal more violent rather than changing him to a better individual. The last theory of punishment being the most humane of all looks into this aspect.

Fitchte in order to explain this in greater details puts forward the illustration, An owner of the land puts an notice that 'trespassers' would be prosecuted. He does not want an actual trespasser and to have the trouble and expense of setting the law in motion against him. He hopes that the threat would render any such action unnecessary; his aim is not to punish trespass but to prevent it. But if trespass still takes place he undertakes prosecution. Thus the instrument which he devised originally consists of a general warning and not any particular convictions.

Thus it must be quite clear now by the illustration that the law aims at providing general threats but not convictions at the beginning itself. Even utilitarian such as Bentham have also supported this theory as it has been able to discourage the criminals from doing a wrong and that also without performing any severity on the criminals. The present day prisons are fallout of this theory. The preventive theory can be explained in the context of imprisonment as separating the criminals from the society and thus preventing any further crime by that offender and also by putting certain restrictions on the criminal it would prevent the criminal from committing any offence in the future. Supporters of this theory may also take Capital Punishment to be a part of this theory. A serious and diligent rehabilitation program would succeed in turning a high percentage of criminals away from a life of crime. There are, however, many reasons why rehabilitation programs are not commonly in effect in our prisons. Most politicians and a high proportion of the public do not believe in rehabilitation as a desirable goal. The idea of rehabilitation is considered mollycoddling. What they want is retribution, revenge, punishment and suffering.

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types of theories is that they make the criminal more violent rather than changing him to a better individual.

Deterrent Theory

The term "Deter" means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

The object of punishment is not only to prevent the wrong-doer from doing a wrong a second time, but also to make him an example to other persons who have criminal tendencies. Salmond considers deterrent aspects of criminal justice to be the most important for control of crime. The chief aim of the law of crime is to make the evil-doer an example and a warning to all that are like minded. One of the primitive methods of punishments believes in the fact that if severe punishments were inflicted on the offender would deter him from repeating that crime. Those who commit a crime, it is assumed, derive a mental satisfaction or a feeling of enjoyment in the act. To neutralize this inclination of the mind, punishment inflicts equal quantum of suffering on the offender so that it is no longer attractive for him to carry out such committal of crimes. Pleasure and pain are two physical feelings or sensation that nature has provided to mankind, to enable him to do certain things or to desist from certain things, or to undo wrong things previously done by him. The basic idea of deterrence is to deter both offenders and others from committing a similar offence.

In earlier days a criminal act was considered to be due to the influence of some evil spirit on the offender for which he was unwillingly was made to do that wrong. Thus to correct that offender the society retorted to severe deterrent policies and forms of the government as this wrongful act was take as an challenge to the God and the religion. But in spite of all these efforts there are some lacunae in this theory. This theory is unable to deter the activity of the hardcore criminals as the pain inflicted or even the penalties are ineffective. The most mockery of this theory can be seen when the criminals return to the prisons soon after their release, that is precisely because as this theory is based on certain

restrictions, these criminals are not affected at all by these restrictions rather they tend to enjoy these restrictions more than they enjoy their freedom.

J. Bentham, as the founder of this theory, states:

"General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence, which has been, committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all. That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety."

Bentham's theory was based on a hedonistic conception of man and that man as such would be deterred from crime if punishment were applied swiftly, certainly, and severely. But being aware that punishment is an evil, he says, if the evil of punishment exceeds the evil of the offence, the punishment will be unprofitable; he will have purchased exemption from one evil at the expense of another.

The basic idea of deterrence is to deter both offenders and others from committing a similar offence. But also in Bentham's theory was the idea that punishment would also provide an opportunity for reform.

"While a person goes on seeking pleasure, he also takes steps to avoid pain. This is a new system of political philosophy and ethics developed by Jerome Bentham and John Stuart Mill in the 19th century called Utilitarianism. It postulates human efforts towards "maximization of pleasure and maximum minimization of pain" as the goal. "The main ethical imperative of utilitarianism is: the greatest good for the largest number of people; or the greatest number of goods for the greatest number of people" The fear of consequent punishment at the hands of law should act as a check from committing crimes by people. The law violator not merely gets punishment, but he has to undergo an obnoxious process like

arrest, production before a magistrate, trial in a criminal court etc. that bring about a social stigma to him as the accused. All these infuse a sense fear and pain and one thinks twice before venturing to commit a crime, unless he is a hardcore criminal, or one who has developed a habit for committing crimes. Deterrent theory believes in giving exemplary punishment through adequate penalty."

Restrictive Principles of Deterrence

Beccaria points out, "the more cruel punishments become, the more human minds harden, adjusting themselves like fluids, to the level of objects around them; and the ever living force, of the passions. brings it about that, after a hundred years of cruel punishments, the wheel frightens men only just as much as it first did the punishment of prison". Hob house also observed: "people are not deterred from murder by the sight of the murderers dangling from a gibbet. On the contrary, what there is in them of lust for blood is tickled excited, their sensuality or ferocity is aroused and the counteracting impulses, the aversion to bloodshed, the compunction for suffering are arrested". In the eighteenth century England, while thieves were hung up publicly as a warning, „deterred pickpockets frequently plundered the spectators. Thus, one limiting principle to the deterrent theory arises from the fact that the fear inspired even by the most terrifying of punishments will be blunted by long familiarity with that particular mode of punishment.

Another limiting principle is that extreme severity of a penal code may make people unwilling to co-operate in carrying out the punishment. In England it was usual for juries to indulge in prior perjuries for saving petty offenders from gallows. When a prisoner was indicted for stealing goods valued at 300 pounds, the jury found him guilty of larceny of goods to the value of 39 shillings in order that the conviction should not carry with it the penalty of death. Thus if the prescribed penalty be too severe, its deterrent effect would be outweighed by the increased hope of immunity entertained by the malefactor.

Reformative Theory

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is a born

Criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

According to the reformative theory, the objective of punishment is the reformation of criminals. But that is the beginning of a new story, the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life. It emphasizes on the renewal of the criminal and the beginning of a new life for him.

The most recent and the most humane of all theories are based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crimes. Though it may be true that there has been a greater onset of crimes today than it was earlier, but it may also be argued that many of the criminals are also getting reformed and leading a law-abiding life all-together. Reformative techniques are much close to the deterrent techniques.

This theory aims at rehabilitating the offender to the norms of the society i.e. into law-abiding member. This theory condemns all kinds of corporal punishments. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. These prisons or correctional homes as they are termed humanly treat the inmates and release them as soon as they feel that they are fit to mix up with the other members of the community. The reformation generally takes place either through probation or parole as measures for reforming criminals. It looks at the seclusion of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism. Though this theory works stupendously for the correction of juveniles and first time criminals, but in the case of hardened criminals this theory may not work with the effectiveness. In these cases come the importance of the deterrence theories and the retributive theories. Thus each of these four theories has their own pros and cons and each being important in it, none can be ignored as such.

Unit-III: Prison Systems

Historical Development of Prison System in India

The Prison is an age old institution. The word "Prison" connotes "to seize" and "cage". The oxford English dictionary defines "Prison is a place, properly arranged and equipped for the reception of persons who by legal process, are committed to it for safe custody while in trial or for punishment". Originally, Prison was conceived as a place of detention to keep offenders pending trials and ultimate punishment. In course of time what was thought of as transit point become a terminus, and imprisonment was regarded as an end in itself.

Lord Macaulay, in his famous 'Minutes of 1835' described that "Imprisonment is the punishment to which we must chiefly trust". He pleaded for the establishment of such regulations, at the same time, prevented it from being attended by any circumstances shocking to humanity. In addition to custodial functions the prison became a penal agency, the chief aim of which was to destroy the so called criminal streak among convicted offenders. A retributive-cum-deterrent philosophy had been the underlying policy of prison administration in India. To these ends, prisons have had a torment cum- terror regime with significant repressive features like isolation, cells and unproductive rigorous labour.

The principles and purposes of prison administration have evolved as a process from the ancient to the present days in India, Europe and America. In India, this process of development can be broadly divided into three phases, viz, Ancient-Medieval period, 2. British Period. 3. Post-Independence period.

In ancient India, at the time of the Artha Sastra, justice was administered in accordance with legal rules, which fell under one or the other of the following four heads (a) Sacred law (*Dharma*) (b) Secular law *('Vyavahara*), (c) Custom (*Charitra*) and (d) Royal Commands (*Rajasasan*). Out of all these four divisions of law, custom (*Charitra)* was the most popular one and Manu along with all other law givers of that time accepted it as the essential principle in the administration of justice; that disputes should be decided in accordance with the customs of the countries and districts *(Janapada*), of castes (*Jati*) and guilds (*Sreni*) and of families (*Kula*). The king in those days was called *Dandadhara,* the holder of *Danda* i.e. the power of punishment or an incarnation of Jama, the judge of the souls of the dead; with the idea of utility and necessity of punishment the law givers of ancient India prescribed severe punishment for crime. The civil actions, the usual remedies given by the courts, were restoration of property and fines.

In criminal cases the punishments were (i) fine (ii) imprisonment (iii) whipping (iv) physical torture (v) banishment (vi) condemnation to work in mines (vii) death. During Rig Vedic period there was no prison, but the house of the accused served the purpose for jail and he was practically imprisoned in his own house till he managed to compensate the plaintiff. Another interesting feature of the administration of legal justice in ancient India was that the offenders in most cases were allowed to pay fines to escape punishments.

The cruel and barbarous penal system of the ancient days continues for quite a long time in our country until the downfall of the Mughal empire. During Mughals the legal system resembled that of ancient India and of contemporary muslim sovereign. Muslim law divided punishment into Hadd, Tazier, Quisas, and Tash-hir. Hadd included stoning to death for adultery, encouraging for drinking wine, cutting off for robbery with murder etc. Tazier was the punishment like public reprimands dragging the offenders to the door, imprisonment or excise or boxing on the ear. Quisas or retaliation rested on the personal types of crimes such as a murder. Tash-hir or public degradation was a popular devised punishment of universal currency throughout the Muslim world and even in Hindu India and Medieval Europe. It included such punishments as shaving off the offender's head, making him ride on an ass with his face turned towards its tail, and his body covered with dust, sometimes with a garland of old shoes placed around his neck, parading him in this posture through the streets with noisy music and finally turning him out of the city. As to the offences against the state, such as rebellion, peculation and default in the payment of revenue, the Quaranic law was silent and as such the sovereign was the sole authority on inflicting punishment in such cases.

With the advent of the British era the administrative structure in India began to assume a new form. The Regulating Act of 1773 saw the establishment of Supreme Court at Calcutta to exercise all civil and criminal jurisdiction. In 1790, the criminal courts in Bengal introduced imprisonment in lieu of mutilation. It was only after 1858, a uniform system of legal justice was initiated in India. The Indian penal code defined each and every offence and prescribed punishment for the same. Imprisonment was the most commonly used instrument for penal treatment. On 14th December, 1935, Lord Macaulay, a member of Indian Law Commission opined, "Imprisonment is the punishment to which we must chiefly trust. It will probably be restored to 99 cases in a 100". It is therefore of great importance to establish such regulations as shall make imprisonment a terror to wrong doers and at the same time

shall prevent it from being attended by any circumstance shocking to humanity. Thus the deterrent philosophy for the management of prisons in India got a fair treatment in his hand. He recommended the appointment of a committee, for the purpose of collecting information's as to the state of Indian prisons and of preparing an improved plan of prison discipline. The report was published in the early part of 1838. The committee went through various aspects like housing of prisoners, discipline, health, diet, remunerative rewards, punishments, education and labour in details. The committee was someway influenced by contemporary ideas in England. Sir John Lawrence, Governor General of India, reviewed the position in 1864 and appointed a Second Prison Commission to minimize high death rate in prisons and to consider other aspects of jail management. The committee of 1864 observed that during the preceding ten years not less than 46,309 deaths had occurred within the walls of Indian prisons. The Prison Committee concluded that sickness and mortality was attributable to overcrowding, lack of ventilation, bad conservancy, bad drainage, insufficient clothing and deficiency of personal cleanliness and inadequate medical facilities. The committee also took into consideration the aspects of juvenile delinquency, female prisoners, diet, jail discipline and a series of suggestions regarding the prison system.

It is said that due to the implementation of recommendations of the committee the death rate in prisons came down considerably. In 1876, the Third Jail Committee under the auspices of Lord Lytton made a general review of the subject and suggested means for introducing more uniform regulations and for making short sentence more deterrent.

The Fourth Jail Committee, appointed by Lord Dufferin in 1888, suggested changes in rules of prison administration and classification and seggregation of prisoners following the investigation into the diversity of practices in the prison. It also covered the internal management of jails, laying down rulers for prison management. The work of this committee was corroborated by the recommendations of All India Committee of 1892. It resurveyed the general prison administration in India and drew up proposals on the subject of prison offences and punishment. This report, as a manuscript was accepted by the Government of India and got confirmed as the Prisons Act 1894. The Act restricted and regulated the use of cellular confinement and penal diet as well. It provided for the classification of different offenders and tried to secure uniformity of treatment to all offenders in jails. This Act was

basically based on principle of deterrence and reflected contemporary English public opinion on the subject

The year 1897 ushered in a new era in the history of prison reform in India. This year Reformative Schools Act was passed and courts were directed to send youthful offenders below 15 years, to Reformative Schools instead of prisons. Despite this setting up of commissions up to 1888 and 89, the Indian prison system lacked substantial reformative aspects in prison work. It failed to recognize the prisoner as an individual and conceived him rather as unit in the jail administrative machinery. It lost sight of the effect as to the humanitarian and civilized influences in the mind of individual prisoner and failed to focus the attention on his material well-being and all necessary elements of a human being to live i.e. diet, health and labour. Thus, it was mainly the idea of deterrence which influenced the prison policy till the year 1919. 19 In 1919, the Fifth Committee was appointed to do away-with the above mentioned shortcomings. This Pre-Independence Jail Committee, chaired by Sir Alexander G. Cadrew, gave a new direction and expression to the new ideas, to be incorporated in the jail administrative system. This committee made an exhaustive tour of England, Scotland, U.S.A., Philippines, Hong-Kong, Andaman's and made an extensive study of the prison systems there. This committee submitted a comprehensive report suggesting for new changes in various aspects of prison system and administration. In this regard, the committee made a huge piece of work with five hundred eighty four recommendations on the subjects like prison staff, separation and classification of prisoners, prison labour and manufactures, discipline and punishment and prison hygiene etc. The publication of this report gave an immediate and great impetus to prison reforms throughout India.

With the introduction of the Montegu Chemsford Reforms, jails and other alike services came under the jurisdiction of the state and the jail reform movement took a new turn in all states following the enactment of Borstal Schools Act, Children Act, Probation and Offenders Act etc. This report laid the foundation stone of the modern prison system in India. The committees in this regard were constituted in different states i.e. Punjab, Jail Reform Committee (1919 and 1948), Uttar Pradesh Jail Committee (1929, 1938 and 1946), Bombay Jails Committee (1939 and 1946), Mysore Jails Committee (1941), Madras Jails Committee

(1950), Orissa Jails Committee (1952) and Kerala Jails Committee (1953). Thus jail reforms went to a new height in India with all its segments in all states.

The post Independence period saw a major change in the Indian prison system. The Government took special and keen interest in it. And as a result, in 1951, invited an expert form United Nations under the technical assistance programme, to study the prison administration in the country and to suggest progressive programmes. The one member committee comprising Dr. Walter C. Reckless as the U.N. Expert went round the country and submitted his report on prison administration in India and suggested a six- month training programme for jail officers. After an intensive study as to the jail administration in India he made a number of recommendations which included the setting up of central Bureau of Correctional Services in Delhi and the revision of jail manuals which were substantially different from the recommendations of the Indian Jails Committee of 1919.22 The All India Conference of Inspector general of prisoners was held in Bombay in 1952 which recommended to set up a committee to draft a Model Prison Manual in pursuance of the recommendations of Dr. Reckless. And the Government of India appointed an All India Jail Manual Committee in 1957, to prepare a model prison manual to examine the Prison Act and other laws and made proposal for changes to be adopted uniformly throughout the country. The committee submitted its report in 1959. It marked the evolution of some new faculties like Central Bureau of Correctional Service (renamed as National Institute of Social Defence in 1975), Working Group on Prison in 1972, to examine measures to streamline the prison set-up in the country. The committee submitted its report in 1973 which comprised of several recommendations and the state Governments were asked by the Central Government to implement the same. The notable recommendations of this working group were to set up a research unit at the headquarters of I.G. of prisons in each state, setting up of a training institute in each state as well as regional training institutes, diversification of the institutions, accommodation and other connected matters. The most remarkable recommendation of this working group was that it recommended the inclusion of the prisons in the Five Year Plan and a provision of Rs 100 crores for the upliftment of the same. It thought that prison administration could not be streamlined unless the Central Government and the State Governments channelize more resources for developing every aspect of the existing system. As a result, the Ministry of Home Affairs initiated efforts for the improvement and

modernization of jail administration by making a grant of Rs. 2 crores in the budget of 1977-78 respectively.23 Besides, this process followed up some more developments like the recommendations of the chief Secretaries to reduce the over-crowding in jails, setting up of new codes and amendments of laws relating to the transfer of prisoners, creation of separate faculties for the care, treatment and rehabilitation of women offenders, segregation of juveniles etc. Furthermore to help the state governments in their efforts to undertake jails reforms, the Central Government formulated a scheme in 1977 to give financial assistance for prison reforms.

Several reports and articles appeared in the press as to the conditions in jails, particularly in Tihar jail, Delhi and in most of the jails in U.P and Bihar, where a number of under trial prisoners were confined without trial for over 10 years. The Government of India, therefore appointed a committee on jail reforms, chaired by Mr. Justice A.N.Mullah (Retd.) in April, 1980. The committee submitted its first report on Tihar Central Jail, Delhi in December, 1980 and the final report in March, 1983. The report can be summed up as follows.

(a) Directive principles of national policy in prison should be formulated and embodied in part IV of the Indian Constitution.

(b) The subject of prisons and allied institutions should be included in the concurrent list of seventh schedule of the constitution of India.

(c) Provision of a uniform framework for correctional administration by a consolidated, new and uniform comprehensive legislation to be enacted by parliament for the entire country.

(d) Revision of Jail Manuals should be given top priority.

(e) Suitable amendment of Indian penal code.

The Ministry of Home affairs followed up action, on the report in consultation with the concerned ministries and departments of Central and State Governments. Further, the Government of India constituted a committee on women prisoners in May, 1986, with the Supreme Court justice. VR Krishna Iyer, as the Chairman. The committee submitted its report on 1.6.1987. The major recommendations of the committee were :

a) Provision of a national policy pertaining to the women prisoners in India.

b) Formation of new rules and regulations relating to the punishment and conduct.

c) Maintenance of proper coordination among the police, law and prison for providing do justice to women prisoners.

d) Provision of legal aid for them.

e) Construction of separate prisons for women prisoners.

f) Proper care for the baby, born in jail to a women prisoner and provision of nutrious diet for the mother and the child.

Prisoners were incarcerated in about 1.000 prisons, including 7 Reformatory Schools for the adolescent offenders and 6 Reformatories for women. Many women and adolescent offenders were imprisoned in separate enclosures attached with or located in the prisons, meant for adult male offenders. A social consequence of conviction and imprisonment is far severe, damaging and degrading on women prisoners as compared to male prisoners. It makes their rehabilitation difficult. It was very natural that the National expert committees on women prisoners 1986-87 strongly recommended for changes is the substantive law and procedures of criminal justice system so as to reduce women crime, prosecution, conviction anc. institutional incarceration; as otherwise cause more harm than its dilluory deterrent effect in crime control.

The open camps, like Sanganer open prison in Rajasthan, near Jaipur, where prisoners are allowed to stay with their families can best serve as half-way-house before their return to society. Open camps provides opportunity for greater community contact to the prisoners, it helps them in their rehabilitation after the completion of their sentence. Therefore to ensure scientific and humanitarian administration of prisons in accordance to the modern philosophy of reformation and rehabilitation, it is imperative that the necessary facilities, structures personnel, legislation and processes, be ensured. The idea of setting up Open Jails is to restore the dignity of people-a chance to live a normal life after release.

Prison Manual

The Tamil Nadu prison and reformatory manual consists of 4 volumes. Volume-II was revised and issued in 1983. Along with this volume-III was also issued. Thus the 3 volumes became 4 volumes from 1983. The volume - I is important because it contains

various acts relating to prison administration. Volume II is the most significant of the 4 volumes.

Salient Features of the Jail Manual

Volume - I contains various acts providing for the establishment and maintaining of prisons and act son prisoners related subjects. These acts are The Prisons Act 1894, The Prisons Act 1900, The Identification Of Prisoners Act 1920, The Exchange of Prisoners Act 1948, The Transfer Of Prisoners Act 1950, The Prisoners (Attendance In Courts) Act 1955, and relevant portions of act like, the Indian Lunacy ant 1932, Extracts from the Indian Extradition Act 1903, Extracts from the Indian Penal Code 1860, Extracts from the code of Criminal Procedure 1973 and Tamil Nadu acts amending the prison and prisoners act. Volume -1 of the prison and reformatory manual was one of the oldest in the country and served as a model for other states to form their manuals.

Volume II contains the rules and regulation for the management of prisoners framed under sec.59 of the Prisons act 1894. Volume-II contains the statutory rules made by the govt, in the inspection, superintendence and management of prisons. Broadly this contains ruled relating to various aspects of the day-to-day administration of the prison. This manual is considered to be one of the best manuals of the various manuals/orders of the various departments of the Tamil Nadu Government. The value given to human life, individual‟s self-respect, religion, caste and human approach are note worthy. For example it provides for the Mohammedan prisoners to be provided with knee length trousers and also provides a Sikh to keep kirpan (sword) with him.

This volume specified the organisation and administration of the prison department, of central prisons, duties and responsibilities of executive, medical, and ministerial and correctional staff, admission and classification of prisoners, treatment of prisoners, discipline and daily routine, offence and punishment, remission system, grading of convict officers, die try, clothing and bedding, convict labour and prison industries, visitors, interview and communication with prisoners, release of prisoners, medical administration, sanitation, garden and farming, ruled relating to under- trial/remand prisoners, civil prisoners, political prisoners, female prisoners, adolescent prisoners and rules relating the general administration of the prison as well as the manufacture department of the prison. To go in detail the various aspects of this volume, will be time consuming though it is worth, a perusal of this volume

will help anyone who may be required to form rules and regulation for any Institution or system.

Volume III contains the rules framed under other enactments namely criminal procedure code 1973, Prisoners (Attendance in courts act 1982), Indian lunacy act 1912, the Tamil Nadu suspension of sentence rule 1982 and some other acts with rules relating to the administration of the prisons. Volume-Ill consists of various rules as already stated; the important of them being the prisoner‟s suspension of sentence rules 1982. This rule provides for the suspension and release of prisoners on emergency and ordinary leave by the Superintendent and Deputy Inspector General of prison/government respectively.

A prisoner is released on a short leave to attend to the serious illness, death, and marriage of a relative with or without escort. For the ordinary leave the grounds are to make arrangements for the livelihood of the family and for the settlement of life after his release, to make arrangements for the admission of his children in school or college, construction or repair of his home, to make arrangement or to participate for the marriage of son, daughter, brothers, for the marriage of self and for settling family dispute like partition etc. agricultural operation like sowing, harvesting etc. and any other extraordinary reasons. If the conditions laid down for the ordinary leave are satisfied, D.I.G. of prisons grants ordinary leave and gets it ratified by the government later. This system of granting leave by superintendents and D.I.G of prisons is prevalent in Tamil Nadu only in the whole of the country. Another salient rule in this volume is the rules for the grant of financial assistance to released prisoners. These rules as subsequently stand amended provides for grant of financial assistance up to Rs.5000/- per prisoner as a loan for buying things like tools for any trade, machineries, livestock etc. to start a new life by a released prisoner. Efforts are on to remove the financial ceiling and to prescribe the loan as a set of tools of the trade of the prisoner‟s choice, bullock carts with or without bullock, milking cows and other such requirement for any trade, and the prisoner is proposing to start.

The other salient rule in this volume is the rules relating to the prisoners‟ canteen. Canteen are run in the prison from which the prisoners are permitted to buy articles like toilet items, beedi, cigarettes, coffee, tea, bun, biscuits, stationary items etc. The prisoners can use their own cash or the wages earned by them by working in the prison.

Volume IV contains the executive and administrative orders and instructions issued by the govt, and inspector general of prisons form time to time relating to inspection, superintendence and management of prison and prisoners in the state of Tamil Nadu. Vol. lV consists of various instructions issued by the Govt, and I.G. periodically.

As unlike other government services, in prison department we deal with human beings. Hence there is a constant change of circumstances. To suit this change new rules/ instructions/guidelines are issued. While the prisons act was formed in 1894, the first circular was necessitated in 1900 itself! This volume is as important as volume-II and covers almost all the subjects of volume II.

There is a subsidiary jail manual for the management, superintendence and inspection of subsidiary jails. These rules were framed in 1898. Like the jail manual volume II, this manual contains, rules and regulations covering all aspects of running of a subsidiary jail.

Concluding, the manuals of the prisons department are as old as the department and right from the beginning are very elaborate, educative, cover all aspects, keep changing according to the changing-times, human in its approach-and with informative motive.

The Prisons Act, 1894
(Act Ix Of 1894)

[22 March 1894]

An Act to amend the law relating to Prisons.

Chapter I - Preliminary

1. Title, Extent and Commencement. — (1) This Act may be called the Prisons Act, 1894.

(2) It extends to the whole of India except [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]; and.

(3) It shall come into force on the first day of July, 1894.

2. *[Repeal].* *Repealed by the Repealing Act, 1938 (1 of 1938), section 2 and Schedule.*

3. Definitions

In this chapter explain the definition of the followings;

- Prison
- Criminal Prisoner
- Convicted Criminal Prisoner
- Civil Prisoner

- Remission system
- History-ticket
- Inspector General
- Medical subordinate
- Prohibited article

Chapter II- Maintenance and Officers of Prisons

In this chapter explain about the following sections

4. Accommodation for Prisoners. The State Government shall provide the accommodation in prisons constructed and regulated in such manner.

5. Inspector General. An Inspector General shall be appointed, subject to the orders of the State Government the general control and superintendence of all prisons.

6. Officers of Prisons. For every prison there shall be a superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the State Government thinks necessary:

7. Temporary Accommodation for Prisoners. State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

Chapter III - Duties of Officers

Generally – It said that the general duties of officers

8. Control and Duties of Officers of Prisons. — All officers of a prison shall obey the directions of the Superintendent.

9. Officers Not To Have Business Dealings With Prisoners.— No officer of a prison not having business dealings with prisoners.

10. Officers Not-To Be Interested In Prison-Contracts.

Superintendent

11. Superintendent. Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

12. Records To Be Kept By Superintendent. — The Superintendent shall keep, or cause to be kept, the following records:-

(1) A register of prisoners admitted;

(2) A book showing when each prisoner is to be released;

(3) A punishment-book for the entry of the punishments inflicted on prisoners for prison offences;

(4) A visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison;

(5) A record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under section 59

Medical Officer- It said that the role and duties of medical officer

13. Duties of Medical Officer. Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties of medical officers in prison.

14. Medical Officer to Report in Certain Cases. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

15. Report on death of prisoner. — On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:

(1) The day on which the deceased first complained of illness or was observed to be ill,

(2) The labour, if any, on which he was engaged on that day,

(3) The scale of his diet on that day,

(4) The day on which he was admitted to hospital,

(5) The day on which the Medical Officer was first informed of the illness,

(6) The nature of the disease,

(7) When the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) When the prisoner died, and

(9) (In cases where a post-mortem examination is made) an account of the appearances after death, together with any special remarks that appear to the Medical Officer to be required.

Together with any special remarks that appear to the Medical Officer to be required.

Jailer- It said that the role and duties of Jailor

16. Jailer. — (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere. (2) The Jailer shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

17. Jailer to give notice of death of prisoner. — Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

18. Responsibility of Jailer. — The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confined to his care, and for the money and other articles taken from prisoners.

19. Jailer To Be Present At Night. — The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

20. Powers of Deputy and Assistant Jailers: To be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule there under.

***Subordinate Officers* –** It said that the role and duties of subordinate officers

21. Duties of Gate-Keeper. — The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and if any such article or property be found, shall give immediate notice thereof to the Jailer.

22. Subordinate officers not to be absent without leave. — Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

23. Convict Officers. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code. (45 of 1860).

Chapter IV - Admission, Removal and Discharge of Prisoners

24. Prisoners to be Examined on Admission. - (1) whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from

him. (2) After admission of criminal prisoner, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add. (3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. Effects of Prisoners. - All money or other articles be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of Jailer.

26. Removal and Discharge of Prisoners. - (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

Chapter V - Discipline of Prisoners

27. Separation of Prisoners. — The requisitions of this Act with respect to the separation of prisoners are as follows:-

(1) In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;

(2) In a prison where male prisoners under the age of [twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;

(3) Unconvinced criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) Civil prisoners shall be kept apart from criminal prisoners.

28. Association and Segregation of Prisoners. — Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

29. Solitary Confinement. — No cell shall be used for solitary confinement

30. Prisoners under Sentence of Death. — Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of,

the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

Chapter VI - Food, Clothing and Bedding of Civil and Unconvicted Criminal Prisoners

31. Maintenance of Certain Prisoners From Private Sources.— A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General.

32. Restriction on Transfer of Food and Clothing between Certain Prisoners. - No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

33. Supply of Clothing and Bedding to Civil and Unconvicted Criminal Prisoners. - Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

Chapter VII- Employment of Prisoners

34. Employment of Civil Prisoners. - Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

35. Employment of Criminal Prisoners. - No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

36. Employment of Criminal Prisoners Sentenced to Simple Imprisonment. — Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

Chapter VIII - Health of Prisoners

37. Sick Prisoners. - (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him.

38. Record of Directions of Medical Officers. - All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket.

39. Hospital. - In every prison a hospital or proper place for the reception of sick prisoners shall be provided.

Chapter IX - Visits to Prisoners

40. Visits to Civil and Unconvicted Criminal Prisoners - At proper times and under proper restrictions, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

41. Search of Visitors - The Jailer may search any visitor, or cause him to be searched but the search shall not be made in the presence of any prisoner or of another visitor.

Chapter X - Offences in Relation to Prisons

42. Penalty for Introduction or Removal of Prohibited Articles into or From Prison and Communication with Prisoners - Whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. Power to Arrest for Offence under Section 42 – It said that the power to arrest for offence under section 32.

44. Publication of penalties - The Superintendent shall cause to be affixed, the penalties incurred by their commission.

Chapter XI – Prison Offences

45. Prison Offences - The following acts are declared to be prison-offences when committed by a prisoner:-

(1) Willful disobedience to any regulation of the prison

(2) Any assault or use of criminal force;

(3) The use of insulting or threatening language;

(4) Immoral or indecent or disorderly behaviour;

(5) Willfully disabling him from labour;

(6) Contumaciously refusing to work;

(7) Filing, cutting, altering or removing handcuffs, fetters or bars without due authority;

(8) Willful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment.

(9) Willful mismanagement of work by any prisoner sentenced to rigorous imprisonment;

(10) Willful damage to prison-property;

(11) Tampering with or defacing history-tickets, records or documents;

(12) Receiving, possessing or transferring any prohibited article;

(13) Feigning illness;

(14) Willfully bringing a false accusation against any officer or prisoner;

(15) Omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official; and

(16) Conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

46. Punishment of Such Offences - The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by-

(1) A formal warning:

(2) Change of labour to some more irksome or severe form [for such period as may be prescribed by rules made by the State Government;

(3) Hard labour for a period not exceeding seven days in the case of convicted criminal prisoner's not sentenced to rigorous imprisonment;

(4) Such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government;

(5) The substitution of gunny or other coarse fabric for clothing of other material, not being woolen, for a period which shall not exceed three months;

(6) Imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government;

(7) Imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government;

(8) Separate confinement for any period not exceeding [three] months;

(9) Penal diet, that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government:

(10) Cellular confinement for any period not exceeding fourteen days:

47. Plurality of Punishments under Section 46 - Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination.

48. Award of Punishments under Sections 46 and 47 - The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections for a period exceeding one month

49. Punishments to be in Accordance with Foregoing Sections - Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

50. Medical Officer to Certify To Fitness of Prisoner for Punishment - (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

51. Entries In Punishment Book - (1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

52. Procedure on Committal of Heinous Offence - If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

53. Whipping. - (1) No punishment of whipping shall be inflicted in installments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

54. Offences by Prison Subordinates. - (1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both. (2) No person shall under this section be punished twice for the same offence.

Chapter XII- Miscellaneous - It said that the miscellaneous sections of Prison Act

55. Extramural custody, control and employment of prisoners.

56. Confinement in irons.

57. Confinement of prisoner under sentence of transportation in irons.

58. Prisoners not to be ironed by Jailer except under necessity

59. Power to make rules.

60. [*Power of Local Government to make rules*] Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

61. Exhibition of copies of rules.

62. Exercise of powers of Superintendent and Medical Officer.

Unit-IV: Correctional Institutions

Adult Institutions: Central, District and Sub Jails

There are Central jails in the most of the states in India and also special prisons for women. In some states like Tamil Nadu there are two women prisons.

Routine in Central Jails

All the blocks and cells and barracks shall be unlocked at day break thought out the year for which convict night watchman shall awake the prisoners and keep them ready to go out the cells and blocks shall finish their bathing and breakfast before 7.30 A.M. The prisoners shall be marched to the workshops by 7.30 A.M and the prisoners have the work in the workshops from 7.30 A.M to 11.30 A.M. By 11.30 A.M the workshop shall be dosed. 11.30 A.M to 12.30 P.M. is lunch break for the prisoners. By 12.30 P.M. again the prisoners shall be marched to the workshops where they have to work from 12.30 P.M. to 4.30 P.M. From 4.30 P.M. to 5.30 P.M or up to 6"o clock the prisoners shall be left free to play games to go to the library to take bath and to finish their evening meals by 6,30 P.M Prisoners shall be locked up in their respective cells and blocks and they will be allowed to read books, to hear music, to hear radio news and to see Television etc., By 9.30 P.M. silence horn shall be observed, all the prisoners shall go to the bed by 9.30 P.M. During the night when the prisoners are sleeping, prison officials in various ranks will check up the prisoners and to see them not to violate any prison rules and regulations. Again the next day morning the prisoners shall be unlocked at daybreak.

During the day time prisoners shall be sent to the workshops. Sick prisoners shall be sent to the prison hospital if necessary they shall be sent to General Hospital. Prisoners who are facing trials in the court shall be sent to the respective courts.

Generally, Carpentry, Weaving, Tailoring, Bookbinding, Blacksmithing, Soap making Tag making and etc., are the industries in almost all the central jails. For the security of the prisons, warden guards are doing duty both day night and convict wardens tale-talk clock system is also used in addition to the warden staff security.

The superintendents at least once in a fortnight shall make a night visit to check up whether guarding is being properly performed and everything is in order, and the Jailer also

shall have a night visit at least once in a week. There are two Asst, surgeons' in each and every Central Jails and they shall give necessary treatments to the prisoners if they are found sick. If necessary the prisoners may be referred the General Hospital.

After the lockup, all the keys shall be kept in the key box kept in the between main gate. For any emergency, the jailor shall open the prison and take necessary action immediately with the notice of the superintendent's.

The COFEPOSA Prisoners, Tada Prisoners, Habitual Prisoners, Tamil Nadu Preventive Detention Act (T.P.D.A) Prisoners, A class prisoners, Prisoners involved the smuggling civil debtors, Foreign prisoners are detained only in central Jails. Escapees and prisoners involved in sensitive cases *are* detained only in Central Jails. Both convicted and *under* trail and remand prisoners are also detained in central prisoner separately. Female prisoners are segregated and kept separately in Central Prison. Immoral gang shall be sent to the staff quarters for cleaning and gardening. Parade for the warder staff, shall be conducted once in a week.

In all central jails there are schools up to 5th STD, which is recognized by the State Government. And every school has got its own library where three or four teachers are working according to the strength of the prisoners. The District Educational Officer uses to visit the prison schools and conducts examinations as in the case of other schools situated outside the prison. The inmates who are willing to study for higher studies they are allowed for higher studies. At present some of the inmates are doing B.A., M.A., B.G.L., etc., through correspondence courses.

Inspector General shall conduct the Annual Inspection every year and check the security arrangements of the prisons, discipline of the prisons, action taken towards the rehabilitation and welfare of the prisons. This is the routine practice, which is being followed in all the Central Jails.

The criteria for a jail to be categorised as the Central Jail differs from State to State. However, the common features observed in all the States/UTs are that the prisoners sentenced to imprisonment for a longer period (More than two years) are confined in the Central Jails, which have larger capacity of accommodation in comparison to other jails. These jails also have rehabilitation facilities. Assam, Meghalaya, Orissa, Uttaranchal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep did not report existence of

any Central Jail in their territories. Tamil Nadu reported the highest number of 9 Central Jails followed by Madhya Pradesh and Maharashtra (8 each).

The available information regarding capacity for Prison Inmates in Central Jails in respect of States/UTs indicates that Tamil Nadu (13768), West Bengal (10957), Maharashtra (10859) and Bihar (10035) have comparatively larger capacity. These were followed by Madhya Pradesh (7113), Uttar Pradesh (7031), Rajasthan (6760), Punjab (6736), Andhra Pradesh (5542), Karnataka (5211), Kerala (3052) & UT of Delhi (3237). The following table provides State/UT wise break-up of capacity for male, female and total inmates in Central Jails.

The number of Central Jails in Tamil Nadu, Maharashtra, West Bengal and Bihar along with their respective capacities for total inmates was more as compared to other states. The capacity to lodge female inmates in these jails is comparatively higher in Madhya Pradesh, Maharashtra, West Bengal, Tamil Nadu, Karnataka and Kerala being 462, 320, 305, 246, 230 and 198 respectively.

District Jail

District Jails serve as the main Prisons in some of the States/UTs. For example, in Assam there is no Central Jail, whereas as many as 23 District Jails were reported to be functioning in Assam. The other States which have considerable number of District Jails are Uttar Pradesh (49), Rajasthan (26), Assam, Bihar and Maharashtra (23 each), Madhya Pradesh (21), Orissa (13), West Bengal (11), Andhra Pradesh and Haryana (10 each). Among UTs, only A&N Islands and Pondicherry reported District jail (one each).

The District Jails in Uttar Pradesh, Bihar, West Bengal, Assam and Rajasthan have the capacity of lodging a large number of inmates. The total capacity of inmates in district jails of these States was 24771, 6949, 5727, 5641 and 4974 respectively with an average capacity of around 506, 302, 521, 245 and 191 inmates per jail.

Comparatively higher accommodation for female inmates 810, 523, 354, 338 and 284 was also provided in District Jails in Uttar Pradesh, West Bengal, Assam, Madhya Pradesh and Bihar respectively.

Sub Jail

Sub Jail Nine States have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These States are Maharashtra (100), Andhra Pradesh (99), Tamil Nadu (96), Madhya Pradesh (78), Odisha (73), Karnataka (70), Rajasthan (60) and West Bengal & Telangana (33 each) while 7 States/UTs have no sub-jails (namely Arunachal Pradesh, Haryana, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi) (Table 1.2). The State of Odisha had the highest capacity of inmates (10,272) in various sub-jails followed by Madhya Pradesh (6,029), Bihar (4,012), Rajasthan (3,368), Tamil Nadu (3,100), Karnataka (2,240), West Bengal (2,132), Gujarat (1,590) and Maharashtra (1,589).

Juvenile Institutions: Observation Homes, Special Homes

Observation Homes

Observation Homes are meant for the temporary reception of any juvenile in conflict with law who are not released on bail and their cases are pending before Juvenile Justice Board, during the pendency of any inquiry against him / her. Only children in conflict with law brought under the purview of the Indian Penal Code and other legislations are produced before the Juvenile Justice Board constituted as per the section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendments Act 2006. The apprehended children are normally detained under probation up to 4 months in these Observation Homes.

The State Government establishes and maintains either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them. If the State Government is of opinion that any institution other than a home established or maintained under by the government is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them, it may certify such institution as an observation home.

The State Government may, by rules, provide for the management of observation homes, including the standards and various types of services to be provided by them for

rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn.

Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries. Care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years giving due to considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

At present in Tamil Nadu, there are six Observation homes directly run by Government. The children residing in the observation Homes are provided with basic amenities like food, clothing, shelter and bedding apart from other services like education (both formal and non-formal), vocational training, medical facility and counseling as the part of their short term rehabilitation. To ensure the safety of the children, the Government has installed surveillance and security equipments at observation homes in Chennai and Cuddalore.

Special Home

Children who are convicted under section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment Act, 2006, are admitted to Special Homes for long term rehabilitation. The Act says that,

1. Any State Government may established and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act.

2. Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1), is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.

3. The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of service to be provided by them which are necessary for re-socialization of a juvenile, and the

circumstances under which, and the manner in which, the certification of a special home may be granted or withdrawn.

4. The rules made under sub-section (3) may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.

Women Institutions: Vigilance Home and Protective Home

The Vigilance/Protective Homes established under the provisions of Immoral Traffic (Prevention) Act, 1956 provide care, treatment, training and rehabilitation to the girls and women. These institutions also admit girls who face the threat of sexual exploitation and are in moral danger. They are situated in Chennai, Madurai, Trichy, Salem and Coimbatore.

In Tamil Nadu, Women and girls who have fallen victim of sexual exploitation and become pregnant can be admitted in the Government Vigilance Home and Stri Sadanaa, Chennai.

The protective homes are under the control of the department of correctional administration. The protective homes are classified into three types:

1. Rescue homes.
2. Vigilance home and
3. Vigilance rescue shelters.

Vigilance rescue shelters are short stay institutions intended for the Intermediate custody of girls and women who are undergoing trial or interrogation under the provisions of the suppression of immoral traffic in women and girls act 1956. On conviction they are sent to vigilance home. The rescue homes are intended to receive reform and to rehabilitate girls below 21 years of age rescued from brothels under the provisions of the act and those who are exposed to moral danger in society and require care and protection in the institution. Girls and women with illegitimate pregnancies are also admitted in to these institutions for shelter and protection.

Vigilance Home

The government vigilance home run by the Directorate of Social Defense was set up during the British rule in 1930 under the Madras Vigilance Service. From 1948, the T.N. government has been running it. Women convicted by the court under the Immoral Traffic Prevention Act (ITPA) are detained in this institution. Girls joining voluntarily with the permission of the Director of Social Defense, orphaned or abandoned girls who are mainly shifted from juvenile homes, girls kidnapped and rescued by the police, women rescued from brothel homes are also housed as inmates. Unwed mothers are also kept in the home.

In Tamil Nadu, The government vigilance home consists of a fairly large campus with the main administrative block. The office is on the ground floor of this building while the first floor is used for storing mats, washed laundry etc and the second floor is not in use but locked up. Adjacent to this is the barrack which houses those remanded and convicted under the ITPA.

Though this is a large room, a part of it has been blocked by cardboards to make the room smaller which is quite surprising. In front of this barrack is the dining room where all the inmates take their meals. Some distance away is another building, the ground floor of which is used to house the Stri Sadna inmates and the unwed mothers. There is also the mat weaving and the tailoring room, a store etc. The first floor has the same layout with most of the rooms lying unused-there is a welfare officer.s room, a doctor/psychologists room, the library etc. Apart from this there are also other buildings which are vacant such as the quarters for the assistant superintendent, the remand house (earlier used for remanded inmates) which also has a waiting room for visitors.

Protective Home

In Tamil Nadu, The government protective home was started in 1981 and covers the Coimbatore and Yelagiri jurisdictions. It was earlier functioning as a .Rescue Home. under the Revenue department. The building consists of 2 office rooms, a hall, a TV room, a room where the inmates sleep and the kitchen area. The building is on rent and completely lacks storage facilities (according to the staff, since the building was on rent there was no use spending money on storage since it would be a waste of money)- no cupboards or shelves

and the inmates keep their things in steel trunks. Documents are kept in sacks in the corner of the rooms. The kitchen had vessels piled on top of the platform giving it a very untidy look. There is no space around the building which faces a road. Next to it is the cement block making area which is so noisy that one has a hard time talking or hearing in the home.

Open Prisons

The United Nations Congress on Prevention of Crime and treatment of Offenders held in Geneva in 1-955, made an attempt to define as open prison thus: "An open institution is characterized by the absence of material and physical precaution against escape such as walls, locks, bars and armed-guards etc., and by a system based on .self-discipline and innate sense of responsibility towards the group in which he lives".

Thus open prisons are „minimum security" devices for inmates to rehabilitate them in society after final release. In India, they are popularly called as open Jails.

It has four aspects:

(i) Open to prisoners, i.e., inmates can go to market at sweet will during the day but have to come back in the evening;

(ii) Open in security, i.e., there is absence of precautions against escape, such as walls, bars, locks and armed guards;

(iii) Open in organisation, i.e., working is based on inmates' sense of self-responsibility, self-discipline, and self-confidence; and

(iv) Open to public, i.e., people can visit the prison and meet prisoners. It is the kind of authority and the nature of management transferred to the inmates and the degree of freedom from physical restraints (to escape) that should be the real measure of openness of an open prison.

The main objectives of establishing open prisons are: to reduce overcrowding in jails, to reward good behaviour, to give training in self reliance, to provide dependable permanent labour for public works, to prevent frustrations and create hope among long-termers, to provide training in agriculture and industry, to examine the suitability of releasing offenders from prisons, and to enable prisoners to live with their family members (in some states).

Objectives of Establishing Open Air Prisons

- To reduce overcrowding in jails, to reward good behaviour, to give training in self-reliance,
- To provide dependable permanent labour for public works,
- To prevent frustrations and create hope among long termers,
- To provide training in agriculture and industry, to examine the suitability of releasing offenders from prisons, and to enable prisoners to live with their family members (in some states).

Main Characteristics of Open Prisons

The main features of an open institution may be summarized as follows:

1. Informal and institutional living in small groups with minimum measure of custody.
2. Efforts to promote consciousness among inmates about their social responsibilities.
3. Adequate facilities for training inmates in agriculture and other related occupations.
4. Greater opportunities for inmates to meet their relatives and friends so that they can solve their domestic problems by mutual discussion.
5. Liberal remissions to the extent of fifteen days in a month.
6. Proper attention towards the health and recreational facilities for inmates.
7. Management of open Jail institutions by especially qualified and well-trained personnel.
8. Improved diet with arrangement for special diet for weak and sick inmates.
9. Payment of wages in part to the inmates and sending part of it to his family.
10. Financial assistance to inmates through liberal bank loans.
11. Free and intimate contact between staff and the inmates and among the inmates themselves.
12. Regular and paid work for inmates under expert supervision as a method of reformation; and
13. Avoidance of unduly long detention.

Admission for Open prison

Eligibility conditions for admission to open prisons vary from state to state. The main conditions are:

(1) Prisoners should be willing to abide by the rules of open prisons

(2) They should be physically and mentally fit to work

(3) They should have been sentenced for terms of one year or more and must have spent at least one fourth of the total term of imprisonment in jail

(4) They should have record of good behaviour in prisons

(5) They should not be below 21 years or above 50 years as prescribed by the state

(6) They should not have been convicted for certain types of crimes (like dacoity, forgery, counterfeiting, etc.)

(7) They should not have any case pending in the courts;

(8) They should not be habitual offenders

The superintendents of prisons prepare lists of prisoners to be sent to open prisons on the basis of the eligibility conditions. These lists are sent to the selection committees which examine each case history and make the final selection whether to opt them for open prison or not.

Advantages of Open Prisons

The obvious advantages of the open prisons as compared with the conventional prisons may be briefly stated as follows:

1. They help in reducing overcrowding in jails.
2. Construction cost is fairly reduced.
3. Operation cost of open prisons is far less than the enclosed prisons.
4. Engaging inmates of open-air prisons in productive work reduces idleness and thus keeps them physically and mentally fit.
5. Removal of prisoners from general prison to an open prison helps in conservation of natural resources and widens the scope of rehabilitative process.

In India, only 17 States have reported about the functioning of open jails in their jurisdiction. Amongst these States, Rajasthan has reported the highest number of 23 open jails. Maharashtra has 10 each jails followed by Kerala & Tamil Nadu (3 each) and Gujarat & West Bengal (2 jails each). The remaining 11 States - Andhra Pradesh, Assam, Bihar, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Punjab, Telangana and Uttarakhand have one open jail each. Existence of such jails was not reported from any of the

UTs. The highest capacity of inmates in open jails was reported from Maharashtra (1,372) followed by Rajasthan (1,220), Kerala (469), Uttarakhand (300), Tamil Nadu (260), Andhra Pradesh (235), Himachal Pradesh (210), Telangana (195) Odisha and West Bengal (125 each) , Bihar (104), Assam & Gujarat (100 each), Karnataka (80) and Punjab (50).

Unit-V: Community Based Corrections

Probation: Concept and Scope

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. Through this paper, the advantages of probation are highlighted along with how it could be made more effective in India.

The term Probation is derived from the Latin word probare, which means to test or to prove. It is a treatment device, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good. Imprisonment decreases his capacity to readjust to the normal society after the release and association with professional delinquents often has undesired effects.

According to the United Nations, Department of Social Affairs, The release of the offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality. The United Nations recommends the adoption and extension of the probation system by all the countries as a major instrument of policy in the field of prevention of crime and the treatment of the offenders. In this paper, the focus is on the legislative and administrative aspects of probation, and means by which probation may be made more effective in India.

Concept and Scope of Probation

• An alternative to imprisonment and

• A is used primarily for minor offences and first-time or youthful offender

• A behavioural contract between the judge and the offender (a set of conditions with which the offender must comply or return to court)

• Often based on the information provided to the court by a Probation Officer in a Pre-Sentence Report

• An opportunity for the offender to change their behaviour in the community

Extensive use of Probation

• Probation is one of the 3 subsystems of the corrections system (Probation, Prison,

• In terms of the number of people it serves, it is the largest subsystem of the corrections system

• Probation and its use is much more than imprisonment in the U.S.A. (three million people were on probation)

• It is cost effective Probation costs about 1/10th of prison '

Types of Probation

1. Supervised Probation

• The probationer must see a probation officer

• The probationer must also fulfil certain other conditions as set by the judge or instructions issued by the probation officer usually include the conditions specified by the probation officer and the court.

2. Unsupervised Probation

• The probationer is not required to see a probation officer

• The probationer is believed to have learned their lesson and is capable of correcting their own behaviour

Mandatory Conditions of Probation

• Attend court as and when directed to so

• Keep the peace and be of good, behaviour

• Any other condition which the judge believes to be reasonable and will assist the offender in changing their behaviour, examples:

• Fulfill all social and legal obligations

• Abstain from alcohol or drugs

• Find employment within a specified period of time

• Avoid contact or involvement with certain persons (usually named)

Merits and Demerits of Probation:

Merits

1. In probation system the matter of shame or stigma if not completely removed are reduced to a certain extent.
2. As the probationer is, left in the society, his family could put some reasonable restriction.
3. The community will have the benefit of manpower.
4. Probation is less costly and as such the Community is financially profited.
5. Probation in fact is an opportunity to an offender to struggle to recapture self- respect.

Demerits

1. The system devotes too much attention on the offender and in the zeal of his reformation the interests of the person injured by the offender‟s delinquent act are completely lost sight of this obviously is against the accepted norms of justice.
2. Admitting all young offenders and first offenders to probation regardless of their antecedents, personality and mental attitude might lead to recidivism because may of them might not favorably respond to this reformatory mode of treatment.
3. In many cases it is difficult ascertain whether the delinquent is first offender or a habitual one. Therefore, there is there are more chances that an offender who is a recidivist might be admitted to probation.
4. Lack of interest for social work among the probation officers presents real difficulty in selecting right persons for this mode of treatment. Ghute attributes lack of qualification, lack of proper supervision and excessive burden of casework as the three causes of inefficiency among the probation staff. Particularly in India, probation is reduced to mere farce. This laborious correctional task is handled by persons who are mostly inexperienced and inadequately trained for this job.

Historical Development of Probation

Origin of Probation

The origin of probation can be traced to English criminal law of the Middle Ages. Harsh punishments were imposed on adults and children alike for offenses that were not

always of a serious nature. Sentences such as branding, flogging, mutilation, and execution were common. During the time of King Henry VIII, for instance, no less than 200 crimes were punishable by death, many of which were minor offenses.

This harshness eventually led to discontent in certain progressive segments of English society that were concerned with the evolution of the justice system. Slowly but resolutely, in an effort to mitigate these inhumane punishments, a variety of measures were devised and adopted. Royal pardons could be purchased by the accused; activist judges could refrain from applying statutes or opt for a lenient interpretation of them; stolen property could be devalued by the court so that offenders could be charged with a lesser crime. Also, methods such as benefit of clergy, judicial reprieve, sanctuary, and abjuration offered offenders a degree of protection from the enactment of harsh sentences.

Eventually, the courts began the practice of "binding over for good behavior," a form of temporary release during which offenders could take measures to secure pardons or lesser sentences. Controversially, certain courts began suspending sentences.

In the United States, particularly in Massachusetts, different practices were being developed. "Security for good behavior," also known as “good aberrance,” was much like modern bail: the accused paid a fee as collateral for good behavior. Filing was also practiced in cases that did not demand an immediate sentence. Using this procedure, indictments were "laid on file" or held in abeyance. To mitigate unreasonable mandatory penalties, judges often granted a motion to quash based upon minor technicalities or errors in the proceedings. Although these American practices were precursors to probation, it is the early use of recognizance and suspended sentence that are directly related to modern probation.

Modern Probation

As a young professional in England, Hill had witnessed the sentencing of youthful offenders to one-day terms on the condition that they are returned to a parent or guardian who would closely supervise them. When he eventually became the Recorder of Birmingham, a judicial post, he used a similar practice for individuals who did not seem hopelessly corrupt. If offenders demonstrated a promise for rehabilitation, they were placed in the hands of generous guardians who willingly took charge of them. Hill had police

officers pay periodic visits to these guardians in an effort to track the offender's progress and keep a running account.

John Augustus, the "Father of Probation," is recognized as the first true probation officer. Augustus was born in Woburn, Massachusetts in 1785. By 1829, he was a permanent resident of Boston and the owner of a successful boot-making business. It was undoubtedly his membership in the Washington Total Abstinence Society that led him to the Boston courts. Washingtonians abstained from alcohol themselves and were convinced that abusers of alcohol could be rehabilitated through understanding, kindness, and sustained moral suasion, rather than through conviction and jail sentences.

In 1841, John Augustus attended police court to bail out a "common drunkard," the first probationer. The offender was ordered to appear in court three weeks later for sentencing. He returned to court a sober man, accompanied by Augustus. To the astonishment of all in attendance, his appearance and demeanor had dramatically changed.

Augustus thus began an 18-year career as a volunteer probation officer. Not all of the offenders helped by Augustus were alcohol abusers, nor were all prospective probationers taken under his wing. Close attention was paid to evaluating whether or not a candidate would likely prove to be a successful subject for probation. The offender's character, age, and the people, places and things apt to influence him or her were all considered.

Augustus was subsequently credited with founding the investigations process, one of three main concepts of modern probation, the other two being intake and supervision. Augustus, who kept detailed notes on his activities, was also the first to apply the term "probation" to his method of treating offenders.

By 1858, John Augustus had provided bail for 1,946 men and women. Reportedly, only 10 of this number forfeited their bond, a remarkable accomplishment when measured against any standard. His reformer's zeal and dogged persistence won him the opposition of certain segments of Boston society as well as the devotion and aid of many Boston philanthropists and organizations. The first probation statute, enacted in Massachusetts shortly after this death in 1859, was widely attributed to his efforts.

Following the passage of that first statute, probation spread gradually throughout the United States. The juvenile court movement contributed greatly to the development of probation as a legally-recognized method of dealing with offenders. The first juvenile court

was established in Chicago in 1899. Formalization of the intake process is credited to the founders of the Illinois juvenile court. Soon after, 30 states introduced probation as a part of the juvenile court procedure. Today, all states offer both juvenile and adult probation.

Probation in India – Probation of Offenders Act.

The probation of offenders act is an act providing for release of first offenders by suspending the sentence and placing under supervision was enacted in 1936 - 37. It was called the Madras Probation of Offenders Act. Later the Probation of Offenders Act was enacted in 1958.Tamil Nadu is one of the first few states that enacted this act. While the act of 1936 restricted the application of this act to first offenders and for an offence punishable with not more than 2 years of imprisonment and no previous conviction, later these restrictions were removed. Also the earlier restriction with regard to the age and duration of sentences was later dispensed with. Now for airy offence this act can be applied. A court can order release of the person under this act may direct him to be related on his entering into a bond with or without sureties to appear and receive sentence when called upon during such period.

In the event of a person released under this act violating any of the conditions of the bond executed by him, he can be apprehended and awarded the original sentence. The court is also empowered to allow the continuance of the bond and impose fine. In the event of his not paying the fine, the court may sentence him for the original offence. For the implementation of this act probation officers are appointed. Regional probation officers and the chief probation superintendent supervise the probation officers.

The probation officer shall visit the offender at reasonable intervals and receive visits from the offender, see that offender observes the conditions of the bond executed by him, report to the court of the behaviour of the offender and advise, assist and be friend the offender and if needed endeavour to find suitable employment. The offender is required to keep the probation officer informed of his place of stay, means of livelihood etc. A person dealt under the provisions of this act shall not suffer any disqualification attached to a convict.

Salient Features of Probation of Offenders Act

1. The Probation of Offenders Act, 1958 is intended to reform the amateur offenders by rehabilitate in society and to prevent the conversion of youthful offenders into obdurate criminals under environmental influence by keeping them in jails along with hardened criminals.

2. It aims to release first offenders, after due admonition or warning with advice who are alleged to have committed an offence punishable under Sections 379, 380, 381, 404 or Section 420 of the Indian Penal Code and also in case of any offence punishable with imprisonment for not more than two years, or with fine, or with both.

(3) This Act empowers the Court to release certain offenders on probation of good conduct if the offence alleged to have been committed must not be punishable with death or life imprisonment. However, he should be kept under supervision.

(4) The Act insists that the Court may order for payment by the offender such compensation and a cost of the proceedings as it thinks reasonable for loss or injury caused to the victim.

(5) The Act provides special protection to persons under twenty-one years of age not to sentence him to imprisonment. However, this provision is not available to a person found guilty of an offence punishable with life imprisonment.

(6) The Act provides the freedom to Court to vary the conditions of bond when an offender is released on probation of good conduct and to extend the period of probation not to exceed three years from the date of original order.

(7) The Act empowers the Court to issue a warrant of arrest or summons to him and his sureties requiring them to attend the Court on the date and time specified in the summons if an offender released on probation of good conduct fails to observe the conditions of bond.

(8) The Act empowers the Court to try and sentence the offender to imprisonment under the provisions of this Act. Such order may also be made by the High Court or any other Court when the case comes before it on appeal or in revision.

(9) The Act provides an important role to the probation officers to help the Court and to supervise the probationers put under him and to advise and assist them to get suitable employment.

(10) The Act extends to the whole of India except the State of Jammu and Kashmir. This Act comes into force in a State on such date as the State Government may, by

notification in the Official Gazette, appoint. It also provides liberty to State Governments to bring the Act into force on different dates in different parts of that State.

Probation Procedures: Pre-Sentence Investigation Report

S.4 (2) and S.6 (2) of the Probation of Offenders Act provide that the judge would consider the report of the probation officer before deciding on whether to grant probation. S. 14 of the said Act lays down the duties of the Probation Officers.

The pre-sentence report of the Probation Officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedents and throw light on the background which prompted him to commit the offence and give information about the offenders conduct in general and chances of his rehabilitation on being released on probation.

The judge may also pass a supervision order under section 4(3) of the Act, whereby the offender is placed under the supervision of a probation officer and certain conditions are imposed upon him. This is mostly in the form of regular visits to the supervising officer. Some of the conditions which must be followed have been laid down in S. 4(4). On the application of the probation officer such conditions may be varied- S. 8(2) and also the offender may be discharged- S.8 (3). If the offender fails to follow the conditions laid down by the Court, the original sentence against him may be revived S. 9.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the report of a probation officer or a recognized voluntary organization to be considered before passing a sentence. The Magistrate appointed as a member of the Board constituted under this Act must know something of child psychology.

The Board would pass orders against a juvenile. The Act provides for the setting up of Observation and Special Homes by the State Government where the juvenile could be placed. Here the rehabilitation and social integration of the child would take place. It also provides for an Aftercare programme which would take care of the delinquent child after he has been discharged from these homes, based on the report of the Probation Officer. The

Probation officers appointed under the probation of Offenders Act would also function under the Juvenile Justice (Care and Protection of Children) Act.

Pre Sentence Investigation Report

A presentence investigation report (PSIR) is a legal term referring to the investigation into the history of person convicted of a crime before sentencing to determine if there are extenuating circumstances which should ameliorate the sentence or a history of criminal behavior to increase the harshness of the sentence. The PSIR has been said to fulfill a number of purposes, including serving as a charging document and exhibit proving criminal conduct, and is said to be akin to a magistrate judge's report and recommendation.

Considered among the most important documents in the criminal justice field, the Pre-sentence Investigation Report (PSI) has been the central source of information to sentencing judges since the 1920s. Its original purpose was to provide information to the valuable suggestions on Prison Administration in India. Consequently, All India Jail Manual Committee was formed to review the working of Indian Jails and suggest measures for reform in the system. Consequent to the Report of the Jail Manual Committee the Government of India decided to have a comprehensive legislation on probation of offenders. Then the Probation of offenders came in to force in 1958. Its original purpose was to provide information to the court on the defendant's personal history and criminal conduct in order to promote individualized sentencing. With the advent of more punitive sentencing policies in recent years, the PSI has become more offence focused and less individualized. Despite current trends, the PSI will likely remain a critical component of the criminal justice system.

Rules

Local rules, adopted by the judges of each jurisdiction, supplement the federal rules and set a specific schedule for the disclosure of the initial draft of the presentence report to the defendant and both counsel, for the filing of objections to the report by counsel, and for the submission of the final report to the court, the defendant, and counsel. The report must be disclosed to the court, the defendant, defendant's counsel, and the attorney for the government at least before the sentencing.

The probation officer must manage the investigation process within the time line established by those rules. In addition to gathering information, the officer must plan to verify that information, interpret and evaluate the data, determine the appropriate sentencing guidelines and statutes to the specific facts of the case, and present the results of the investigation in an organized and objective report. The probation officer must set deadlines for the submission of information by the defendant and others and monitor compliance with the deadlines.

Revocation of Probation

Probation along with other alternative sanctions is increasingly being used, to alleviate the strain on correctional institutions. As more correctional facilities are filled to capacity, more and more offenders are receiving sentences of probation, and hence serving their sentence in the community. However, the effect of probation violations negates the idea that beds are freed up by the use of alternative sanctions. Several issues have been raised about probation per se, and specifically about increasing probation populations. Foremost is revocation of probation. This is important because it has implications both to public safety and to the effectiveness of probation itself as an alternative sanction. Probation revocation occurs due to violation of probation order, or a new conviction. A judge who sentences an offender to probation is taking the chance he will stay out of trouble. If he violates the rules of probation or is rearrested for new crimes, sanctions are imposed, up to and including revocation--the termination of probation and reinstatement of a jail sentence. While a probation officer has some discretion and each county and state is unique, there are certain violations that typically trigger a violation of probation hearing and revocation.

Several factors associated with probation revocation, most notably, past problem behaviour. In particular, offenders with previous military disciplinary problems or a juvenile or adult record were more likely to have their probation revoked. Also noted was the more likely revocation of the socially disadvantaged, specifically probationers with lower education and lower socio-economic status.

Instability in marriage and jobs was also reported as associated with probation revocation, and property offenders were noted to be more likely to have their probation

revoked. Furthermore, it is reported that the imposition of special conditions and longer sentences increase the likelihood of probation revocation. Repeatedly reported are some socio-demographic characteristics and crime attributes of probationers that made them more likely to become recidivist. Among these, though reported at varying degrees of importance are characteristics such as age, sex, ethnicity, prior records, and type of offence, educational level, and drug and alcohol use. The some other factors of revocation of probation is

New Criminal Charges

A new arrest during the period of probation that results in a criminal conviction will almost always result in a judge revoking the underlying probation.

Positive Urinalysis for Drugs or Breath Test for Alcohol

Substance abuse testing is a required condition of probation when the probationer has a history of alcohol or drug abuse or if there is reasonable suspicion of illegal use.

Missed Appointments

Probationers, who disappear, miss scheduled appointments, lie about their work or school schedules or who travel out of state without permission, will not last long on probation in most jurisdictions.

Possession of Weapons

Probationers are not permitted to possess weapons on probation. Having or carrying a weapon while on probation is a serious offense, and a probation officer will typically recommend that the probation be revoked. In some cases, possession of a firearm by a felon or other convicted person might be a new and separate crime, depending upon the law in the jurisdiction. In either case, it is a violation of conditions serious enough to result in probation revocation.

Violation of Special Conditions

Certain special conditions might apply to a probationer. These might include having no contact with the victim of the offense, having no contact with children or attending an anger management course. These special conditions apply to specific individuals when ordered by the sentencing judge. Judges do not typically have patience for a probationer who disobeys these court-imposed special conditions. Revocation is likely.

Parole: Meaning and Scope

Gillin defines parole as "the release from a penal or a reformative institution, of an offender who remains under the control of correctional authorities, in an attempt to find out whether he is fit to live in the free society without supervision. It is thus the last stage of the penal or correctional scheme of which probation may probably be the first. It is therefore necessary that in suitable cases, the inmates be released under proper supervision from the prison institution after serving a part of their sentence. This will serve a useful purpose for their rehabilitation in free society. This object is accomplished by the -system of parole, which seems to restore the inmate to society as a normal law abiding citizen.

In other words parole may be said as conditional release, a ticket of leave, an administrative pardon, a permission to spend the part of the sentence outside the prison or a premature release.

According to Donald Taft, "Parole is a release from prison after part of the sentence has been served, the prisoner still remaining in custody and under stated conditions until discharged and liable to return to the institution for violation of any of these conditions." Thus, parole is a release method which retains the same control over prisoners, yet permits them more normal social relationships in the community and provides constructive aid at the time they most need it. Parole is one of the correctional schemes. The life in a prison is so rigid and restrictive that it hardly offers any opportunity for the offender to rehabilitate himself. In suitable cases, the inmates of a prison should be released under proper supervision from the prison institution after serving a part of their sentence. This may serve a useful purpose for their rehabilitation in the society as a normal law abiding citizen.

The Object of Parole

Parole is a penal device which seeks to humanize prison system. The objects of parole are:

(1) To enable the inmate to maintain continuity with his family life and deal with family matters;

(2) To save the inmates from the evil effects of continuous prison life;

(3) To enable the inmate to retain self-confidence and active interest in life.

The Indian law provides for parole only in cases of serious offenders who are committed to long-term sentences.

Kinds of Parole

Custody Parole and Regular Parole are the two kinds of parole to which a convict is eligible. Custody Parole can be granted in emergent situations and circumstance only such as death of a family member, marriage of family member, serious illness of family member or in any other emergent circumstances. During the Custody Parole, the prisoner has to be escorted to the place of visit and return there from ensuring the safe custody of the prisoner. Such prisoner would be deemed to be in prison for the said period and the same would also be treated as period spent in prison.

In all other situations, it is open to the government to consider applications for Regular Parole. Some of the grounds on which the applications of the prisoner may be entertained are:

1. Serious illness of a family member

2. Critical conditions in the family on account of accident or death of a family member

3. Marriage of any member of the family of the convict

4. Delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home

5. Serious damage to life or property of the family of the convict including damage caused by natural calamities

6. To maintain family and social ties

7. To pursue the filing of Special Leave Petition before the Supreme Court of India again a judgment delivered by the High Court convicting or upholding the conviction, as the case may be

Parole - Provisions and Rules

The Prisons Act of 1894 being Act No. 9 of 1894 has defined the furlough system and the parole system under Sections 5(A) and 5(B) of the Prisons Act, 1894 which reads as

follows: “5(A) ‘Furlough system‘means the system of releasing prisoners in jail on furlough in accordance with the rules for the time being in force.” “5(B) ‘Parole system‘ means the system of releasing prisoners in Jail on parole, by suspension of their sentences in accordance with the rules for the time being in force.” 6. Pursuant to the powers conferred by Clauses 5 and 28 of Section 59 of the Prisons Act, 1894 (9 of 1894) in its application to the State

. The parole and furlough rules are part of the penal and prison system with a view to humanize the prison system. Those rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The objects of such a release of prisoner can be read from para 101 of the report submitted by the All India Jail Manual Committee as also the objects mentioned in Model Prison Manual. These objects are:

Parole is essentially an executive function and instances of release of detenues on parole were literally unknown until this Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically ‘parole‘is a concept known to military law and denotes release of a prisoner of war on promise to return. As a consequence of the introduction of parole into the penal system, all fixed term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformative process and is expected to provide opportunity status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody.

Parole Board

The parole board consists of parole authorities who are from among the respectable members of the society. In India and elsewhere, since the police are looked with bias and distrust, the police opinion about an inmate is not considered to be a valid ground for allowing a particular offender on parole. The members of the parole board are assigned the function of discharging the inmates on parole after careful scrutiny. Thus the parole board

takes administrative decision on paroling but inmates and while acting as such they are performing a quasi-judicial function.

Another important work assigned to the parole staff is to prepare a case history of the parolees and help and advise them in the process of their rehabilitation. Besides parole board, there is also a set of field staff working outside the prisons. These field personnel keep a close supervision over the parolees and report cases of parole violations to the parole authorities.

Thus the parole system, by and large, consists of three agencies, vis., the parole board, the case investigators and the parole supervisors; and all of them work in close liaison with each other.

In United States the expert psychologists and psychiatrists who subject an inmate to a psychological test to determine his suitability for being paroled out handle the task of granting parole. We do not, however have such systems in India and are content with giving every prospective parolee a hearing in the prison itself. The Indian law provides for parole only in cases of serious offenders who are committed to long-term sentence. It has now generally been agreed that if at all the prisoners are to release prior to their final discharge, they must be released on parole so that they could be kept under proper supervision and guidance.

Main Conditions of Parole

The success or failure of parole however depends upon the suitability of persons who are given parole. The following guidelines may be observed while granting parole.

1. Offenders committed for crime against person are more suited for parole than those committing crime relating to property. The latter, often resort to recidivism and do not respond favorably to the conditions of release on parole.
2. Inmates with family responsibilities are not more suited than those who are without family liabilities.
3. The first offenders are more suited than the recidivists.
4. Offenders who belong to higher socio-economic status or those who are educated respond favorably well to the system of parole. The obvious reason being that such persons are

committed to prison for an act, which they commit due to sudden impulse on emotional disturbance in them for which they generally repent.

5. Persons who are committed to long term sentences and their final discharge if far off prefer parole.

6. Finally parole should be administered only to those‟ inmates who display an inclination for good behaviour and respect for law and justice. The adaptability of the inmate can be accessed through a method of careful diagnosis by trained and qualified parole staff.

Further in the following cases, parole would ordinarily be not granted except, if in the discretion of the competent authority special circumstances exist for grant of parole;

(a) If the prisoner is convicted of murder after rape;

(b) If the prisoner is convicted for murder and rape of children;

(c) If prisoner is convicted for multiple murders.

The period of release on parole shall not, ordinarily, exceed one month at a time except in special circumstances to be mentioned in the order granting parole. The Government shall decide the period of release on the merits of each case, for reasons to be specified in the order granting parole.

After Care Services

The term 'aftercare' refers to the programme and services organized for the rehabilitation of inmates released from correctional institutions. It presupposes a period of stay and treatment in an institution which may be reformatory, certified school, Borstal or a prison. Since the former two institutions also admit non-delinquents in some states an inmate does not necessarily mean a convict. It includes neglected or uncontrollable children as also women in moral danger or otherwise destitute who are committed and detained in reformative or protective institutions under the orders of a court. The object of aftercare is the full reintegration and rehabilitation of an ex-inmate in society after his release from an institution so as to prevent him from his relapsing into a life of crime, delinquency or dependence.

The concept of aftercare has got widened with the passage of time and now measures taken to rehabilitate persons suffering from physical or social disabilities also fall within its

ambit. The report of the Advisory Committee on Aftercare sponsored by the Central Social Welfare Board suggests that aftercare services should extend not only to ex-inmates but also to those suffering from physical or social handicaps. Thus, orphans, blind, deaf, mute, crippled persons, neglected and destitute children, deserted and helpless women and beggars should all receive the benefits of both institutional and non-institutional care as they are in a miserable plight on account of circumstances beyond their control and as such deserve social protection and assistance. By the very nature of things, each category of destitute would require a different service suitable for its peculiar needs.

Thus 'aftercare' may be defined as any programme or services organized for the rehabilitation of ***(a)*** inmates released from institutions or ***(b)*** persons suffering from physical or social handicaps on account of circumstances beyond their control. It is voluntary when the ex-inmate or the destitute can by his free volition accept or reject it. It is compulsory where the law makes it obligatory upon an ex-inmate or a destitute to come under the supervision of the aftercare organisation. Aftercare has not been compulsory in India as there is no legal compulsion for an ex-inmate or a destitute to accept the services provided by an aftercare institution. The position is, however, different in the United Kingdom where the law provides for compulsory aftercare for certain categories of offenders. This study confines itself to the aftercare of ex-inmates of prisons and correctional institutions only.

Generally it is not appreciated that punishment for crime does not terminate with serving out the sentence. A criminal record is a lifelong handicap particularly in societies which are not mobile. Thus in a rural setting an ex-convict suffers a severer stigma than that suffered by his counterpart in the more mobile urban society. Immediately after his release an ex-inmate faces a number of handicaps. It would be proper to examine in some detail the obstacles in the process of his re-absorption in the mainstream of society. The problems are follows;

- Social Stigma
- Loss of Civil Rights
- Surveillance by Police
- Difficulties in Getting Employment
- Psychological Difficulties in Adjustment

Measures before Release

It is generally agreed that aid to discharged prisoners by aftercare societies should begin in the prison which will afford an opportunity to the members of such societies to become acquainted with their clients; that such aid should continue upon discharge and should include moral and material assistance culminating in a job.

If the aim of punishment is reformation of the inmate, then corrective measures should be adopted immediately after he enters an institution. Some of these measures are follows

- Healthy surrounding and recreation
- Education
- Vocational training
- Religious instructions

Functions of Aftercare Institutions

These institutions have to render all kinds of help to the released prisoner which would result in his final re-adjustment and rehabilitation *in* society. The aftercare worker should try to establish relations with the prisoner before his release and start preparation as *per* his needs. The various aspects of aftercare which require pointed attention are:

- Legal aid
- Social integration and family welfare
- Marriage
- Clothing, food and shelter
- Special homes for girls and children
- Employment
- Educational opportunities
- Recreational facilities
- Additional vocational training including training in modern techniques of agriculture
- Financial assistance

Recommended Readings

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