CHAPTER I

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A. Conceptual Framework

The word prison or jail denotes an ancient institution. Nobody can say exactly when it came into being. "Its origin lost in the hazy mists of antiquity. As a place of detention, however its counterpart has existed since Biblical times. As we understand the jail in modern times, we might accept the date of its origin as 1166, when Henry-II commanded the construction of jails at the Assize of Clarendon.¹ Thus, from time immemorial prisons were there. It is mentioned in the 'Future of Imprisonment' by Norval Morris that imprisonment was used extensively in Rome, Egypt, China, India, Assyria and Babylone and firmly established in Renaissance Europe.²

The word jail or prison creates some sensation rather curiosity in all, children, youths and the old ones. It is such a word by hearing which we all experience a different feeling - a mixture feeling of fear and hatred. However, prison simply means a well-protected habitat where a small fractions of the population are confined for custody by legal proceedings while awaiting trial or punishment. The Oxford English


Dictionary defines jail as "a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment."

Prison means different things to different people. However, "prison for most people means Holloway, Worm Wood Serbs or the local gaol. But it should not be thought solely in these terms. A prison is simply a place in which people are held captive."

Prison have existed for a very long time. About 3000 years Before Christ, the idea of prison was expressed in the uniform of bridge-shaped writing of the samaritans by a combination of symbols for 'dark' and 'house'. Even now the archaeologists are getting more and more proof about the system of imprisonment in ancient period.

We may discuss the evolution of prison system under three phases or periods. In the first period, prisons were mainly detention rooms as during this period imprisonment was not regarded as a form of punishment. Punishment for different offences used then, were, "Death by hanging, by hurling over the Tarpeian Rock - crucifixion, beheading and drowning in the sack, exile, beating with rods and forced labour. It is learnt that in ancient Greece the penalty of imprisonment was hardly ever occurred. In the

5. Ibid., p.5.
Roman Republic it was not at all in vogue and in the Roman Empire it was used for minor offences only.

The second phase began towards the middle of the sixteenth century, when an "experiment with imprisonment as a form of punishment for certain type of offenders mostly for juveniles, sturdy beggars, vagabonds and prostitutes was initiated." Later another institution was evolved in England known as the House of Correction which was a place for punishment. Thus "the London Bride Well, the Amsterdam Rasphuis and Spinhuis founded respectively in 1557, 1595 and 1597; Francis Florentine Hospice established in 1677, the reformatories for Boys and Women in St. Micheal's Hospice in Rome founded in 1704 and in 1735; were the most important institution of this period." This period lasted up to the close of eighteenth century.

Then began the third phase when imprisonment became the most useful and accepted form of punishment in almost all modern states of the world as a substitute of the previous corporal and capital punishment. Thus imprisonment as a form of punishment is comparatively of a recent development. However, "Prison during the last three centuries or so, has evolved to the status of an institution of social control and symbol of legitimate coercion. It is no more a resting ground in the legal processes where death penalty, banishment or life transportation may be the verdict." 

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8. Ibid., pp.57-58.
Looking back, in India too, prisons were serving the purpose of detaining offenders till their trial and execution. In short, prior to arrival of British in India, most of the punishments were meted out, outside the prison and there was no uniform code for all the members of the society. Punishments were awarded to persons taking into consideration their caste and religion.10

However, only after the Britishers came to India, systematic penal code was drawn in the line of equality to all individuals. With the passage of time the British Government passed some laws for better administration of justice in India. In the year 1773 the Regulating Act was passed establishing a Supreme Court at Calcutta and empowering it with all civil, criminal, admiralty and ecclesiastical jurisdiction.11

In the year 1833 an Indian Law Commission was appointed to prevent any conflicting judicature of the administration of law and to prepare a uniform code of law. In the year 1858, the British Crown took over direct responsibility by means of a Royal proclamation. In the next three years, first the Civil Procedure Code, then the Indian Penal Code and almost immediately afterwards the Criminal Procedure Code all of which had long been in preparation were enacted.12

So after a long period legal system was established in India and imprisonment became the most suitable and commonly accepted means of punishments.

Theories Relating to the Objectives of Imprisonment

A simple question comes to our mind as to why persons be put behind prison bars or why at all prisons do exist? This leads us to study the purpose of imprisonment. It is a well known fact that prisons are meant for criminals and a criminal is "a person against whom crime is proved". Here it is important to note that the simple meaning of crime is "a violation of law at a particular place at a particular time."

Prisons mainly exercise three important functions, the first being its custodial function. Prison is a custodial house of some members of the society, isolated from the rest of the population, as their existence in the society is greatly injurious to the social order. Thus they are kept here until their conviction or release.

The second function of the prison is its coercive function by which it can pursue a member to obey the order of either the civil or criminal court of law and be released. This type of function is mainly applicable to juveniles, sturdy beggars, vagabond and prostitutes.

Thirdly, it can exercise its correctional function by making imprisonment itself a punishment for convicts as ordered by a court of law. This correctional function of prison, as we know, becomes most suitable for all other types of punishments.

Objectives of Imprisonment

From our study we know that imprisonment for a prisoner is essential to segregate him from the rest of the population of a given society and to make that society free from his mischief. Yet imprisonment has so many other functions as follows.

(a) Retribution  
(b) Vindication  
(c) Deterrence  
(d) Neutralisation  
(e) Penitence  
(f) Resocialization or Rehabilitation etc.

Let us now discuss these objectives of imprisonment.

Retribution

Retribution is the oldest objective of imprisonment. It is felt that retaliation for an injury is the outcome of a natural and universal impulse. But Anthropologists do not agree with the preposition that people in stone age living under savage condition are invariably of a revengeful character.
However, it is that the prevalence of this impulse provides justification for retributive punishment.

If retribution is the object of punishment, the serving of a period of imprisonment should end the matter and a man's previous convictions should not be considered in awarding a sentence for another offence. But this is not the case, while awarding a sentence to a habitual offender, his previous convictions are taken into account.15

Vindication

Vindication of the law, as implied in the imposition of punishment for wrong-doing simply means the restoration or reassertion on the law protected values which the perpetrator has destroyed. It is an abstract emphasis on both the value itself and on the rule embodying it and prohibiting its destruction. In a purely objective manner or in any event that was its original meaning- the wrong must be righted by imposition of yet another detriment.16

Few writers like Kent have espoused the theory of vindication. However some criminologist attacked the idea of vindication as for them" two wrongs do not makes a right."17

17. R.N. Datir, op.cit., p.29.
Deterrence

It may well be stated that the present day preventive theory is a substitute of the utilisation principles of deterrence. "Deterrence simply refers to the prospects or the memory of pain as a psychological stimulus posited by society in anticipation of the response of abstention from gaining illicit pleasure." Thus 'deterrence' may well be meant the employment of terror as such a stimulus.

Deterrence may be of two forms such as:

(a) General deterrence and
(b) Special deterrence

General deterrence may be referred to as the employment of a public notice that a given detriment will follow wrong-doing. In case, the general deterrence has failed, then the theory of special deterrence may be applied. "European criminologists, for generations have placed so much trust in the policy of deterrence that they have regarded deterrence and prevention as virtually synonyms."

Neutralization

By neutralization it is meant that when a prisoner is put behind prison bars, being isolated from the rest of the society, he is checked from committing

19. Ibid., p.32.
further crime. This idea of neutralization is attacked by writers like Leopold on ethical and utilitarian ground who says- "Crimes are committed in prison, crimes have been alleged to be committed by men serving time in prison, who managed to slip away at night long enough to commit a robbery or two, returning in time for the morning count."\(^{20}\) However, Muller had tried to counter balance the attack by stating "I have nothing to say to this other than that an occasional aeroplane crash is hardly an argument against the idea of aviation though it may be an argument for better aeroplane maintenance or navigational devices."\(^{21}\) Naturally the principle of utility would dictate that, solely as far as neutralization is concerned, no more force should be employed than is necessary for the preventive purpose.\(^{22}\)

**Penitence**

The dictionary meaning of penitence is to repent. Prisons sometimes serve the purpose of providing opportunity to the law breaker to repent for his misdeed in the past. The penitence system which became known as the separate, solitary or Pennsylvania system was based on Howard's Cellular system, but went beyond his teaching in requiring the strict separation of the prisoners by day as well as by night. The reformatory virtues of this

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22. R.N. Datir, op.cit., p.32.
system were held to lie in complete absence of contamination, in religious
instruction and silent contemplation.  

Resocialization or Rehabilitation

It is a well known fact that harsh mental and physical treatment is
certainly neither the solution for checking crime nor the means of refraining
criminals from wrong-doing. So Nathan Leopold has suggested "Turn prisons
into hospitals and psychiatric consulting room".

Resocialization and Rehabilitation are of different meaning. Galtung
makes a distinction between the two, by saying that "by the later the individual
abstains from criminal acts simply because the opportunities for such acts
are not prevalent in his general sphere of action. Resocialization, on the
other hand, means that the individual does not engage in criminal acts even
when the opportunities are present. Newly internationalized normative
constraints prevent him from engaging in such acts that would violate his
own new standards of proper and expected behaviour.

Thus today, the objective of imprisonment is mostly rehabilitation.
However, whether the modern prison serves this purpose, Leopold says:
"Of course this not. It is just the opposite. Prison, as now constructed and

operated, simply do not rehabilitate.... The entire organization of most prisons is such that it puts positive obstacles in the way of rehabilitation.26

A study of all the objectives show that today so many things are expected to be achieved through imprisonment of law-breakers in society. In modern practice the authorities and people in general feel that the criminals should be corrected and reformed and their mental make up be changed in such a way that after coming outside there would be no need for them to enter the prison again.

In short, it can be said safely that the object of modern prison system in India up to 1919-20 was "deterrence and retribution". After independence objective of imprisonment becomes reformation and deterrence. Today, when we are marching towards the twenty first century, the government is considering on the Gandhian belief that crime is but a sign of a diseased mind and that imprisonment should primarily aim at treating a prisoner's diseased mind.

Features of Prison

In literature on prisons written either by Donald Clemmer, Gresham M. Sykes or by Norman S. Hayner and Ellis Ash, the forces of enquiry is usually directed towards seeing prison as a distinct unit, in contrast to other system in society.

26. Ibid., p.36.
The prison is not an autonomous body like a church. It is not an independent system of power, but an instrument of the State, shaped by its social milieu and by stage of social, political and economic developments.27 But whenever the prison is put to stand the test of community with its accompanying basic features and requirements, it is always explained that since the prison milieu is unique, where several features of a free community get drastically changed, it would not be fair to reject the prison's claim as a community only on the basis of some trivial differences.28

It is true that the essence of human relation inside a prison is not identical with the relation of the members of the open community. However, comparing prison community with the community in open, Gill observes that the walled community of prisons resembles in many ways to any other community of the free society.29

Recognising the prison as a community we are to study its features. It is a non-competitive organisation as no other organisation directly challenges it. "It has a unique position in society in which organisations competes either for economic resources or for the loyalty and support of group members".30

27. Indra J. Singh, op. cit., p.16.
Another specific feature of a prison system is that it is a closed or protected system. Members of the larger society (except for the relatives of the inmates and officials and non-official visitors) have no direct stake in the prison in terms of ownership, goods, services or reciprocal relations of any kind. Thus the prison is relatively protected from outside scrutiny.\(^{31}\)

Again prison is relatively an isolated social system. It is a structure composed of a ruling caste and a subordinate caste ... and unlike organisations of a bureaucratic type, the two castes do not share any overall primary goal through co-operative participation in production.\(^{32}\)

The use of force is another characteristic feature of prison system. This does not mean that the inmates are systematically flogged or physically tortured. The force used is not the dynamic energy of the whip, it is the static power of tool-proof steel cells. The inflexible restraint of a square of a steel is directly felt prison experience. As time turns, the thumbscrew of the square down closer in the mind, the pain may express itself in a physical sensation.\(^{33}\)

Other equally important feature of the prison are the unresponsiveness of the governing authority and ever present eye of authority. It is marked by the sharp feature of uncertainty and indefiniteness too.

\(^{31}\) Ibid., p.11.
\(^{32}\) Ibid.
This isolated non-competitive closed and protected system is designed to meet the contradictory goals. Society wants criminals changed, so that they will commit no more crimes. The prison society is expected to "reform or rehabilitate criminals". Next, society wants protection from criminals. The prison system isolates criminals from general society so that they can not commit crimes during certain period of time. Also society wants retribution. The prison system is expected to make life unpleasant for people, who by their crimes made others' lives unpleasant. Finally prison system is expected to reduce crime rates not only by reforming criminals but also by deterring the general public from behaviour which is punishable by imprisonment.34

Lastly the characteristic of prison system is the life of a prisoner is so taken up by a detailed regulation and supervision that he is deprived of personal autonomy and reduced to the status of a child even to use of a chamber pot.35

From the discussion it is learnt that the prison as an isolated social system is a structure consisting of a ruling group and a subordinate group. However, authority of the ruling group, the Inspector General of Prisons, being its executive head, is almost total. Below the Inspector General of Prisons a group of officials like the Superintendent, jailor, Assistant jailor, Assistant jailor,

Subedars, Jamadars, Havildars, Naiks and Seepoys etc. are to discharge their duties in their own jurisdiction. The subordinate group i.e. the prisoners come to the jail from the sentencing courts. Three varieties of inmates are found in side the prison viz :

(a) Convict prisoners, those who are finally convicted by the court of law.

(b) Undertrial prisoners whose trial is being done by the courts awaiting awards of punishment or aquittal, and

(c) The security prisoners who are arrested under the Maintenance of Internal Security Act (MISA), the Terrorist and Anti Disruptive Act (TADA) or any such other Acts.

B. Objective of Study

In the huge administrative edifice of any society, prison stands as an important pillar. Being an important branch of criminal justice, its functioning requires attention, particularly in view of the growing emphasis on the study of social security and social defence. However, due to its unique and isolated position in the mainstream of the social system, its functioning, both administrative and operational is not fully studied from different angles in the state of Orissa. Therefore, the researcher has taken up the subject to study and to know something more in this field.

Secondly, it aims at studying;

(a) the regular routine work of the prison which has a great effect on the attitude and behaviour of the inmates and
(b) the relation between the inmates in their daily life as well as relation between the inmates with the officials, administrative, custodial, supervisory, and correctional in general.

Thirdly, its aim is to enquire about the criticism generally levelled by the media against the jail authorities relating to their brutal and dehumanizing behaviour towards the inmates.

Fourthly, to study the grievances of the prisoners against the authorities relating to prisoner's right.

Fifthly, to study about the steps taken by our government to provide vocational training to the inmates, which will ultimately help them for socialization and rehabilitation.

Sixthly, to study the problems and difficulties faced by the jail officials and staff and the opinion of jail officials on prison administration.

Lastly, in Orissa, research work on prison administration is quite inadequate. Dr. Amarendra Mohanty has worked on Jail Administration in Orissa but in his study he has not made reference to any special jails in the State. Bhubaneswar is the Capital City of the State where the criminal activities are multiplying day by day. Therefore, the researcher is interested to take up a study of Bhubaneswar Special Jail which has not been given due attention so far.
C. Hypotheses

The following hypotheses have been chosen to be tested in this study.

1. Urbanization is the main cause of crime.

2. Imprisonment has brutal and dehumanising effect on its inmates.

3. Facilities for prisoners in jail are inadequate.

4. Facilities for jail staff is inadequate.

5. The purpose of imprisonment is correctional and curative.

6. The existing system of prison labour is traditional and obsolete.

7. The organisation of prison department is outdated and requires much improvement.

D. The Method

The selection of an appropriate methodology where the prison community is a sample is by no means an easy task.36

The method of science is the essence of the whole enterprise; elaborating hypotheses, testing their validity through objective verification, proof and demonstration and finally arriving at a body of established laws.\textsuperscript{37}

The methods used in research work usually are participant observation, the social survey and the use of documents. The method 'participant observation' was not possible to be accepted by the researcher due to some limitation, like it was not possible on her part to stay inside a prison to study the day to day behaviour of the prisoners. The researcher had made use of the relevant theoretical materials available at the library of the Office of the Inspector General of prisons, Orissa, Orissa Secretariat Library, the Parija Library of Utkal university, National Library, Calcutta and Library of State Archives.

Institution of Study

The researcher, therefore had mainly to depend on the available documents and literature on prison community. The study has also used the "Survey-cum-Evaluation" type research method.

For the study of the prison administration and its functioning, the researcher selected the Bhubaneswar special jail as no study has been done on it. The prisoners are of different ages, castes, of varied educational

\textsuperscript{37} A. Mohanty and N. Hazary, \textit{Indian Prison System, op.cit.,} p.11.
qualification and of different background. The most important thing to note here is that the crime committed by the inmates are of several types.

The day in which the researcher started her interview, the total number of inmates (both convicts and under trials) in the jail were 332. The convicts being 67 in number, the rest were the under trials. The researcher interviewed 50 convicts and 80 undertrials of various categories. Thus 130 inmates in all responded on the various questions asked to them by means of the questionnaire. The researcher took a sample of 130 inmates (including lady prisoners) which constitute a little more than one third of the total prison population through a system of random sampling method.

The important data for the study was collected through an interview schedule. Before this task began, the researcher did go through the required literature on prison and prison administration written by eminent Indian and Foreign writers. The interview given by the inmates helped in getting much information relating to their socio-economic background, the cause of crime, their attitude towards the staff and the society at large.

For meeting and interviewing the jail inmates the researcher could get the permission of the Inspector General, Prison, Orissa, by which it was possible to meet the inmates twice in a week until the work was over.

An interview schedule consisting of 7 pages was utilised for the work.

This contained three major subjects like:
(a) Social background of crime
(b) Problems of prisoners, and
(c) Perceptions of prisoners.

This schedule was typed in English but since the inmates were either illiterate or semi-literate, in most cases its translation in Oriya was made by the researcher for their understanding.

Before the interview of the inmates began, the researcher met the officials like the Superintendent, Jailor and Assistant Jailor of the administrative branch and also the Prison Welfare Officer to convince them about the real intention of the researcher and the value underlying the research on the subject.

During the period of interview all the officials, like the Superintendent, the Jailor, Assistant Jailors, etc. gave full co-operation. The Prison Welfare Officer did help a lot in whose presence the interview with inmates was fixed.

As pointed out earlier in the presence of the Prison Welfare Officer, the inmates did respond to the question put to them by the researcher without hesitation. But it is a pity that some of them were hopeful of either their early release or redressing of their grievances by the researcher’s appeal to the Government. Here the researcher had to confess that nothing of that short could be done by her. The Prison Welfare Officer of Bhubaneswar Special Jail did help the researcher a lot with whose co-operation a
meaningful rapport with the inmates could be possible. Once the inmates were convinced about the motive of the research work, they were free in their discussion.

During the time of interview, the researcher was told by some inmates that sometimes the jail authorities were very partial in their treatment to some notorious inmates out of fear. Also the inmates said about the medical facilities enjoyed by these above type of inmates which was not so in case of others. They again complained about the false entry of some such inmates in the jail hospital so that they would get better diet than others. Yet, in spite of all these allegations by the inmates, most of them agreed that facilities provided to them in the Bhubaneswar Special Jail is much better than any other jail of Orissa.

During the visit period to the jail the researcher too conducted an interview to the jail officials and staff for eliciting their opinion on prison administration, reform, their difficulties and problems in the day to day functioning of jail. Most of the officials and staff except two or three were fully cooperative in providing important data. For this purpose another questionnaire was used.

For better understanding of the subject (Prison Administration) and its various aspects, the researcher had attended some seminars and regional training courses on prison and correctional administration organized by the Inspector General of Prisons, Orissa from time to time. In these seminars,
the researcher could get some information from the valuable lectures given by some eminent personalities of the State, viz., the Inspector General of Prisons, Orissa, the Deputy Inspector Generals, the Professor of Psychology, the Superintendent of Jail, the Director of Public Prosecution, the Chairman of Women Commission, Orissa, etc.

Thus, the researcher tried her best to get information from all these sources. Yet the work is having its limitations. This is so because of the following reasons.

First, the researcher could not always get the exact happenings inside the prison due to the fear-psychosis of the respondents (Prison officials and staff) to the interview.

Secondly, both the prison officials and staff were too busy with their official work that they could not give much time to the researcher to discuss the problems on the subject.

Thirdly, the prison officials, too, could not provide some materials and data due to the "confidential Stamp" put on the material.

Lastly, since very little work is done in this field, it was not possible to get much materials on it. Yet, the researcher had tried to throw light on the existing prison system and on what reforms can be made to make it a better place for the inmates in our State.