CHAPTER – III

PRISON AND PRISONS REFORM
Institutions never arrive full blown: they are historical Products of layer upon layer of custom emerging from the distant past into hesitant shapes. The modern Prison is a Product of such a Process. In order to best understand our own Prison development we must appreciate what was on the minds of the contemporaries who built them.*

Crime has been considered eternal and so far has been known, human fallibility has manifested itself in all types and forms of human organizations. Human being, have always and every where, flouted the patterns of permitted conduct and the society which prescribed conduct patterns also prescribed the procedures to handle the non-conformers. From the punitive barbaric to civilized, each society has used its own sanction from cruel to correctional1. One of such sanctions has been the imprisonment. Imprisonment in its pure and simple form is a kind of cruel sanction, its object being primarily to deprive the offender of his liberty which is the most serious damage which can be caused to human being.

[A] Prisons: Historical Overview
(i) Prisons in India

1. Ancient India

Imprisonment as a form of punishment for social wrongs was scarcely approved by ancient Indian penologists. Prisons were no doubt there. While the primary object of imprisonment was deterrence, it was also preventive. That function of imprisonment in the view of Manu becomes quite evident

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from his statement: “Let him place all prisons near a high-road where the suffering and disfigured offenders can be seen.” This implied that Passers by would be deterred from the commission of crime by the sight of the miserable plight and suffering of the prisoners. If a Culprit is imprisoned, he is prevented from repeating the crime. Manu lays down that a king should repress miscreants by these lawful punishment of imprisonment and ……

Thus Manu mentions imprisonment among the three main modes of punishment. It is also on record that Brihaspati laid great stress on imprisonment of convicts in closed prisons.

The pre-Buddhist prisons system was most inhuman; Prisons were like cages, caves and dungeons. Besides the prisoners used to carry heavy load and chained to prevent the escapes. They used to lead brutal life and had no regard for their rights in the prisons. It was a common practice to keep the prisoners in solitary confinement as to afford them an opportunity of self introspect. Sometimes these prisoners were outcaste by society and exiled somewhere in the forest where they were either eaten by wild animals or lost in the density of forest.

Kautilya in his Arthashastra stated that rules in ancient India made frequent use of fortresses to lodge their prisoners. He was personally of the view that as for as possible prison should be constructed by the road-side so that monotony of prison life is reduced to a considerable extent. In Kautilya’s Arthashastra one would find elaborate rules governing construction

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2 Bandhnanini Cha sarvani rajmarge nivesyet. 
Dukhityatra drasyenon vikratah papakarinah. Manu IX 288.
3 Adharmikam tribhir nyayairnigrhniy tprayatnatah. 
Nirodhanena bandhena vividhena vodhenacha. Manu VII/310.
4 Prakash, S., History of Indian Prison system, Jr. of Correctional Work, v.22, 1976 at 83-88
5 Kane. P.V., History of Dharmasastra, Poona (1946) at 404.
of prison houses, conduct of prison administration and appointment of prison officials. He prescribes that a Jail should be constructed in capital provided with separate accommodation for men and women kept apart and well guarded at the entrances.\textsuperscript{6}

He further provides that among the duties of the “Nagrarika” is to let out of the Jail on the day of festival of the birth constellation of the king and on the full moon day of every month such persons as are extremely old, young, suffering from disease and helpless or those who are charitably disposed may pay the fines for the offences for which the prisoners are jailed may be set free on their working every day. Prisoners may be released from the Jail on the conquest of a fresh territory or on the coronation of the crown prince. This system has some similarity with the State remission in the present system.

In \textit{Delhi Topra Pillar Edict No. IV}\textsuperscript{7} Emperor Ashoka promulgates that he gives three days respite to prisoners on whom judgment has been passed and who have been condemned to death. Ashok in his \textit{Vth Pillar Edict}\textsuperscript{8} says that he let off prisoners 25 times in 26 years. In the first separate Edicts at Dhauli.

Ashoka addresses his officers of Justice in the capital that they should so act that even a single person should not unnecessarily suffer imprisonment. But according to Yuan Chwang, Ashoka in his early career

\textsuperscript{6} Ibid.  
\textsuperscript{7} Carpus-1, Vol. I, at 123  
\textsuperscript{8} Ibid.
was most cruel and had constructed a Jail that was called. "Hell Prison" of Ashoka.⁹

In Mahabharata we find mention of full fledged prison houses being maintained by Jarasandha, the king of Magadh and by Kans, the king of Mathura where Vasudev and Devki had been lodged for several years. But those prisons used to be maintained principally for custody of war prisoners, political enemies and under trials before conviction accused of heinous crimes.

In Brahatsmahita (47.81) and Harscharita¹⁰ there is a mention of prisons and release of prisoners on various occasions.¹¹ Kalidas alludes to the release of prisoners on various occasions and grounds.¹²

After Buddhism and Jainism prison system of India underwent certain changes in attitude and outlook of the rulers towards the treatment of prisoners. A little bit importance was attached to the prison life.

Thus we may say that there was no regular prison system i.e. imprisonment as a form of punishment, in ancient India as most of the punishments were meted out outside prison. Actually there was no prison in the modern sense. Only political defectors and war offenders were kept in custody as prisoners.

2. Medieval India

The fragmentation of political authority, continued instability of rulers, repeated invasions, loot and massive destruction of institutions and property, characterize the Turko-Afghan period from A.D. 711 to 1526 which

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¹⁰ II-2nd Para.
¹² Raghuvans XVII, 19, Malavikagnimitra (Act. IV).
basically frustrated the programmers of welfare of prisoners and recognition of their rights as human beings. Force, cruel treatment and torture were normal phenomenon. The old forts and castles were utilized as prisons.

Under Muslim Law imprisonment as a form of punishment did not exist. It was Abul Fazal, one of the learned Ministers of Akbar, who gave an interpretation that the Muslim rulers could award imprisonment to culprits and we find that a number of Forts and Fortresses were used to confine offenders. In December 1590, it was reported to Akbar that Shahbaz Khan had come from Swad without orders for which act he was committed to prison.13

Although the imprisonment was a very usual form of punishment in Mughal India there were no specific rules fixed for it. The prisoners were treated as animals because there was no regard of their rights. No period was fixed for imprisonment. There used to be there “noble prisons” in Mughal India Gwalior, Rohtas and Ranthambore.14 On the basis of examination of Mughal records it has been observed that imprisonment was not the first frequent punishment at the highest imperial court. The regular jails for confining convicts were of two classes for man of high ranks & criminals of ordinary status.15

Thus Akbar’s introduction of imprisonment in his administration of criminal justice was a great departure from the Muslim law. It could be looked upon as the first step, however, premature and crude of peno-correctional philosophy and administration sown by the great Mughal

13 Badayuni: Muntakhib – ut- tawariikh, 11 (Translated by Towe, at 404).
14 Supra 12.
Emperor Akbar, fored a very favourable climate to sport and flourish under Jahangir, who added his own colour, and zeal to it and gave his best time, attitude and effort to develop correctional administration under the name of justice with a high sensitivity to humanness, compassion, kindness and noble qualities of head and heart. It illustrates that Jahangir was very kind towards prisoners and their basic rights.

Jahangir was followed by Shahjahan who acquired his throne by means that left unpleasant memories. He himself spent his last eight Years as a captive of his son during which he was given the brackish water of the fort to drink. A person with so bitter an atmosphere round about him could not bestow generosity on the prisoners and tolerate their dignity, liberty and rehabilitation.

The accounts recorded by European travelers as well as the scattered materials show that there were neither regular jails in the modern sense, nor proper arrangements for keeping criminals and political offenders in custody during Mughal period. When the prisoners were taken to the prison they were usually “loaded with iron fetters on their feet and shackles on their necks.” During Mughal period the practice of releasing prisoners on bail from Jail was in existence.

The end of the Mughal era gradually deteriorates into that phase of civilization when the prisoners were deprived of their liberty and physically forced on the point of pain and torture. Even during the Mughal rule in India

17 Monserrate, at 211 (Commentary Translated by J.S. Hoyland and Annotated by Bannergi).
18 Manucci, I. at 90.
19 Sangar, Satya Prakash: Crime and Punishment in Mughal India, Delhi 1967 at 36-37.
the conditions of prisons was awfully draconian, the prisoners were ill-treated, tortured and subjected to most inhuman treatment and generally no heed was paid to their fundamental rights, the Jail discipline was too severe and regimental to be born the inmates.

2. Modern India

(a) Prisons before Independence

The prisons in India, at the time of the takeover of the country by the East India Company, were in a terrible condition, this was inevitable in a criminal justice system where deterrence was the only aim of a prison sentence. The East India Company believed only in keeping in custody the prisoners as economically as possible and with the maximum profit to the government. It was not surprising; therefore, that utmost neglect and cruelty were associated with the administration of Jails.\(^{20}\) There was no centralized system of prison.

A prison was attached to each Fauzadari Thana as well as to the criminal court of the district under the superintendence of the Fauzdar. The jail appears to have been formerly any building in the vicinity of the court of justice which could commercially be hired or appropriate for the purpose.\(^{21}\) The Fauzdar Jails were all sorts of makeshift arrangements made with no genuine concern for life and liberty of the inmates.

The jails were overcrowded everywhere. The judges were in the habit of confining the accused persons for long periods before bringing them to trial, their subordinates, the thanedars frequently imprisoned people without

\(^{21}\) Bengal: Past and Present Vol III.
any show of legality, the conditions, discipline and sanitation of most of the
jails of the Nizameat, which were under the charge of the Nawab, was
seriously bad. Many jails were terribly overcrowded and criminals and
debtors, men and women were often confined in the same building and even
in the same room. Convicts were transported to other countries from India
and were employed principally upon road making and cleaning estates and
no regards were paid to their life, liberty and other basic rights.

During the term of Warren Hastings the jail buildings started tottering,
sanitation disappearing, sickness rising and their misery of inmates being
exploited for all kind of corrupt practices.

In 1786 Cornwallis succeeded Warren Hasting who formulated a new
scheme, which was promulgated on Dec. 3, 1790, which may also be
referred to as “the trying birth of the modern prison system in India.”
Accordingly the control and management of the jails were transferred to
European hands. The Magistrate was put in charge of his jail in Districts. He
was commanded to inspect jails at least once a month and to redress all valid
complaints of the prisoners. He was to pay special attention to health and
cleanliness of the prisoners. Prisoners were confined in separate rooms
according to the seriousness of their crimes. Many prisoners were so
enfeebled either by old age or sickness, that they could scarcely support the
weight of the chain which insured their safety during the day. The cooked
their food. They were supplied water from a small dirty tank. The jail in
which a prisoner was allowed only a space of 25 inches was built on low
marshy, unhealthy ground and deaths were naturally frequent. Under trial

22 Bengal: Public Consultation of 30 August, 1785.
24 Benaras Revenue Consultations 3 Dec, 1790.
prisoners were confined indiscriminately with murders. Due to such miserable condition of jails Cornwallis declared that "humanity cried for a remedy."

In Dec. 1792 Cornwallis told the Court of Directors that he had resolved to rebuild all the jails in province in such a style that the health and morals as well as the safety the prisoners would be secured.

From the point of view of the emergence of prison as a system, the Regulation IX of 1793 had a vital significance as it provided the first comprehensive codification of rules for the management of jails, which also specified the objective there of. During 19th century the prison was a well recognized, separately identifiable institution, for the detention of persons awaiting trial before the court, and also for keeping persons found guilty and awarded a sentence by the court. The new role of the prison as an instrument for carrying out imprisonment as a punishment got well established as a common practice without being questioned at any level. As an institution it was crude and rudimentary with a number of arrangements made on a temporary and make shift basis. There was no Prison department as such; sickness and mortality rates among prisoners were high.

Prison offences had been defined and punishments thereof had also been prescribed, Physical torture appeared the main plank of prison punishment. As besides whipping, the other punishments were putting in heavier fetters, adding on iron neck chain of moderate weight, handcuffing,

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26 Supra 17.
solitary confinement and reduction of the diet allowance, thus violating the right to life and personal liberty in the modern sense.

Lord Macaulay in 1835 drew the attention of the Directors of East India Company to the terrible conditions prevailing in Indian prisons. According to him it is necessary to make imprisonment a terror to wrongdoers and at the same time prevent it from being attended by any circumstances shocking to humanity.27

A Committee was appointed by the Government in 1936 to give a report on the existing conditions in jails in the country and suggest steps for future administration in the prison. The Committee in its recommendations deliberately rejected all reforming influences such as moral and religious teaching, education or any system of rewards for good conduct and suggested the building of central prisons where the convicts might be engaged not on manufactures which it condemned but in some dull, monotonous, wearisome and uninteresting work.28 This attitude was inevitable since even in England, at that time, there was a lot of escapism regarding the possibility of reformation of criminals.

The Second Prisons Commission was appointed in 1864 to minimize the high death rates in prisons. The Commission came to the conclusion that the sickness and mortality may be considered as mainly attributable to overcrowding, bad ventilation, conservancy and drainage, insufficient clothing, sleeping on the ground, deficiency of personal cleanliness, dirty water, extraction of labour form unfit prisoners and insufficient medical

27 Macaulay, T.B. Minute dated 14 Dec., 1835 (in Howell A.P. Under Secretary to govt. of India-Note on Jails and jails Discipline, at 1)
28 Howells, A.P. Op. Cit p.44.
The Committee, therefore, recommended certain minimum spaces for each prisoner inside the prison, better clothing and food and regular medical check-up of the prisoners.\textsuperscript{29}

In 1876 Lord Lytton appointed a committee to make a general review of the subject and in particular to suggest means for introducing more uniform regulations and for making short sentences more deterrent.\textsuperscript{30} In 1888 the Fourth Committee was appointed which laid down elaborate rules for prison administration and recommended separation of under trial prisoners, classification of prisoners into casual and habitual and building of hospitals in each jail. Thus, the Committee suggested some special features of jail. Thus, the Committee suggested some special fractures of improvements in the activities of prisoners and their welfare.

The work of the Committee was supplemented by the All India committee in 1892. It re-examined the whole prison administration in India and drew up proposals on the subject of prison offences and punishment. The Report of the Committee was accepted by the government of India which passed the Prisons Act. 1894, which is the current law regarding the prison administration in India.

The freedom movement had a direct impact on prison conditions in India; the dimension of national movement during the first half of 20th century brought the Indian prisons into social lime-light. Political prisoners were classified in two categories (i) violent and (ii) non-violent. Summary trials were conducted for the political prisoners.

\textsuperscript{29} Quoted in the Report of the Indian Jails committee, 1919.
\textsuperscript{30} The Imperial Gazetteer of India, The Indian Empire, Vol. IV Adm., at 399.
The British prison authorities had to frame elaborate and rigorous prison regulations for the freedom fighters with minutest details about prisoners' food, medical care, family visitors, recreation, etc, with the additional burden on prisons due to in flood of political offenders there was extra burden on traditional jails budgets with the result the conventional system was literally ignored and the condition of prisons deteriorated beyond imagination. The prison authorities had little time and resources to attend non-political prisoners.\textsuperscript{31}

After the First World War, All India Jail Manual Committee 1919-20 was formed which made an exhaustive and comprehensive study of various prison systems in India and abroad. In its report, a clear departure from earlier stands on deterrent aspect was made and the principle of reformation of convicts was accepted, the Committee observed:

The Indian Prison Administration has lagged behind on the reformatory side of prison work. It has failed so far to regard the prisoner as an individual and has convicted of him as a unit in the jail administrative machinery. It has lost sight of the effect which humanizing and civilizing influences might have on the mind of the individual prisoner. Witness after witness from almost every province in India has with singular unanimity declared that Indian jails do not exercise a good or healthy influence on their inmates, that they tend to hardened if not to degrade, and that most men come out of prisons worse than they went in.\textsuperscript{32}

Thus the committee underlined the need for reformative approach to prisoners and discouraged the use of corporal punishment in prisons. It recommended utilization of prisoners in productive work in order to bring about their reformation. The Committee for the first time initiated the correctional programmes in jails with the special emphasis in the utilization

\textsuperscript{32} Report of the Indian Jails Committee, 1919, at 32.
of modern and up-to-date methods of correctional techniques and rehabilitation programmes for the welfare of prisoners to enable them to become law-abiding and economically self-sufficient citizens after their release from the jails. The Report of the Committee of 1919, it may be remarked, “laid the foundation stone of modern system in India.”

The need for humanizing jail administration was universally recognized at the threshold of independence. Humanizing jail administration is a very vague and generalized statement; Jails have been notorious all over the world for brutal inhuman handling of prisoners.

(b) Prisons after Independence

The sweet sonorous chant of Vedic Mantras and the blowing of conch-shells, at the dawn of the August 1947, gave the “Jai Ghosh” of “Swarajya” in India. Pandit Jawaharlal Nehru called upon his fellow members on India’s independent government to “take the pledge of dedication to the service of India and her people and to the still larger causes of humanity.”

After independence, the country had undergone a complete metamorphosis, a new transformation. A completely new India had been born, the people whether official or non-official were fired with a new desire of freedom. The people have now become the master of the nation after independence were themselves had been prisoners at one time or another. Therefore, the thought and movement for prisoners’ rights got momentum.

33 Supra 17.
We must discard all our notions about the criminal being considered a criminal at all. He must be considered a victim of social circumstances, a person requiring treatment rather than punishment.36

In 1949 Pakwasa Committee accepted the system of utilizing prisoners as labour for road work without any effective supervision on them to secure their liberty to some extent.

Constitution of India placed “Jail” into the State List of the Seventy Schedule. The Union Government had literally no responsibility of modernizing prisons and their administration.

Dr. W.C. Reckless, an expert of United Nations was invited to suggest progressive programme for the scientific care and treatment of offenders. Later on a Committee was appointed to prepare All India Jail Manual in 1957 on the basis of recommendations of Dr. Reckless and the All India Conference of Inspectors General of Prisons. Some of the important recommendations dealing with reformative and rehabilitative problems of the convicts are:

1. Greater use of probation system to avoid too much pressure on prisons.
2. Abolition of solitary confinement as a mode of punishment.
3. Classification of prisoners according to their needs in terms of personality.

Despite the reformative measures taken by the government the general condition of prisoners in India is far from satisfactory. The social contempt

36 The Report of Bombay Jail Reforms committee. 1948, at 5.
of prison life keeps all sections of society uninformed about what goes on inside the prison cells.

The Government of India appointed the All India Jail Reforms Committee 1980-83 with Justice A.N. Mulla as its chairman. The committee has suggested setting up of a national Prison Commission as a continuing body to bring about modernization of prisons in India. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prisons. The media and eminent public-men should be allowed to visit prisons so that public may have first hand information about condition inside the jail. The committee has recommended that the conditions of prisons should be improved by making adequate arrangements for food, clothing, sanitation, ventilation etc, lodging of under – trials in prisons should be reduced to bare minimum which can be assured by speedy trials and simplification of bail procedures. The under – trials should be kept separate from convicted prisoners, probation, after-care, rehabilitation and follow-up of offenders should for an integral part of prison service.

The dominant features of prison administration in Independent India are not much dissimilar to those in British India. This can be the gauged by very striking similarities between the recommendations made by Indian Jail Committee in 1919-20 and those made by the Model Prison Manual Committee in 1957.37

(ii) Prisons in Other Countries

The history of prisons clearly reflects the changes, in societal reaction to crime from time to time. Whatever has happened in India in the field of

prison reform is the direct outcome of developments taking place in the Pena-logical thought of various countries particularly of England and U.S.A.

1. England

In England the administration of justice was taken over by the crown in 12th century. Imprisonment, as understood then, was not an end in itself by way of punishment. It was used to compel the offender to pay the fine or to spend the period between arrest and trial or between the conviction for a capital offence and its execution. Cellors' gate-house and towers, which were used to serve as detention houses were kept in extremely inhuman conditions. There was no classification of prisoners. These houses were not maintained by the state. Inmates were charged for the accommodations, foods and other essential requirements. The goals were dens of lechery, debauchery, moral corruption and pestilence.\(^{38}\)

John Howard in famous book “The State of Prisons” has described the awful condition of British prisons during the 18th century. Beccaria was the first European criminologist who raised a voice against the continuance of harsh and inhuman treatment to prisoners. Pope XI also advocated the cause of human treatment inmates.\(^{39}\)

Imprisonment was used in a few cases in the Anglo-Saxon period. It was 1597, when in a real sense prisons were established and separate arrangements were made for the security and watch and ward of prisoners, but still they were primitive type of jails whose conditions were inhuman,
bad, cruel, unscientific and miserable. All prisoners irrespective of age, sex, etc, were kept together.

The rise of capital punishment and increasing use of transportation checked the significance of imprisonment as a mode of punishment and any possibility of serious thinking about the problems of prisoners was adversely affected. The period during which cruelties to and ill treatment of offenders was the principal feature of criminal justice system laid the birth and girth and growth of enlightenment era in England and Europe which ultimately paved the way for the more humane approach towards prisoners. A process of reformation of criminal law system was initiated which resulted in the improvement of prison system and somewhat protection of prisoners’ rights.

John Howard, the pioneer in the prison reform movement in England, believed in the reformation of personal character as the objective of imprisonment. He recognised the importance of religious and moral instructions and the utility of learning trades and crafts in the prison.\(^{40}\)

In 1894 the Gladstone committee advocated the abolition of useless labour in prisons and stressed the importance of work in association and improved classification of prisoners and the establishment of separate reformatory feretories for juveniles was strongly emphasized.\(^ {41}\) Sir Arthur Waller, the then chairman of Prison commission for England and Walse, Suggested to the international Penal and Penitentiary Congress in 1925 that a set of regional rules should be, drawn up governing the treatment of prisoners as a human being.

\(^{40}\) Siddique Ahmed: Criminology, Eastern Book Co. 1993 at 115.
\(^{41}\) Pillai K.S.: Principles of Criminology at 615.
Sir Lionel Fox, the great name in the field of prison reform, suggested that public should always be kept well informed about the working inside the prisons and the prison administration should aim at reconciling the conflicting objectives of deterrence and reformation. As a result of his persistent efforts, the number of open prisons in Bristol was increased in order to protect the fundamental rights of prisoners to some extent.

At present, the following features are the salient features of the English Prison System:

1. Prisons should be minimum security institutions wherein basic rights of prisoners should be duly recognized.
2. The inmates should be provided vocational training inside the prison for their physical, moral, and mental upliftment.
3. The prisoners should be classified into different categories through group therapy method.

2. America

In America, before the 19th century, prisons were little used to punish convicted criminals. The medieval period of history was an era of barbarism and different punishments for criminals. Those who were to be tried for political offences or war crimes were kept in prisons as under trials. Thus imprisonment was used in rare cases. The life inside the prison was hard, unbearable, and painful. With the march of time, public opinion mobilized against the barbarous methods of treating prisoners, which led to the passing of famous Penn's Charter of 1862. The object of this Charter

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42 Lionel Fox: *Studies in penology* (Published by Int. Penal and Penitentiary Commission in 1964 at 187).
43 Barnes and Teeters: *Criminology* at 371.
was to put an end to brutal methods of punishment on humanitarian grounds and bring out reforms in prison administration.44

With the advance of civilization greater emphasis was laid on prisoners' reformation. In the latter part of the 18th century America took up the task of improving prison condition. Credit goes to the Quaker movement. But the system of confinement was cellular; each prisoner being confined alone in his cell. The object of reformers behind advocating solitary confinement was that of providing segregation of prisoners and prevents unhealthy influences of contamination by fellow prisoners.45 But as solitary confinement produced mental troubles and even mental disorders, the system of cellular confinement had to be substituted by ordinary confinement in communal life. A compromise between cellular and congregate confinement was affected in Auburn system. During the day prisoner was allowed congregate life but during the night the prisoner was sent back to the solitude of his own cell.

The major set back of Pennsylvania system was lack of productive labour for prisoners, over-crowding and cruelty. Consequently this system fell in disuse by the later half of the 19th century and was finally abandoned in favour of Auburn System. The Auburn System was more economical to operate due to the better industrial potential as a result of prisoners working together; it was accepted by the majority of states.

With new developments in penology during the early decades of the 20th century the prisons no longer remained the dump houses for convicts

45 Gault, R.H.: *Criminology* at 402.
but were used as places of industry to train inmates for skilled work. It helped in the rehabilitation of prisoners as mentally and physically fit members of society. Individualization of prisoners became the object of punishment.\footnote{Supra 32.} Opening of reception center at Illions in 1933 marked the beginning of reformative era in the American Prison System. The basic needs and fundamental rights of the prisoners were the main concern of the authorities. The condition of health and sanitation was considerably improved and the inmates were provided facilities for reading, writing and schooling. The prisoners were to dine together in a common mess and they could meet their relatives and friends on certain fixed days. The sentence of solitary confinement was completely abolished and general tendency was to narrow down the gap between the out-side free-life and the life inside the prison to the maximum possible extent.\footnote{Supra 44.}

Despite a series of prison reforms the condition of American prisons still remains deplorable. Beating up, extortion, blackmail and sexual assaults were common occurrences inside the prison. Earlier even the court had little regard for the rights of prisoners as they believed that as a result of his conviction the prisoner has forfeited his liberty and personal rights except those which the law in its humanity accords to him.\footnote{Supra 32.} However this attitude of indifference has now changed due to human rights consciousness of the American judges and the constitutional rights of prisoners in USA are now well safeguarded.

\footnote{Supra 32.} \footnote{Supra 44.} \footnote{Supra 32.}
3. Russia

In Russia prisons are called “Miesta Lischenja Svobadi” i.e. the places of withdrawn freedom. There is no inhuman treatment of prisoners. The rights of prisoners are protected to a great extent. The educative reforms system adopted in these prisons offer better opportunities for inmates to reform and rehabilitate them in normal life. Liberal good time allowance is granted to prisoners and they can be released before the expiry of their term of sentence. The prisoners are allowed for the work done by them. Thus their family is saved from hardship and starvation.

The Russian prison system also provides for education, adequate means of recreation and religious discourses. The prisoners form a council of culture to settle their mutual disputes in spirit of co-operation.

The history of prison system reveals that the objectives of imprisonment have been retributive, deterrent, preventive, reformatory, compensatory and rehabilitation expiration and atonement. There was little regards to the rights of prisoners in India as well as other countries. Prisoners were not treated as human being and they were tortured and humiliated.

[B] Prisons: The Justification

Punishment is not an end in itself but a means to an end – the maintenance and protection of society. In pre-modern societies, punishment were extra-mural, with the development and civilization, imprisonment became the chief mode of punishment. It has raised many questions. Why

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49 Id.
50 Lenkom Vom Koerber: Soviet Russia Fights Crime at 196. (Quoted in id.).
51 Id at 177.
imprison a person? If a person is to be imprisoned for punishment, then what are the objectives or justifications of imprisonment?

The attitude towards crime and criminal at a given time in a society represents the basic values of that society. The criminal may be described as a monster or be pictured as a hunted animal or as the helpless victim of brutality. Imprisonment can be used as a method of reducing the incidence in 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.

It is this principle which underlines the doctrines concerning the desirability and objectives of imprisonment. The objectives of imprisonment still leaves open the possibility of detention of a person because he is a danger to society according to law.

The justification or an objective of prison corresponds to the four important theories of punishment—Retributive, Deterrent, Preventive and Reformative. Thus broadly speaking there are at least four objectives which are intended to be fulfilled through prison.

(i) **Retribution**

According to retributive theory of punishment the evil should be returned for evil without having any regard to its social consequences. The offender should receive as much pain and suffering as inflicted by him on this victim to assuage the angry sentiments of the victim and the community. Sir James

Stephen claimed that criminal law stands to the passion of revenge in much the same relation as marriage to sexual appetite.\textsuperscript{54}

Various ideas have sought to justify the retributive aspect of punishment on theological, aesthetic and expiatory grounds, Retribution fulfills a religious mission of punishing the offender, it re-establishes the social harmony disturbed by the offence and the offender’s guilt is washed away through suffering.\textsuperscript{55} The retributive theory suggests that punishment is an expression of society’s disapprobation for offender’s criminal act.\textsuperscript{56} The theory of retribution has its origin in the crude animal instinct of individual or group to retaliate when hurt. The extreme limit to which the retribution element must be carried is expressed thus:

> Even if a civil society were to dissolve itself by common agreement of all of its members, the last murderer remaining in prison must first be executed, so that everyone duly receive what his actions are worth and, so that the blood guilt thereof will not be fixed on people because they failed to insist on carrying out the punishment for if they fail to do that, they may be regarded as accomplices in this public violation of legal justice.\textsuperscript{57}

On the retributive theory, imprisonment is justified as an end in itself, and quite apart from any deterrent or reformatory effect which it may produce upon the offender himself or upon others. When we say that, on this theory, an offender is sent to prison because a crime had been committed, we mean that the commission of the crime is the ground of imprisonment. We look to the past rather than the future. We deal with the offence rather than with the offender. According to this theory, “guilt plus punishment is equal

\textsuperscript{55} Heinrich Oppenheim: \textit{The Rationale of Punishment} (1913).
\textsuperscript{56} Supra 32.
\textsuperscript{57} \textit{The Methaphysical Elements of Justice}, Translated by John Ladd (Bobb S Merill. U.S.A.) at 100 (quoted in Ahmed Siddiqui: \textit{Criminology}, Eastern Book Co. Third Ed. At 78.)
to innocence.” No sooner an inmate completes his term of sentence, his guilt is deemed to have been washed off and he is relegated to a position as if he has committed no wrong.

Kant’s views, “The punishment must agree in quality with the offence”, leads us into great difficulties, so far as imprisoned in concerned. On this theory precisely similar periods of imprisonment should be assigned to similar offences. The whole of our legal system is against such a practice. If retribution is the objective of incarceration, 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.

Retribution has special cathartic significance for the offender, who believes that once he has paid his debt to society; his guilt should be wiped out. He should be able to start a new life without stigma. The legal against ex-convicts, the loss of civil rights and frequent harassment by authorities undermine the legitimacy of retributive punishment. If individuals have no moral right to exact retribution, how can any group of individuals in the society acquire such a moral right? As regards expiation, Blackstone urged that atonement and expiation should be left to the Supreme Being. The practical snag is that it becomes extremely difficult for a person to start with a clean slate after being convicted of an offence. In a very interesting comment on retribution, Nigal Walker observed:

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58 Kant: The Philosophy of Law 195 (Hastic Translation 1887)
60 Blackstone: Commentaries IV at 11 (quoted in Ahmed Siddiqui’s Criminology).

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If the retributionist is arguing that punishment is justified in spiritual improvement, he is asking that the penal system should do the work of the Church. He is certainly entitled to ask that it should not make the work of Church impossible (for example, by placing obstacles in the way of contact between offender and the priest). But if he asks that it should adjust the nature of the penalty to assist in the work of the Church he is raising awkward questions; for example, would it justify longer (or shorter) prison sentences, for christians than for atheists? But, I do not think that genuine retributionists regard retribution as a means in this way. For them it is end in itself.61

The retributive idea has been brought out of a past in which the solidarity of society, the influence of body on mind, the significant complexities of modern psychology were either under-estimated or as yet undiscovered for use."62

Thus at present time the retributive theory appears to be out of favour because the modern doctrine gives stress on future of an offender than the past and dealing with the offender than with the offence.63

In this context the observations of Justice V.R. Krishna Iyer are apposite:

The retributive theory has had its day and is no longer valid; deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as penal panacea.

(ii) Deterrence

Deterrence has the same linguistic roots as “terror” and “terrible” and its literal meaning is “that which frightens away from”.64 It is assumed that as in day to day life the infliction of pain or its apprehension
keeps people away from certain prescribed behavior, the same purpose is served by punishment in relation to conduct forbidden by law.

Imprisonment deters the criminal minded members of the State, who might be tempted to commit crime, from the commission of crime and deviation from the path of duty by creation of terror through the example of the suffering of the inmates. That Manu has this function of imprisonment in view becomes quite evident from his following statement. Let him place all prisons near a high-road where the suffering and disfigured offenders can be seen.65

This implies that the passers by would be deterred from the commission of crime by the sight of the miserable plight and suffering of the prisoners. Thus it deters both, the offender as well as the potential offenders. Deterrence is most effective when a certainty of quick apprehension, prosecution and punishment is. Presumably the more unpleasant the incarceration, the greater will be its deterrent value.

In fact, there was a time when mankind was so brutal and uncouth that only drastic demonstrations seemed to suffice as stimuli against proposed crime. By now, we have learned that excessive terror backfires in many ways. It makes men oblivious rather than alert to sufferings' it renders men brutish and this contributes to aggressiveness, instead of reducing it, in any event, it is safe to say that terror has vanished from the concept of

65 Supra 12.
deterrence. What is left is the anticipation of detriment to be avoided, such detriment usually being loss of one’s freedom for a considerable stretch of time.66

During medieval period, the conditions of prisons were awfully bad and prisoners were virtually living a life of hell on the earth, Deterrence was the cardinal rule of justice which meant considerable torture and harassment to offenders. Imprisonment was used as a means to inflict pain on the offenders.

1. General Deterrence

General deterrence is the employment of a public notice that a given detriment will follow wrongdoing. In scanning the penological attacks on general deterrence we see on type of attack against the idea itself. Certain psychoanalysts have pointed out that convicts actually yearn for the “womb of society”, i.e., prison, which takes them out of the rat-race life of competition, while certain others seek punishment for a sense of guilt. The opponents of general deterrence point their fingers at the rising crime rate and content that if our threats of punitive reaction (proposed imprisonment) had any positively stimulation effect, the crime rate ought to drop rather than rise.67 Majuumdar and Datta68 discussing the role of the East India company (1818-57) comment, “the early Indian jail system was, like its English prototype, insanitary, demoralizing and non-deterrent.”

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66 Id.
67 Ibid.
68 Majumdar, R.C. & Dutta, Kallkinkar: British Paramountcy and Indian Renaissance, Bhartiya Vidya Bhawan, Bombay, 1970 at 383-84
2. Special Deterrence

The special deterrence had shed its terror aspect and simply relies on the relatively unpleasant side-effects which any deprivation of freedom carries with it. This deprivation of freedom is necessarily accompanied by a certain regimentation that is unavoidable whenever human beings are placed into an enforced community, i.e., prison. Few authorities would disagree with the proposition that any additional amount of deprivation imposed on prisoners is unnecessary or even detrimental and should, therefore, be avoided. The loss of freedom alone is unpleasant enough to till a long memory which is despotive of future temptations to break the law.\textsuperscript{69}

The great end of punishment is to deter all men from crime who are capable of committing it and susceptible of the fear of punishment. We include the sufferer himself amongst those for whom this end is sought, whenever it is desirable to deter him from a repetition of his crime and on his understanding, it appears to us that this single object of imprisonment is of such paramount importance that no secondary object ought to be aimed at in any such way as that thereby the main object will be attained in any material degree less perfectly than could otherwise be the case.\textsuperscript{70}

The charge is made that special deterrence apparently does not function effectively. Even assuming that imprisonment could be swift and sure for all convicted offenders, the high recidivism rate of released criminals raises serious questions about the effectiveness of the deterrent model of imprisonment. Quite a large number of hardened criminals return

\textsuperscript{69} \textit{Supra} 68.
\textsuperscript{70} Committee on Prison Discipline, 1938 Para 220.
to prison soon after their release. They prefer to remain in prison rather than leading a free life in society.

The doctrine concerning deterrent punishment has been closely connected with the classical theories of crime and criminal responsibility. In earlier times, crime was attributed to the influence of “evil spirit” or “free will” of the offender. So the society preferred severe and deterrent punishment for the offender for his act of voluntary perversity which was believed to be a challenge to God or religion.\footnote{Barnes & Teeters: New Horizon in Criminology, Prentice Hall Inc., New York (3rd ed.) at 216.}

(iii) Prevention

Preventive theory of punishment is based on the proposition “not to avenge crime but to prevent it”. In fact the idea inherent in any form of punishment is to prevent the commission of crimes by the actual as well as the potential offenders. By putting a man in the prison, society physically removes him from its bosom and, for the period of his incarceration, makes it physically impossible for him to commit further crimes.

The timely identification of potential offenders is implicit in the concept of crime prevention.

As an off-shoot of preventive views regarding crime and criminals, the development of prison institution gained momentum. The preventive theory seeks to prevent the recurrence of crime by incapacitating the offenders. It suggests that prisonisation as the best mode of crime prevention as it seeks to eliminate offenders from society thus disabling them from
repeating crime. It pre-supposes some kind of physical restraint as well as liberty of offenders.\textsuperscript{72}

Any correctional system operating with restraint, particularly which involved in imprisonment, relied implicitly on the idea that restraint has an incapacitating effect. It is obvious that there are dangerous and non-reformable convicted criminals who must be caged for long periods, perhaps, in many cases for life, but in such instances rehabilitation is for the most part of forlorn hope.\textsuperscript{73}

One of the important objectives of imprisonment is to prevent the commission of crime. In order to achieve this goal the offenders are incarcererated which resulted in the violation of their fundamental rights. The offender sentenced to imprisonment gets exiled from his familiar world. He is severed from his family and friends, his accustomed occupations, interests and recreations. Thus in order to prevent the occurrence of crime we put the offender in inhuman, miserable and degrading conditions which is against the policy to maintain dignity and assure freedom of every citizen. In the changing circumstances of welfare society the prevention would not be the sole aim of imprisonment.

(iv) Reformation

The penological theory of reformation is the human reaction of thinking people to the related problem of crime, criminal and crime

\textsuperscript{72} Supra 68.
\textsuperscript{73} Mueller Gerhard O.W.: Punishment, Correction and Law at 60 (quoted in Datur’s prison as a Social System, Bombay Popular Prakashan (1978) at 32).
prevention. Individualized treatment became the cardinal principle for reformation of the offenders.

This shift in sentencing policy has taken place because experience has taught us that barring a few categories of criminals most of the crimes are committed by those who are victims of circumstances. Social condition, economic imbalances, lack of education and avenues for mental development, family feuds, apathy and consequent inability of States to improving the living condition of the masses are some of the factors leading to crimes.\textsuperscript{74} That is why it is said that “Society prepares crime, criminal Commit it.”\textsuperscript{75}

As against retributive, deterrent and preventive justice the reformative approach to punishment seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law-abiding citizen. Thus, punishment is used as a measure to reclaim the offender and not to torture or harass him. The sole aim of the prison should be the reformation and rehabilitation of the offenders.

The reformist advocates humanly treatment of prisoners and they should be properly trained to adjust themselves to free life in society after their release from the institution. Mahatam Gandhi, thus emphasized that:

All punishment is repugnant to \textit{Ahinsa}. Under a state governed according to the principal of \textit{Ahinsa}, therefore a murderer would be sent to a penitentiary and there given every chance of reforming himself. All crime is a kind of disease and should be treated as such.

\textsuperscript{75} Supra 10.
The reformative view of penology suggests that imprisonment is only justifiable if it looks to the future and not to the past. It should not be regarded as setting an old account but rather as opening a new one. Thus, the supporters of this view justify imprisonment not solely for the purpose of isolating criminals and eliminating them from the society, but to bring about a change in their mental outlook through effective measures of reformation during the term of their imprisonment. In *Md. Bulzab Ali v. Superintendent, District jail, Nawgong*76 the Gauhati High court observed:

The prison system in civilized world has been modernized and the prisons have been turned to institutions where constructive training moral, mental and vocational is imparted to the prisoners. “The prison regime” of an incarcerated person should be utilized for upliftment of moral, mental and vocational faculties of the prisoners. In due course prisoners are to be released and must go back to the society. One must look to the interest of the society. They should not be permitted to go back to the society turning from bad to worse.

Therefore, the supporters of reformative theory of punishment are concerned with the reformation and welfare of the individual criminals. Prisoners are accepted by and large as the goal of the modern punitive Reformation of the institutions. Yet their total effect is regressive rather than therapeutic. Correctional services seek to remold the offender to refit him into the social we. However, a doubly painful phase follows at the end of his imprisonment. Outside, the old horrid corridors of crime and cruelty unavoidably drag the vulnerable into the dark alleys of offences which they hand of late learnt to relinquish. The clock is put back to re-enact the usual drama of violence and crime, much do the final destruction of the released ones. Should this be accepted as unavoidable reality, the purpose of imprisonisation looks utterly unproductive, if not entirely useless.

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76 1988 East Cr. C. 60 at 61 (Gauhati).
Many penologists have denounced the "reformist ideology" underlying individualized treatment model because in practice they are more punitive, unjust and inhumane than retribution or deterrence. Writing about the condition of prisons in Russia and France, Peter Kropotkin observed:

Prisons are seen as symbols of our hypocrisy regarding rehabilitation, our intolerance of deviants or our refusal to deal with the root causes of crime such as poverty, discrimination, unemployment, ignorance, overcrowding and so on.\textsuperscript{77}

Treatment in prisons should be reformative and not punitive. Any correct penal system must aim at changing the habits of the inmates through training and inculcation of ethical values and by creating sounder attitude towards family, rights of other and towards law through canalization of impulses.) In the words of the Standard minimum Rules for the Treatment of Prisoners approved by First United nations Congress on the Treatment of offenders at Geneva in 1955, the basis of training must be to accord to the prisoners" the respect due to their dignity as human beings" and to establish in them the will to lead a good and useful life on discharge and to fit them to do so.\textsuperscript{78} The idea is not to make the prisons pleasant, but to construct a system of training such as will fit the prisoners to re-enter the world as a citizen. Next comes the removal of any feature of unnecessary degradation in prison life, and the promotion of self-respect, and education on broad lines calculated to arouse some intelligent interests and to raise the mind out of a sordid circle of a selfish broodings. Finally we endeavor to awaken

\textsuperscript{77} Kamenka & Brown : \textit{Ideas and Ideologies, law & Society, at 112} (quoted in Para jape's \textit{Criminology & Penology}" at 147).

\textsuperscript{78} Bhattachary, B. K.: "prisons" (1958) at 2.
some sense of personal responsibility by the gradual and cautious introduction of methods of limited trust.\textsuperscript{79}

Thus, the essential elements of a reformatory programme of individualized training and treatment, it can aspire to achieve, are well known and include the following:

Scientific classification and programme planning on the basis of complete case history, examination, tests and studies of the individual prisoners; adequate medical services having corrective as well as curative treatment as their aim and making full use of psychiatry; psychological services properly related to the problems of education, work assignment, discipline and preparation for parole; individual & group therapy employment at tasks comparable in variety type and pace to the work of the world outside and outside and specially at tasks with vocational training value; education planned in accordance with the individual need; wholesome reaction so organized as to promote good morale and sound mental and physical health; a religious programme so conducted as to effect the spiritual life of the individual as well as the whole of the community of the prisoners, discipline that aim at the development of self controlled and preparation for free-life and above all competent personnel carefully selected, well trained and serving under such conditions as to promote high degree of morale and efficiency.\textsuperscript{80}

Thus the objective of imprisonment is not to have retribution against the offender but to make him a better human being so as to be more useful to the society. The prison has come to have two goals; to restrict and confine the individual and to prepare and help him re-enter the open community as a responsible citizen with a capacity to accept the limits of law. The concept has expanded from 	extit{punishment to reformatory punishment} because of increasing relation that confining alone; though succeeding in punishing will be only temporary protection of the community.

\textsuperscript{79} Police Commissioners Report for 1922-23 quoted in supra 29.
\textsuperscript{80} Austin, Mc cronomic, "The prisons Role in Crime Prevention" \textit{Journal of Criminal Law and Criminology}. Vol XLI 1950-51 at 43-54.
In *Mohd. Giasuddin v. State of A.P.*\(^{81}\) the apex court more elaborately observed:

Modern penology regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime but also on the criminal and seek to personalize the punishment so that the reformist component is so much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether relevant if not injurious, at the stage of fixing the guilt, may have to brought to the notice of the court when the actual sentence is determined.

The main aim of punishment should be protection of society, through rehabilitation of the offender.

The institution should be a center of correctional treatment, where major emphasis shall be given on the re-education and reformation of the offender. The impacts of institutional environment and treatment should aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and his total value scheme of life.\(^{82}\)

According to the Report of the Rajasthan Jail Reforms Commission, “Jails are social institutions where the person recovers by a therapeutic treatment. Recovery means rehabilitation through trilogy of modern correctional methods, viz. education, discipline and individual attention which lead him or her social life so that the offender regains his sense of self-respect.” The reformation of the offenders mainly based on the idea that, as Mahatma Gandhi said crime is but a sign of a diseased mind and that

\(^{81}\) AIR 1977 SC 1927.
\(^{82}\) Model Prison Manual 13 (under guiding principals).
imprisonment should aim primarily at treating a prisoner's diseased mind and making him fit to go into society after release to lead an honest life.\textsuperscript{83}

The crucial problem today is whether a criminal is to be regarded by society as a nuisance to be abated or an enemy to be crushed or a patient to be treated or a refractory child to be disciplined. Or should he be regarded as none of these things but simply be punished to show to others that antisocial act does not finally pay. Thus punishment can be used as a method of reducing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating or preventing them from repeating the offence or by reforming them into law abiding citizens.\textsuperscript{84} It is this principle which underlies the doctrine concerning the objectives of prison.

With the march of the civilization the emphasis has shifted from the punishment of the offender to his treatment and reformation in the present era of humanism the offender is considered the product of the circumstances that needs adequate treatment and reformation and prison must serve these purposes in order to maintain the dignity of the individual offender. Humanitarian method of treatment is no less effective in reducing the probability of an offender to recidivate.

In India after independence the principal objective of imprisonment being reformatory as little as possible deterrent. The objective of prison treatment is to devise and use techniques of correcting the effects of the long drawn causative factors, in the controlled atmosphere of the campus, utilizing the helpful factors in his personality, family situation and attitudes

\textsuperscript{83} The Bombay Jail Manual (1955) at 4 Para 2.
\textsuperscript{84} Supra 32.
and approaches, thus helping the prisoner to reconstruct his life pattern with increased capacity for adjustment to the socio-economic situation and healthy interpersonal relationship and skills to earn an honest livelihood.  

Ours is a crusade for a noble cause, humane and just. The reformation and rehabilitation are an appeal for the acceptance of an ideology the ideology which is nurtured in our own civilization and culture. On the legal front it is a fight to secure to a neglected and forgotten sector of society—the prisoners—their fundamental rights granted under our Constitution to every citizen of the motherland—right to “justice, liberty and humanity” which have been propounded as the moving spirit behind the reformation of the offenders so that they are able to contribute their mite or increasing the social peace, prosperity and happiness and add to the human resources.

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