CHAPTER - I
INTRODUCTION

Liberty of person is one of the most precious rights of all human beings. In certain circumstances judicial authorities may decide that it is necessary to deprive some people of that right for a period of time as a consequence of the actions of which they have been contacted or of which they are accused. When this happens the persons concerned are handed over by the judicial authority to the care of the prison administration. They are described as prisoners.

The essence of imprisonment is deprivation of liberty and the task of the prison authorities is to ensure that this is implemented in a manner which is no more restrictive than is necessary. It is not the function of the prison authority to impose additional deprivations on those in its care. But infact prison institutions due to their malfunctioning and malpractices increase the severity of prisoner’s punishment to such an extent that their human rights get violated.

Prison system has a unique position in the society in which organizations compete either for economic resources or for the loyalty and support of group members. It is non competitive in the sense that no other organization challenges it directly (Grosser, 1968:11). Prison system is a closed or protected system. Members of the larger society (except for the relatives of the inmates, and official and non official visitors) have no direct stake in the prison in terms of ownership, goods, services or reciprocal relation of any kind. Thus, the prison is relatively protected from outside scrutiny. The prison system isolates criminals from general society so that they cannot commit crimes during certain period of times. Also, society wants retribution. The prison system is expected to make life unpleasant for people who, by their crimes, have made others lives unpleasant.
Finally, society wants to reduce crime rates. The prison system is expected to reduce crime rates not only by reforming criminals but also by deterring the general public from behavior which is punishable by imprisonment (Sutherland and Cressey, 1960:461). No society can be crime free and criminals are found in all age groups, among both sexes and in all strata of society. Apparently, the prison represents the worst of the social system (Clemmer, 1953:313, 14).

1.1 **Prison - Concept and Definition:**

The English word prison came from old French ‘prison’ and is a place in which people are physically confined and deprived of a range of personal freedoms.

A prison is a place for detention of under trials and convicted people who have committed on or the other crime or have acted against the prevalent laws of the country. The word ‘prison’ has been traditionally defined as a place in which persons are kept in custody pending trial or in which they are confined as convicts undergoing imprisonment.

The word 'Prison' has been derived from Latin language which means to ‘seize’.

Prison is used as an institution to treat the criminals as a deviant so that there should be lesser restrictions and control over him inside the prison.

Prison as defined in section 3 of Prison Act 1894, includes a police lock up or any place which has been declared by the state government by general or special order to be a subsidiary jail.

The term jail is a generic term which applies to penal institution housing both prisoners awaiting trial and prisoners who have been sentenced by judicial authorities. Consequently, the jail performs the function of remand institutions and prisons.
'Prison' also means any jail place used permanently or temporarily under the general or special orders of a local government for detention of prisoners and includes all buildings and lands appurtenant thereto, but does not include.

(a) Any place for the confinement of prisoners who are exclusively in custody of the police;\(^{10}\)

(b) Any place specially appointed by the local government under section 541 of the code of criminal procedure 1878\(^{11}\); or

(c) Any place which has been declared by the local government by general or special order, to be a subsidiary jail.

Other terms used for prison are penitentiary, correctional facility and jail. For most of the history in the western world imprisoning has not been a punishment in itself but rather a way to confine criminals until corporal or capital punishment was administered.\(^{12}\) (Crighton and Towl, 2008: 71)

It is on the record that Brashpati laid great stress on imprisonment of convicts system. Kautilya in his Arthshastra has stated that rules in ancient India made frequent use of fortresses to lodge their prisoners. It was a common practice to keep the prisoners in solitary confinements to offer them an opportunity of self introspection.\(^{13}\)

In Encyclopedia of Social Sciences (1826) in an article on prison architecture it has been emphasized, that the prison offers an effective method of exciting the imagination to a most desirable point of abhorrence. The persons in general, refer their horror of prisons to an instinctive feeling rather than to any accurate knowledge of the privations or inflictions. The exterior of a prison should therefore, be formed in the heavy and somber style which most frequently impresses the spectator with gloom and terror.\(^{14}\)
Thus prisons were designed to be a place where anti social individual could be reformed into a useful member of the society.\textsuperscript{15} Prisonization symbolizes a system of punishment and also a sort of invitational placement for under trials and suspects during the period of trail.

1.2 Human Rights - Meaning and Definition:

The expression 'human rights' is comparatively of recent origin. It has formally and universally become recognized only after the creation of the United Nations in 1945, which has as its main convert, reaffirmed "faith in the equal rights of men and women and of nations large and small ....."\textsuperscript{16} Broadly speaking human rights may be regarded as those fundamental and inalienable rights which are essential rights which are essential for life as a human being. Human rights are the rights which are possessed by every human being irrespective of his or her caste, creed, race, religion, sex and nationality. Human rights being the birth right are thus those rights which are inherent in our nature and without which we cannot live as human beings. On other words, human rights being eternal part of the nature of human beings are essential for all individuals to fully develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual, moral, physical, social and other needs.

Human rights are, therefore, those rights which belong to an individual as a consequence of being human. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. Because of their immense importance to basic rights they are the rights which cannot and must not be taken away by legislature or any act of the government and which are after set out in a constitution.\textsuperscript{17}
From the above description about human rights, it is pretty clear that human rights, whether recognized or not, belong to all human beings at all times and in all places. These are the rights which are solely by virtue of being human, irrespective of any distinction. It is the role of the state to uphold, promote and protect them in accordance with existing law of the land. Thus individuality, universality, paramountcy, practicability and enforceability are some of the important features of this crucial doctrine.

1.3 Punishment - Meaning and Definition

We use the word punishment to describe anything we think is painful; for example, we refer to a “punishing work schedule” or a “punishing exercise program.” We also talk of punishment in the context of parents or teachers disciplining children. However, in this discussion we will consider punishment in a particular sense. Flew argues that punishment, in the sense of a sanction imposed for a criminal offense, consists of five elements:

1. It must involve an unpleasantness to the victim.
2. It must be for an offense, actual or supposed.
3. It must be of an offender, actual or supposed.
4. It must be the work of personal agencies; in other words, it must not be the natural consequence of an action.
5. It must be imposed by an authority or an institution against whose rules the offense has been committed.

If this is not the case, then the act is not one of punishment but is simply a hostile act. Similarly, direct action by a person who has no special authority is not properly called punishment, and is more likely to be revenge or an act of hostility.

In addition to these five elements, Benn and Peters add that the unpleasantness should be an essential part of what is intended. The
value of this definition of punishment resides in its presentation of punishment in terms of a system of rules, and that it distinguishes punishment from other kinds of unpleasantness.\textsuperscript{19}

Another definition of punishment proposed by Garland is “the legal process whereby violators of criminal law are condemned and sanctioned in accordance with specified legal categories and procedures” (Garland 1990: 17).\textsuperscript{20} Here we will not discuss the punishment that takes place in schools, within families, or in other institutions, but instead will discuss forms of punishment that take place as the result of legal processes defined above.

1.4 Genesis of Punishment

Thinking about the issue of punishment gives rise to a number of questions, the most fundamental of which is, why should offenders be punished? This question might produce the following responses:

- They deserve to be punished.
- Punishment will stop them from committing further crimes.
- Punishment tells the victim that society disapproves of the harm that he or she has suffered.
- Punishment discourages others from doing the same thing.
- Punishment protects society from dangerous or dishonest people.
- Punishment allows an offender to make amends for the harm he or she has caused.
- Punishment ensures that people understand that laws are there to be obeyed.

Some of the possible answers to the question of why offenders should be punished may conflict with each other. This is because some answers are based on reasons having to do with preventing
crime whereas others are concerned with punishment being deserved by an offender. When a court imposes a punishment on an offender, it often tries to balance the sorts of reasons for punishment noted earlier, but sometimes certain purposes of punishment dominate other purposes. With the passage of time there have been shifts in penal theory, as well as in the purpose of punishment due to transition in politics, public policy, and social movements. Consequently, in a cyclical process, an early focus on deterrence as the rationale for punishment gave way to a focus on reform and rehabilitation. This, in turn, has led to a return to punishment based on the notion of retribution and just deserts.\textsuperscript{21}

1.5 Theories of Punishment

In the philosophical debate about punishment, two main types of theories of punishment dominate: \textit{utilitarian theory} and \textit{retributive theory}. These philosophical theories have in turn generated further theoretical discussions about punishment concerned with deterrence, retribution, incapacitation, rehabilitation, and more recently, restorative justice. Theories that set the goal of punishment as the prevention of future crime (deterrence) are usually referred to as \textit{utilitarian} because they are derived from utilitarian philosophy. Past oriented theories (theories that focus on the past actions of the offender) are referred to as \textit{retributivist} because they seek retribution from offenders for their crimes. The retributivist conception of punishment includes the notion that the purpose of punishment is to allocate moral blame to the offender for the crime and that his or her future conduct is not a proper concern for deciding punishment.\textsuperscript{22}

Theories of deterrence, retribution, just deserts, rehabilitation, incapacitation as well as the idea of restorative justice are briefly discussed below:
(a) **Deterrence Theory**

Deterrence theory proposes that offenders should be punished so that they will be taught that “crime does not pay” and thus will not to return to crime. Note that deterrence theory assumes that offenders are rational. Accordingly, efforts to increase the cost of crime—usually through more certain and severe penalties—will cause offenders to choose to “go straight” out of fear that future criminality will prove too painful. They will refrain from reoffending so as to avoid the cost of the criminal sanction.\(^{23}\)

The doctrine of deterrence asks a fundamental question about the relationship between sanctions and human behavior: Are legal and extralegal sanctions effective in reducing deviance and achieving conformity? Punishment is said to have a deterrent effect when the fear or actual imposition of punishment leads to conformity.\(^{24}\) The deterrent value of punishments is directly linked to the characteristics of those punishments. Specifically, punishments have the greatest potential for deterring misconduct when they are severe, certain, and swift in their application. Punishments are also widely assumed to be most effective for instrumental conduct (i.e., deliberate actions directed at the achievement of some explicit goal) and for potential offenders who have low commitment to deviance as a livelihood (e.g., the person is not a professional criminal).\(^{25}\)

Deterrence is based on a rational conception of human behavior in which individuals freely choose between alternative courses of action to maximize pleasure and minimize pain. From this classical perspective on crime and punishment, criminal solutions to problems become an unattractive option when the costs of this conduct exceed its expected benefit. Swift, certain, and severe sanctions are costs that are assumed to impede the likelihood of engaging in deviant behavior. From a deterrence standpoint, any type of punishment (e.g.,
monetary, informal, incapacitative, corporal) has a potential deterrent effect as long as it is perceived as a severe, certain, and swift sanction. The research literature on the effectiveness of criminal punishments outlines the four major types of deterrence, which include the following:

- **Specific deterrence** involves the effectiveness of punishment on that particular individual’s future behavior. Recidivism rates (e.g., rates of repeat offending among prior offenders) are often used to measure the specific deterrent value of punishments.

- **General deterrence** asks whether the punishment of particular offenders deters other people from committing deviance. A comparison of crime rates over time or across jurisdictions is typically used to ascertain the general deterrent value of punishment.

- **Marginal deterrence** focuses on the relative effectiveness of different types of punishments as either general or specific deterents. For example, if recidivism rates for drunk drivers are higher for those who receive monetary fines than those who received jail time, jail time would be rated higher in its marginal deterrent value as a specific deterrent for drunk driving. Similarly, debates about capital punishment often focus on the marginal deterrent value of life imprisonment compared to the death penalty as a general deterrent for murder.

- **Partial deterrence** refers to situations in which the threat of sanction has some deterrent value even when the sanction threats do not lead to law abiding behavior. For example, if a thief picked or “lifted” someone’s wallet rather than robbing them at gunpoint (because the thief was fearful of the more serious penalty for committing an armed robbery), the thief would be treated as a “successful” case of partial deterrence.
Similarly, tougher fines for speeding passed in a jurisdiction would serve as a partial deterrent under these two conditions: (1) the average motorist under the new law exceeded the speed limit by 5 miles an hour and (2) the average motorist under the old law exceeded the speed limit by 10 miles an hour. The average motorist is still exceeding the speed limit but he or she nonetheless is driving slower. When the philosophy of deterrence is used in the context of penal reform, it is often as a justification for increasing the severity of sanctions, particularly in Western developed countries. Legislative responses to terrorist attacks, drug trafficking, child abductions, and violent crimes on school property have been directed primarily at increasing the severity and/or duration of punishments (e.g., being a drug “kingpin” and participation in lethal terrorist attacks are now capital crimes under U.S. federal law). Although these greater punitive measures may serve to pacify widespread public demands to “get tough” on crime, the specific and general deterrent effect of such efforts is probably limited without attention to the other necessary conditions for effective deterrence (i.e., high certainty and high celerity of punishments).

- Empirical efforts to assess the effectiveness of deterrence are limited by several basic factors.
  
  o First, persons may abide by laws or desist in deviant behavior for a variety of reasons other than the looming threat or fear of legal sanctions. Some of these non-deterrence constraints on behavior include one’s moral/ethical principles, religious beliefs, physical inability to commit the deviant act, and lack of opportunity.
Second, neither swift nor certain punishment exists in most legal systems in the contemporary world. The majority of criminal offenses are typically unknown to the legal authorities and, even among the known offenses, only a small proportion result in an arrest and conviction. The typical criminal penalty and civil suits are often imposed or resolved months, if not years, after the initial violation.

Third, the severity of punishment actually received by offenders is often far less than mandated by law, due to the operation of such factors as plea bargaining, charge reductions, jury nullifications, executive clemency and pardons, and "good time" provisions. Under these conditions, it is unsurprising that the deterrent effect of criminal and civil sanctions has not been clearly demonstrated across a variety of contexts.

Deterrence theory thus provides a basis for a particular kind of correctional system. Punish the crime, not the criminal. This is done not to achieve retribution or just deserts but to reduce crime. Deterrence is a utilitarian theory; it is all about crime control. Punishments are to be fixed tightly to specific crimes so that offenders will soon learn that the state means business. Do the crime and you will do the time. No wiggle room allowed; no parole once sent to prison. Instead, the sentences served are to be determinate, not indefinite or indeterminate. Convicted offenders should be told at sentencing precisely how long they will spend in prison; once the sentence is imposed, no early release—the cost is carved in stone and not mitigated later on. Ideally, if prison sentences are going to be imposed, they should be made mandatory for everyone convicted of a crime. To stop the behavior, it is held, make the cost clear and
unavoidable: Possess an illegal firearm, sell drugs, rob a store, then it is automatically off to prison.  

(b) Retribution Theory  
Retribution is the theory that punishment is justified because it is deserved. Systems of retribution for crime have long existed, with the best known being the lex talionis of Biblical times, calling for “an eye for an eye, a tooth for a tooth, and a life for a life”. Retributionists claim a moral link between punishment and guilt, and see punishment as a question of responsibility or accountability. At the core of this theory is the mandate to pay an offender back for his or her wrongdoing. This attempt to “get even” is sometimes called “retribution” and sometimes called “just deserts.” Conservatives tend to favor the former term, liberals the latter. Why? Because conservatives wish to ensure that offenders feel the pain they have caused, they thus seek retribution. By contrast, liberals wish to make sure that offenders suffer no more than the pain they have caused; they want to see justice done but only that which is truly deserved. This distinction between retribution and just deserts is more than semantics—more than a war of words. Conservatives typically believe that retribution is achieved only when harsh punishments—especially lengthy prison terms—have been imposed, whereas liberals typically believe that just deserts is achieved through more moderate punishments and shorter prison sentences. Despite these differences, those in both political camps embrace the idea that the core purpose of the correctional system is to balance the scales of justice.  

Note, however, that “getting even”—this balancing the scales of justice through a figurative eye-for-an-eye approach—is unrelated to the goal of reducing crime and of making communities safer. Offenders are punished as an end in and of itself—to achieve justice. Such pain or punishment is seen as warranted or “deserved” because
the offender is assumed to have used his or her “free will” in deciding to break the law.\textsuperscript{30}

Retribution as a penal philosophy has been criticized on several fronts when it is actually applied in practice.

- First, strict retributive sanctions based solely on the nature of the offense (e.g., mandatory sentences for drug trafficking, the use of firearms in the commission of crimes) are often criticized as being overly rigid, especially in societies that recognize degrees of individual culpability and blameworthiness.

- Second, the principle of \textit{lex talionis} (i.e., the “eye for an eye” dictum that punishment should correspond in degree and kind to the offense) has limited applicability. For example, how do you sanction in kind acts of drunkenness, drug abuse, adultery, prostitution, and/or traffic violations like speeding?

- Third, the assumption of proportionality of punishments (i.e., that punishment should be commensurate or proportional to the moral gravity of the offense) is untenable in most pluralistic societies because there is often widespread public disagreement on the severity of particular offenses.\textsuperscript{1} Under these conditions, a retributive sentencing system that espouses proportional sanctions would be based on the erroneous assumption that there is public consensus in the rankings of the moral gravity of particular types of crime.

Even with these criticisms, however, the retributive principle of \textit{lex talionis} and proportionality of sanctions remains a dominant justification of punishment in most Western cultures. Retribution under a Judeo–Christian religious tradition offers a divine justification for strict sanctions and it clearly fits popular notions of justice (e.g., “he got what was coming to him”). The dictum of “let the
punishment fit the crime” also has some appeal as a principled, proportional, and commensurate form of societal revenge for various types of misconduct.\(^{31}\)

(c) Just Deserts Theory

Up until about 1970, criminologists generally thought of retribution as vengeance. During the 1970s, criminologists reconsidered the idea of retribution and advanced new formulations. By the 1980s, the new retributionist theory of just deserts had become influential.\(^{32}\) Importantly, the new thinking indicated that although there should continue to be treatment programs, a defendant would not ordinarily be incarcerated in order to receive treatment.\(^{33}\) This theory gained support as a reaction against the perceived unfairness of systems that favored treatment that had developed over the first half of the 20th century, especially the use of the indeterminate sentence. This form of sentence vested the power of determining the date of release to a parole board, and signifies the practice of individualized sentencing. The latter attempted to sentence according to the treatment needs of the offender, rather than the seriousness of the offense.\(^{34}\) One of the criticisms of indeterminate sentencing was the fact that the sentencing courts had a wide discretion in choosing a sentence, and although they tended to adopt tariffs for classes of crime, individual judges could depart from them without providing reasons. Among the retributivists, Kant argued that the aim of penalties must be to inflict desert, and that this was a “categorical imperative. By this he meant that inflicting what was deserved rendered all other considerations irrelevant.\(^{35}\) Just deserts proponents emphasize the notion that punishment should be proportionate; that is, there should be a scale of punishments with the most serious being reserved for the most serious offenses, and that penalties should be assessed according to the seriousness of the
offense. This is often called *tariff sentencing*. In this method of punishing, the offender’s potential to commit future offenses does not come into consideration, but his or her previous convictions are taken into account because most proponents of just deserts support reductions in sentence for first offenders. Desert theorists contend that punishment should convey blame for wrongdoing, and that blame is attached to offenders because they have done wrong. Consequently, the blameworthiness of the offender is reflected in the punishment imposed. Thus, advocates of desert focus on two dimensions only—the harm involved in the offense and the offender’s culpability. Von Hirsch enlarges on these two main elements, stating that, in looking at the degree of harm, a broad notion of the quality of life is useful because “invasions of different interests can be compared according to the extent to which they typically affect a person’s standard of living”. As to culpability, he suggests that the substantive criminal law, which already distinguishes intentional from reckless or negligent conduct, would be useful in sentencing law. Von Hirsch argues that a focus on the censuring aspect of punishment has coincided with a change in criminological thinking. Criminologists had previously regarded the blaming aspects of punishment as stigma that might create obstacles to the reintegration of the offender into the community and might also cause the offender to reinforce his or her own deviance, making him or her more likely to continue offending. Desert theorists now emphasize that responding to criminal acts with a process of blaming encourages the individual to recognize the wrongfulness of the action, to feel remorse, and to make efforts to refrain from such conduct in the future. In contrast, a deterrent punishment requires the individual to simply comply or face the consequences. The difference between the two approaches is that a moral judgment is required from the offender under just deserts that is not required under a purely deterrent punishment. Some critics
argue that just deserts theory leads to harsher penalties, but von Hirsch contends that the theory itself does not call for harsher penalties, and that sentencing schemes relying specifically on just deserts theory tend not to be severe.³⁷

The fundamental difficulty with deserts theory is that it lacks any principle that determines a properly commensurate sentence. Deserts are determined by a scale of punishment that fixes the most severe penalty. This might be imprisonment or death. It then determines ordinately proportionate penalties for lesser offenses. It follows that if imprisonment is the most severe penalty, then proportionality will provide shorter terms of imprisonment and noncustodial penalties for lesser offenses. If the term of imprisonment for severe offenses is moderate, then short sentences and penalties such as probation will soon be reached on the scale of seriousness. If the penalty for the most serious offenses is death, it follows that long terms of imprisonment will be proportionate penalties for less serious offenses. Many argue that retribution based on just deserts fails to account for the problem of just deserts in an unjust world. Just deserts theory ignores social factors like poverty, disadvantage, and discrimination, and presumes equal opportunity for all Zimring suggests that desert sentencing fails to take account of the fact that there are multiple discretions involved in the sentencing power. He points to the legislature that sets the range of sentences, the prosecutor who has the legal authority to select a charge, the judge as the sentencing authority, and the correctional authority, which is able to modify sentences after incarceration, as constituting a multiplicity of decisions and discretions that make the task of achieving just and proportionate sentences extremely problematic. Since prosecutors and legislators act under political influence and attempt to implement policies that reflect public opinion, the
sentencing process is not the monopoly of the trial judge, but is all too often an expression of varying perspectives based on periodic concerns about whether current philosophies reflect notions of being “tough on crime.”

(d) Rehabilitation Theory

Retribution and deterrence involve a process of thinking that proceeds from the crime to the punishment. However, rehabilitation is a more complex notion involving an examination of the offense and the criminal, and a concern for the criminal’s social background and punishment. In the rehabilitation perspective, the goal is to intervene so as to change those factors that are causing offenders to break the law. The assumption is made that, at least in part, crime is determined by factors (e.g., antisocial attitudes, bad companions, dysfunctional family life). Unless these criminogenic risks are targeted for change, then crime will continue. Thus, crime is saved—recidivism is reduced—to the extent that correctional interventions succeed in altering the factors within or very close to offenders that move them to commit crimes. The ultimate goal of rehabilitation is to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training. The salience of rehabilitation as a punishment philosophy is indicated by the contemporary jargon of “correctional facilities,” “reformatories,” and “therapeutic community” now used to describe jails, prisons, and other institutions of incapacitation. The link between places of incapacitation and reform is established throughout much of written history. The earliest forms incapacitative in their primary function, but some degree of moral and spiritual enlightenment was expected of those condemned to long periods of solitary confinement. This idea of restraint to reform is evident within the context of religious penance in Judeo–Christian practices in Western Europe and the
British colonies in North America and elsewhere. It is also manifested in U.S. history in the early development of reformatories and penitentiaries. These large-scale incarceration structures punished misguided youth and criminals by isolating them so they could reflect on their deviant actions, repent, and subsequently reform their behavior. Confinement and reflection for spiritual reform are also of central importance in the religious principles found in Hinduism and Buddhism. In contrast to retribution that emphasizes uniform punishments based on the gravity of the misconduct, rehabilitation focuses on the particular characteristics of individual offenders that require treatment and intervention. This individualized treatment approach is logically consistent with indeterminate sentencing structures that give judges enormous discretion to tailor punishments for the greatest good to the individual offender and provide parole boards with equally high discretion to release or retain offenders for future treatment. Through the application of current theories of human behavior and the latest therapeutic techniques for behavioral modification, rehabilitation experienced growing acceptance in many countries throughout much of the twentieth century. Even though “correctional” institutions continue to espouse the benefits of rehabilitation and specific treatment programs (e.g., drug treatment, anger management, job training), support for rehabilitation in the United States was dealt a major blow in the mid-1970s with publication of a report that concluded that rehabilitation efforts had no appreciable effect on recidivism. National fiscal restraints, declines in correctional budgets for program development, high public outcry for more severe and longer prison sentences, and a growing crime-control political ideology that focuses on suppression of criminal behavior rather than its early prevention are current conditions in Western societies that are largely antithetical to the ideas of treatment and rehabilitation.40
Further, those in favor of rehabilitation theories acknowledge the possibility of additional problems developing during the offender's sentence or treatment that may be unconnected with the offense and which may require an offender to spend additional periods in treatment or confinement. Utilitarian theory argues that punishment should have reformative or rehabilitative effects on the offender. The offender is considered reformed because the result of punishment is a change in the offender's values so that he or she will refrain from committing further offenses, now believing such conduct to be wrong. This change can be distinguished from simply abstaining from criminal acts due to the fear of being caught and punished again; this amounts to deterrence, not reformation or rehabilitation by punishment. Proponents of rehabilitation in punishment argue that punishment should be tailored to fit the offender and his or her needs, rather than fitting the offense. Underpinning this notion is the view that offenders ought to be rehabilitated or reformed so they will not reoffend, and that society ought to provide treatment to an offender. Rehabilitationist theory regards crime as the symptom of a social disease and sees the aim of rehabilitation as curing that disease through treatment. In essence, the rehabilitative philosophy denies any connection between guilt and punishment. Bean outlines the strengths of the rehabilitation position as being its emphasis on the personal lives of offenders, its treatment of people as individuals, and its capacity to produce new thinking in an otherwise rigid penal system. He suggests its weaknesses include an unwarranted assumption that crime is related to disease and that social experts can diagnose that condition; treatment programs are open-ended and do not relate to the offense or to other defined criteria; and the fact that the offender, not being seen as fully responsible for his or her actions, is capable of manipulating the treatment to serve his or her own interests. In addition, rehabilitation theory tends to see crime as
predetermined by social circumstances rather than as a matter of choice by the offender.\textsuperscript{41} This, it is said, denies the agency of the offender and arguably treats an offender in a patronizing, infantilizing way. Indeterminate sentences gave effect to the rehabilitative perspective because terms of imprisonment were not fixed at trial, but rather the release decision was given to institutions and persons operating within the criminal justice system, including parole boards, probation officers, and social workers. The notion of rehabilitation enjoyed considerable political and public support in the first half of the 20th century, but modern rehabilitationists now argue that fixed rather than determinant sentences should be the context for rehabilitation. They argue that with indeterminate sentences, offenders become preoccupied with their likely release date, and this leads to their pretending to have made more progress in treatment than is really the case.\textsuperscript{42}

The demise of rehabilitation as a theory of punishment began in the 1970s and was the result of a complex set of factors, one of which was a much quoted article by Martinson who argued that “nothing works”; that is, that no treatment program works very successfully in preventing reoffending, and that no program works better than any other. Martinson later attempted to rectify this pessimistic view of rehabilitation and treatment by acknowledging that some programs work, sometimes, for some types of offenders. Nevertheless, from that point on, policy makers and legislators abandoned rehabilitation as an objective of punishment. By the 1980s, the retributionist theory of just deserts had become the most influential theory of punishment. Nowadays, rehabilitationists contend that their rationale for punishment is the only one that combines crime reduction with respect for an offender's rights. According to this view, although capital punishment and long terms of imprisonment may deter and
will certainly incapacitate, rehabilitation can be accomplished only if criminals re-enter society; consequently extreme punishments should be ruled out. Rotman for example, argues in favor of a “right’s oriented rehabilitation,” which accepts the offender’s liability to receive punishment but claims a corresponding right on his or her part to “return to society with a better chance of being a useful citizen and staying out of prison.” This perspective is often termed “state-obligated rehabilitation,” and contends that if the state assumes the right to punish, it should ensure that no more harm is inflicted than was intended when the sentence was pronounced. That is, the intent of the prison sentence is deprivation of liberty and not loss of family ties or employability. Rotman, for one, argues that a failure to provide rehabilitation amounts to cruel and unusual punishment.43

(e) Incapacitation Theory

A primary utilitarian purpose for punishment involves various actions designed to decrease the physical capacity of a person to commit criminal or deviant acts. This principle of incapacitation focuses on the elimination of individuals’ opportunity for crime and deviance through different types of physical restraints on their actions. The conditions of confinement may be so deplorable that they reduce the offender’s subsequent desire to engage in misconduct, but such a deterrent effect is not a necessary component of incapacitation in its pure and earliest form. In other words, a night in the “drunk tank,” confinement in the military stockade, or the “grounding” of a wayward adolescent are often considered useful incapacitative strategies even when these practices do not lead to subsequent reform in one’s behavior. A plethora of devices, techniques, and structures have been used throughout history as means for incapacitation. The early tribal practices of banishment to the wilderness, the English system of “transportation” of convicts to other
colonies in the seventeenth and eighteenth centuries, the exile of citizens in ancient Greek society, and political exile in more modern times are examples of incapacitative sanctions because they involve the physical removal of persons from their former communities, thereby restricting their physical opportunity for misconduct in the original setting. The stocks and pillory in English history and Colonial America were devices used for both public ridicule and incapacitation. Other types of incapacitating hardware are as diverse as electronic shackles for monitoring offenders in open spaces, Breathalysers that prevent drunk drivers from starting their cars, “kiddie harnesses” to restrict the movement of young children in public places, and chastity belts for limiting sexual promiscuity. The function of incapacitation may also be served by other types of legal and extralegal restrictions on one’s behavior. Other legal forms of incapacitation involving civil or administrative decrees include court-ordered injunctions, federal boycotts and restraint-of-trade agreements, restraining orders in domestic violence cases, cease-and-desist orders, revocations of licenses, foreclosures, and the passage of certification requirements to perform particular tasks (e.g., college degree requirements for teaching, passing medical board and bar exams for practicing medicine or law). Many of these actions are economic sanctions in that they carry financial consequences for those involved, but these civil and administrative rules can also be seen as incapacitative in that they place physical restrictions on one’s possible actions. Ostracism, the spreading of adverse publicity, “lumping” (i.e., doing nothing and not responding to one’s inquiries), and censorship are some of the extralegal and informal means of physically restricting one’s behavioral opportunities. The most widely known type of incapacitation involves some form of incarceration, or what others have termed “penal bondage”. Aside from their incapacitative effect on restricting immediate criminal opportunities,
penal bondage of criminals, vagrants, debtors, social misfits, and other disadvantaged groups across time periods and geographical contexts has often included a component of forced labor (e.g., public works projects, forced servitude in military campaigns) as a condition of confinement. Physical structures for incapacitation may have different purposes or functions besides the physical restraint of the body. These places of confinement are described across time and space in context-specific terms like dungeons, towers, workhouses, gulags, jails, prisons, labor camps, "readjustment" centers, correctional or treatment facilities, cottages, sanitariums, and mental institutions. The specific language used for descriptive purposes also signifies their functions beyond physical incapacitation. During the last half century, several new forms of incapacitation have emerged. For example, shock incarceration programs involve short-term incarceration of juvenile offenders to show them the pains of imprisonment and scare them into a future life of conformity. Work release programs and placement in halfway houses are temporary incapacitation programs designed to maintain community ties and ease the adjustment from prison to conventional life. Another variant of incapacitation, intensive-supervision probation (ISP), leaves adjudicated criminals in their community but under the watchful eye of probation officers or other legal authorities. The recent model of selective incapacitation in the United States is designed to target criminal offenders thought to have the greatest probability of repeat offending and place greater restraints on the nature and conditions of confinement for these "high-risk" offenders. Although research suggests that a small pool of people commits the predominant share of violent and property crime, efforts to successfully predict these high-risk offenders suffer from numerous ethical and practical problems, including high rates of both "false positives" (i.e., falsely labeling someone as a high-risk offender) and "false negatives" (i.e.,
releasing high-risk offenders because they were erroneously characterized as low-risk).

Contrary to early historical patterns of incapacitation that emphasized the reduction of the physical opportunity for crime and deviance, modern versions of this philosophy are more “forward-looking” in terms of focusing on the utility of punishments for changing offenders’ criminal motivations once they are no longer physically restrained from committing deviance. In this way, incapacitation is united with other utilitarian philosophies for punishment. Different types of incapacitative sanctions may serve as the initial framework for establishing successful programs of deterrence and rehabilitation.44

Morris argues that sentences intended to incapacitate an offender ought to be permitted only where there exists reliable information showing a high probability of future offending. Morris suggests that taking account of dangerousness in the future should be considered to be statements about an offender's present condition and not as a prediction of future conduct. Some of the problems inherent in incapacitative sentencing include the following:

- It works only if we lock up those who would have committed further offenses if they had been left free;
- If those we lock up are not immediately replaced by new recruits; or
- If the crimes committed after release are not so frequent or serious so as to negate the effects of the crimes prevented through incapacitative sentencing. Ethical questions that arise from the sentencing rationale of incapacitation include (also see Travis 2002):
  - Is it ethical to punish persons for crimes not yet committed?
• Is it ethical to base punishment on inaccurate predictions?
• Is it ethical to punish a repeat offender for a past crime he or she committed and has already been punished for?\(^{45}\)

(f) **Restorative Justice**

One of the most recent goals of punishment derives from the principles of restoration. As an alternative to other punishment philosophies (e.g., retribution, incapacitation, rehabilitation), restorative justice fundamentally challenges our way of thinking about crime and justice. The global victims’ rights movement is a relatively new phenomenon, but, the general roots of restorative justice can be traced back to the early legal systems of Western Europe, ancient Hebrew justice, and precolonial African societies. Restorative justice literally involves the process of returning to their previous condition all parties involved in or affected by the original misconduct, including victims, offenders, the community, and even possibly the government. Under this punishment philosophy, the offender takes full responsibility for the wrongdoing and initiates restitution to the victim. The victim and offender are brought together to develop a mutually beneficial program that helps the victim in the recovery process and provides the offender a means of reducing their risks of re-offending. The theory of reintegrative shaming developed by John Braithwaite is based on the principles of restorative justice. Offenders take personal responsibility for their actions and condemnation is focused on the deviant act, rather than the offender, and its impact on the victim and the community. Both the offender and the community need to be reintegrated as a result of the harm caused by the criminal behavior. Community mediation groups, neighborhood councils, local support groups, and victim-offender conferences are the primary means of achieving these restorative efforts. The principles of restorative justice have been
applied to the study of both criminal and civil sanctions. For example, the institutionalized practice of “written apology” and “letter of forgiveness” in the Japanese criminal justice system is designed to express remorse and make restitution. By accepting the apology, the victim forgives the offender.46

Restorative justice is both non-utilitarian and utilitarian. It is non-utilitarian because there is an overriding concern for achieving justice in and of itself. In this case, the justice is not, as it is in retribution or just deserts, adversarial with the goal of inflicting pure harm on the offender. Think of Lady Justice with her scales tilted downward on one side. In retribution, the scales are balanced by pulling the offender down by having the individual experience pain—arrest, public stigmatization, prison, continued exclusion by the community. By contrast, in restorative justice, the scale tilted downward is pushed back up—restored to its previous position. The goal is thus to motivate offenders to admit their wrongdoing, apologize to victims, and take steps to compensate victims and the community for the harms suffered. The response of others is to hate the sin—it is condemned and shamed—but to love the sinner, if not literally, then at least in the sense of making reintegration possible. Restoration, not retribution—getting everyone back to normal, not getting even—is the goal.

Restorative justice is utilitarian, however, because it claims that its approach of harm reduction is more likely to lower recidivism than the typical correctional response. In fact, advocates of restorative justice wish to take offenders out of the traditional justice system, using prisons only as a sanction of last resort. They prefer to create a parallel justice system that is devoid of judges, prosecutors, defense attorneys, probation officers, and so on. Instead, when a crime occurs, the plan would be to have a “facilitator” call for a
“restorative justice conference”. At this conference, multiple parties will be convened: the offender, the offender’s family members, people from the community who know and will support the offender, the victim, and his or her kin and supporters. The victim’s story, including harm experienced, will be told, and the offender will feel remorse and apologize. Guided by the facilitator, the group will develop a plan for restitution and for using members of the family and the community to build relationships with the offender so as to make recidivism unlikely.47

In considering the nature of a restorative justice approach to offenders, it is useful to note the three core principles suggested by Van Ness and Strong.

1. Justice requires the healing of victims, offenders, and communities injured by crime.
2. Victims, offenders, and communities should be permitted to actively involve themselves in the justice process in a timely and substantial manner.
3. Roles and responsibilities of the government should be rethought and in its promotion of justice, government should be responsible for preserving a just order and the community should be responsible for establishing peace. Restorative justice may be considered unique in its emphasis on not just one component of the criminal justice system such as punishment, but as incorporating victims, offenders, and the community in its strategies and designs.48

1.6 Prison and Imprisonment

Incidentally it may be mentioned that the terms prison and imprisonment receive wider connotations. Prison includes any place notified as such for detention purpose. Stone walls and iron bars do
no make a prison. Also stone walls and iron bars are not a sine qua non to make a jail. Open jails are capital instances. Any life under the control of State, whether within high walls or not, may be a prison if the law regards it as such. Restraint on freedom under the prison law is the test. Licensed release where instant recapture is sanctioned by the law and likewise parole, where parolee is not a free agent, and other categories under the invisible fetters of prison law may legitimately be regarded as imprisonment.

(i) **Prisoner**: 'Prisoner' means any person duly committed to prisons custody by a court or authority exercising civil, criminal or revenue jurisdiction, or by a Court-martial and includes a person detained in prison.

(ii) **Criminal Prisoner**: According to S. 3 (2) of the Prison Act, 1894 'Criminal Prisoner' means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of court-martial.

(iii) **Convicted Prisoner**: According to S. 3 (3) of the Prison Act, 1894 'Convicted Prisoner' means any criminal prisoner under sentence of a court or court-martial, and includes a person detained in prison under the provisions of the of the Code of Criminal Procedure or under the Prisoners Act, 1900.

(iv) **Civil Prisoner**: According to S. 3 (4) of the Prison Act, 1894 'Civil Prisoner' means any prisoner who is not criminal prisoner.

(v) **Under-trial Prisoner**: A person who has been committed to prison custody with pending investigation or trial by a competent authority. In the present research convict prisoners are chosen as respondent. The reformation process of convict
prisoner has been studied. Because there are no reformative or rehabilitative measures adopted on undertrial prisoners or civil prisoners. They are the part of recreational activities but no separate method for their reformation is adopted by prison administration.

1.7 Reformation and Rehabilitation of Prisoners

Reformation, in criminal law the act of bringing back a criminal to such a sense of justice, so that he may live in society without any detriment to it. The object of the criminal law ought to be to reform the criminal, while it protects society by his punishment. One of the best attempts at reformation is the plan of solitary confinement in a penitentiary. While the convict has time to reflect he cannot be injured by evil example or corrupt communication.

"Reform" here refers to reform of the individual, not the reform of the penal system. The goal is to "repair" the deficiencies in the individual and return them as productive members of society. Education, work skills, treating others with respect, and self-discipline are stressed. Younger criminals who have committed fewer and less severe crimes are most likely to be successfully reformed. One criticism of reformation is that criminals are rewarded with training and other items which would not have been available to them had they not committed a crime. However, it must be noted that criminals or potential criminals who do not have access to such educational resources are only acting in their best interests by gaining access to these prisons; if a prison is successful at providing resources to individuals who were unable to get these resources through "acceptable" channels, then perhaps what would be next needed, in the implementation of this model, is societal reform.

The process that one follows is as important as the results that are produced by the process. Without understanding the underlying
process, it is difficult to know how a certain set of results were achieved, or why they were good or bad. So, if results are viewed as the "destination", then process can be viewed as the "vehicle" that gets you there (and ideally, you should be able to use the same "vehicle" for many trips...with a few modifications based on the desired destination!)

The life of any prisoner not only limited inside the prisoner. His life starts from the day when he breaches the law, he commits the crime. After his arrest, he termed as undertrial prisoner. If he found guilty then he convicted, and sentenced for punishment. Then his life as convicted prisoner begins. In prison all reformatory treatment administered on him. But reformation procedure does not ends here, it continued till his rehabilitation in society. The present research made about the prisoner's life begins from the offence he made and continued till his rehabilitation in society. The process of reformation begins from the circumstances of offences, his attitude towards the correctional treatment and his chances of rehabilitation in society.\textsuperscript{49}

1.8 Characteristics of Prison

1. The chief characteristic of prison system is, it has a unique position in the society in which organizations compete either for economic resources or for the loyalty and support of group members. It is non-competitive in the sense that no other organization challenges it directly.

2. Another characteristic of prison system is, it is relatively an isolated social system. It is a structure composes of a ruling caste and a subordinate caste. The term caste is more appropriate here, however, since there is no possibility of vertical mobility across caste lines in the prison and unlike organizations of a bureaucratic type, the two castes do not share any over-all primary goal through co-operative participation in production.
3. Another special feature of prison system is that it is a closed or protected system. Members of the larger society (except for the relatives of the inmates and official 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.

4. The use of force is another characteristic 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 steel is a directly felt prison experience. As time turns the thumbscrew of that square down closer on the mind, the pain may express itself in a physical sensation. When, as often happens, the isolated inmate beats his own head and hands against the walls, the bloody results cannot be easily distinguished from brutality.

5. Another characteristic of this authoritarian system is regimentation and de personalization. Life goes on in an absolutely unchanging routine.

6. An additional characteristic of the incorrigible unit (prison) is the ever present eye of authority.

7. An equally important characteristic is the unresponsiveness of the governing authority.

8. A final authoritarian characteristic of the prison system is uncertainly and indefiniteness.

1.9 Importance of prisons

In every democratic society, prison has a unique role as a formal agency of the criminal justice system. The purpose of imprisonment as a punishment is plain enough - the person who has
committed a wrong must suffer in return. The state through the prison is entitled if not morally obligated to hurt the individual who has broken the criminal law. Since a crime is by definition a wrong committed against the state. Imprisonment should be punishment, not only by depriving the individual of his liberty, but by imposing a kind of painful condition under which the prisoner must live within the walls. Today prisons serve main three purposes, which may be described as custodial, coercive and correctional. A prison as a place of correction historically is developing and new in conception. Earlier prisons served only the custodial function, where an alleged offender could be kept in lawful custody until he could be tried and if found guilty punished. The Digest of Justanian, in Roman law established the custodial principle with the statement that “a prison is for confinement, not for punishment” and in countries that followed Roman law the principle that imprisonment was not a legal punishment was dominant for many years. In England also the High Court judges went out to “deliver the gaols” - to clear them not to fill them. The prisons of the middle ages were, therefore, concurred only with holding prisoners awaiting trial. Penal institutions were chiefly dungeons or detention rooms in secure parts of castles or city towers, used to detain prisoners awaiting trial or execution of sentence. The punishments imposed were torture, banishment, exile, death, branding, mutilation, but never imprisonment.51

The coercive function means that imprisonment may be used to persuade a person to comply with an order made by the court of law, whether civil or criminal; if he complies, he is released. The first use of the prison in this way was against convicted offenders, mostly for juveniles, “sturdy beggars”, vagabonds and prostitutes. This function
is still active in England, since those committed for non-payment of fines or debts or for contempt of court may secure release by paying what they owe or purging their contempt.\textsuperscript{52}

The purposes of prison is protection of the community, supply of food, clothing, shelters to convicted criminals, and protection of inmates from each other and from persons in the outside community, imposition of punishment and rehabilitation of criminals. These purposes are assigned by outsiders and are shared by institutional personal, although some of them are logically contradictory. A complex division of labour is established to attempt their achievement, and each of the purposes is achieved to some extent by the people whose institutional behaviour is patterned by the roles that make up the division of labour. The three principal sections in this division of labour are a hierarchy of custodial ranks, an industrial hierarchy, and a social welfare agency-and they are devoted to keeping inmates, using inmates and serving inmates.\textsuperscript{53}

The prisons, during the last three centuries or so have 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 process where death penalty, banishment, or life transportation may be the verdict. Rather, the institution of prison has imbibed and is influenced by the conventional norms, ideals and assumptions of humanitarianism, enlightenment and the welfare state. It not only carries the bearings of the ideals of the period, but is also impregnated with the expediencies of organizational science.\textsuperscript{54}

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 the stage of social, political and economic development. It reacts to and is acted upon by the society as various struggle to advance their interests.\textsuperscript{55}
1.10 The Purposes of Imprisonment

1. Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. The use of imprisonment as a direct punishment of the court was introduced to Western Europe and North America in the 18th century. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture.

2. Over the years there has been a lively debate, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety.

3. In practical terms, the purposes of imprisonment will be interpreted as a combination of some or all of these reasons.
The relative importance of each one will vary according to the circumstances of individual prisoners. However, a more and more widely held opinion is that prison is an expensive last resort, which should be used only when it is clear to the court that a non-custodial sentence would not be appropriate.

4. The detention of individuals who are awaiting trial is a matter of special concern. Their situation is quite distinct from that of people who have been convicted of an offence. They have yet to be found guilty of any offence and are therefore innocent in the eyes of the law. The reality is that they are often held in the most restricted conditions, conditions that in some cases are an affront to human dignity. In a number of countries, the majority of people who are in prison are awaiting trial. The proportion sometimes is as high as 60 per cent. There are particular problems with the way pre-trial prisoners are treated and when the access that they have to lawyers and to their families is determined not by the prison authorities, but by another authority, such as the prosecutor.56

1.11 Prisons in India

Prisons in India, and their administration, is a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. Day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950. An Inspector General of Prisons administers prison affairs in each state and
The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.

The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down 3 broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration.

Prison establishments in India comprise of 8 categories of jails. The most common and standard jail institutions are Central Jails, District Jails and Sub Jails. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails and Special Jails. Some of the Important Jails are discussed below:

(a) Central jail

The criteria for a jail to be categorised as a Central Jail varies from state to state. However, the common feature observed throughout India is that prisoners sentenced to imprisonment for a long period (more than 2 years) are confined in the Central Jails, which have larger capacity in comparison to other jails. These jails also have rehabilitation facilities. Maharashtra and Tamil Nadu have the highest number of 9 Central Jails each followed by Karnataka, Bihar, Madhya Pradesh, Rajasthan and Delhi with 8 each. Arunachal Pradesh, Meghalaya, Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep do not have any Central Jails.
(b) **District jail**

District jails serve as the main prisons in States/UTs where there are no Central Jails. States which have considerable number of District Jails are Uttar Pradesh (53), Bihar (30), Maharashtra and Rajasthan (25 each), Madhya Pradesh (22), Assam (21), Jharkhand (17), Haryana and Karnataka (15).

(c) **Sub jail**

Sub jails are smaller institutions situated at a sub-divisional level in the States. Ten states have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These states are Maharashtra (172), Andhra Pradesh (96), Tamil Nadu (94), Madhya Pradesh (92), Karnataka (74), Odisha (66), Rajasthan (60), West Bengal (31), Kerala (29) and Bihar (16). Odisha had the highest capacity of inmates in various Sub-Jails. 8 States/UTs have no sub-jails namely Arunachal Pradesh, Haryana, Manipur, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi.

(d) **Women jail**

Women jails are exclusively used for women prisoners, although women may also be imprisoned in other jails. They exist only in 12 States/UTs. Tamil Nadu and Kerala have 3 women jails each and Andhra Pradesh, Rajasthan & West Bengal have 2 women jails each. Bihar, Maharashtra, Odisha, Punjab, Tripura, Uttar Pradesh and Delhi have one women jail each. The total capacity of women inmates was highest in Tamil Nadu (1,569).

(e) **Borstal School**

Borstal Schools are a type of youth detention center and are used exclusively for the imprisonment of minors or juveniles. The primary objective of Borstal Schools is to ensure care, welfare and rehabilitation of young offenders in an environment suitable for
children and keep them away from contaminating atmosphere of the
prison. The juveniles in conflict with law detained in Borstal Schools
are provided various vocational training and education with the help
of trained teachers. The emphasis is given on the education, training
and moral influence conducive for their reformation and prevention
of crime.

Ten States namely, Andhra Pradesh, Haryana, Himachal
Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab,
Rajasthan and Tamil Nadu have borstal schools in their respective
jurisdictions. Tamil Nadu had the highest capacity for keeping 667
inmates. Haryana and Himachal Pradesh are the only states that have
the capacity to lodge female inmates in 3 of their Borstal Schools.
There are no borstal schools in any of the UTs.

(f) Open jail

Open jails are minimum security prisons. Prisoners with good
behaviour satisfying certain norms prescribed in the prison rules are
admitted in open prisons. Prisoners are engaged in agricultural
activities.

Fourteen states have functioning Open Jails in their
jurisdiction. Rajasthan reported the highest number of 23 open jails.
There are no Open Jails in any of the UTs.

India has 1,328 correctional facilities, of which 27 are open
prisons. Open prisons, in one form or another, have existed in India
for almost half a century. They have developed differently in different
states, but prison authorities have always used prison labor in
agricultural and other work outside the prison. Open prisons in India
can be broadly classified into three categories:

- Open farms, where inmates do farming and agricultural work
  assigned to them and live in open areas with other eligible
  inmates.
• Open farms, where inmates do farming and agricultural work assigned to them and live in an open farm area with their families and the families of other eligible inmates.

• Open camps, where inmates work their own trades and occupations, build their own homes and live with their families.

The advantages of open prisons in India are both practical and philosophical. From a practical standpoint, they are less costly than traditional prisons and often profitable for the state. They could help reduce crowding since they are relatively easy to establish and require few staff. Philosophically, open prisons are more humane and reduce the time inmates spend in locked rooms. They are much more effective in keeping families together and help give offenders a sense of social responsibility. According to a Rajasthan State Human Rights Commission on jail reforms chaired by Justice A.N. Mulla in the early 1980s, the open prison gives inmates an effective exercise in self-reliance, cooperation and community living in a family atmosphere. The commission recommended that each state in India develop an institution such as Sanganer. The commission noted that the purpose of an open camp is to:

1. Minimize the damage of punishment;
2. Let the community see the offender at close quarters;
3. Lay bare an offender's day-today behavior to reveal that not every person who has committed a crime is hardened, vicious and unrelenting;
4. Hand responsibility back to the offender;
5. Demonstrate that the presence of family has a moderating effect on the offender; and
6. Show that offending, punishing, restoring and compensating are all part of the social process.
PRI, which has studied the open prisons in India and supports them, lists the following limitations

1. Open prisons are likely to succeed only in societies where the family has a role to play;

2. They have limited success with female offenders. Whereas a man's family is happy to unite with him, in a female offender’s case, the family in all likelihood would rather abandon her;

3. Open camps can only succeed if they are well explained to the public and the community, which is becoming increasingly vindictive as tension and terror increases in society; and

4. Victims and their families feel outraged by such measures, which are seen as "soft" options.  

(g) Special jail

Special jails are high security facilities that have specialized arrangements for keeping offenders and prisoners who are convicted of terrorism, insurgency and violent crimes. Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners which are broadly as follows:

- Prisoners who have committed serious violations of prison discipline.
- Prisoners showing tendencies towards violence and aggression.
- Difficult discipline cases of habitual offenders.
- Difficult discipline cases from a group of professional/organized criminals.

Kerala has the highest number of special jails - 9. Provision for keeping female prisoners in these special jails is available in Tamil Nadu, West Bengal, Gujarat, Kerala, Assam, Karnataka and Maharashtra.  

58
(h) Other jails

Jails that do not fall into the categories discussed above, fall under the category of Other Jails. Three states - Goa, Karnataka & Maharashtra - have 1 other jail each in their jurisdiction. No other state/UT has an other jail. The capacity of inmates (male & female) reported by these three States in such jails was highest in Karnataka (250) followed by Goa (45) and Maharashtra (28).\(^59\)

1.12 Prisoner: Concept and Types of Prisoners

A prisoner, also known as an inmate, is a person who is deprived of liberty against their will. This can be by confinement, captivity, or by forcible restraint. The term applies particularly to those on trial or serving a prison sentence.\(^60\) Any person confined in prison under the order of a competent authority.\(^61\)

At the time when reaction to crime was purely punitive, there was no need for classifying prisoners and all of them were flocked together in a single prison. This system of singular treatment of criminals, however turned the prisons into a living hell on earth with all sorts of vices. The sole object of prisonisation in those days was to subject the inmates to maximum torture and pain and therefore there was no need to classify them. With the evolution of penal science during the late eighteenth and early nineteenth century, the offenders were classified into different categories according to their sex, age and gravity of offence. Even at this time, objective approach to prisoners was not known. It was towards the end of 19\(^{th}\) century that the idea of individualization of prisoners drew attention of penologists and this principle has since then been firmly established into practice. Individualisation of offender as a method of rehabilitation has now become the cardinal principle of modern penology. Evidently in the changed circumstances the earlier
classification of criminals on the basis of their physical differences serves no useful purpose. Therefore modern penologists have worked out an objective classification of prisoners according to differential treatment. In spite of being lodged in maximum security prisons, the modern prisoners are placed in quasi-penal and even non-penal institutions for their reformation. The prisoners are now classified according to the treatment to which they are likely to respond to most favourably. In the modern context, social-defence, namely the protection of society from criminals is the prime object of punishment while classification of prisoners for treatment is the method of it. To achieve this end the criminals are classified in to two broad categories, viz, (1) hardened criminals who are fit for treatment in a conventional jail, and (2) casual criminals, who are fit for treatment in a medium-custody jail or even fit to be sent to Borstal or Reformatory or released on probation.\textsuperscript{62}

Under the present correctional system in United States the task of classifying inmates for their rehabilitation is performed by the following agencies:-

(1) The Central Classification Centre;

(2) The Classification Committee; and

(3) The Reception Centre.

All the convicted persons are first brought before the Central Classification Centre where their antecedents, past history and mental attitude etc. are thoroughly examined by the expert psychologists and psychiatrists. If in the opinion of these experts the inmate is considered responsive to reformation, he is sent to an appropriate correctional institution as recommended by the Central Classification Centre.
There is a Classification Committee associated with each correctional institution which decides the outline of treatment programme for individual inmate according to his mental attitude, psychology and possible reaction to the treatment.

The Reception Centre at each Correctional Institution, on the other hand, receives the new inmate on a trial basis for a month or so and plans to prepare him for his subsequent stay in the institution. Thus the major function of Reception Centre according to Donald Traft is “inmate-orientation through group meetings, pictures booklets and interviews”.

If this pattern of classification of prisoners is adopted in India, the prison authorities may find it easy to tackle the problems of prison and prisoners and at the same time it may also accelerate the reformation of prisoners.63

Prison inmates lodged in Indian jails are categorised as Convicts, Undertrials and Detenues. A convict is "a person found guilty of a crime and sentenced by a court" or "a person serving a sentence in prison". An undertrial is a person who is cu Indian jails in relation to non-Indian Penal Code (IPC) crimes are classified as civil prisoners. They consist of Convicts and Undertrials.64

The Prisons Act 189465 talks about the following types of prisoners:-

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

Section 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 a 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) Civil prisoners shall be kept apart from criminal prisoners.

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.

Solitary confinement. – No cell shall be used for solitary confinement unless it is furnished with the means enabling the prisoner to communicate at any time with an officer of the prison, and ever prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

Prisoners under sentence of death. – (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by the 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.

Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be places by day and by night under the charge of a guard.
Prison inmates lodged in various jails are categorised as Convicts, Undertrials and Detenues. This population can also be further classified on other parameters such as Gender, Nationality, Mental health etc. 3) Unconvicted criminal prisoners shall be kept apart from convicted prisoners;

**Convicts**

Madhya Pradesh has accounted for the highest number of convicted prisoners (14,391) at the end of 2005 among the States & UTs. Other States which had considerably large number of convicts were Uttar Pradesh (13,284), Maharashtra (9,229), Tamil Nadu (7,463), Bihar (5,609), Rajasthan (5,572), Jharkhand (5,294), Punjab (5,072), Andhra Pradesh (5,011), Haryana (4,793), Gujarat (4,445), Chhattisgarh (4,299), Orissa (4,196) and Karnataka (4,049). The Open Jails located in Maharashtra have reported higher number of convicts (559) followed by Rajasthan (410), Uttaranchal (304), Andhra Pradesh (290) and Kerala (262). The number of convicts kept in Special Jails was highest in Orissa (312) followed by Uttar Pradesh (266) and Assam (194).

**Undertrials**

The highest number of undertrial prisoners in various jails during the year 2005, was reported from Uttar Pradesh (43,078) followed by Bihar (40,019), Madhya Pradesh (16,991), Maharashtra (15,946), West Bengal (14,017) and Jharkhand (13,939). Other States which have also reported high number of undertrials in their jails are Delhi (9,791), Orissa (9,720), Andhra Pradesh, Haryana (7,717) and Rajasthan (7,363). 66

**Detenues**

Tamil Nadu has reported the highest number of Detenues (827) kept in various prisons. Tamil Nadu has reported 40 female detenues
in their Jails which was the highest among all the States and UTs.

**Other Classifications of Prisoners:**

The apex Court in Ramamurthy Vs. State of Karnataka (1996) brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and has directed the Central and State Governments to formulate a new Model Prison Manual. Earlier, the All India Committee on Jail Reforms (1980-83) had also emphasized the need for a consolidated law on prisons. Accordingly, with the approval of Ministry of Home Affairs, the Bureau of Police Research and Development constituted a Model Prison Manual Committee at the national level for the formulation of a Model Prison Manual. This model Prison Manual lays down the following kinds of prisoners.

**Adolescent Prisoner**

Any person a) as who have been convicted of any offence punishable with imprisonment, or who having been ordered to give security under section 117, Code of Criminal Procedure, 1973 (Central Act 2 of 1974) has failed to do so and who at the time of such conviction or failure to give security, is not less than 18 years, but not more than 21 years of age. b) who has been committed to prison custody during the pendency of his trial and who at the time of commitment, is not less than 18 years, but not more than 21 years of age.

**Adult Prisoner**

Any prisoner who is more than 21 years of age.

**Casual Prisoner**

A convicted criminal prisoner other than a habitual offender.

**Civil Prisoner**

Any prisoner who is not committed to custody under a writ,
warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court martial and who is not a detenue.  

**Convict**

Any prisoner under sentence of a court exercising criminal jurisdiction or court martial and includes a person detained in prison under the provisions of chapter VIII of the Code of Criminal Procedure of 1973 and the Prisoners Act of 1900.

**Detenue**

Any person detained in prison at the order of the competent authority under the relevant preventive laws.

**Habitual Offender**

A prisoner classified as such in accordance with the provisions of the law or rules.

**Inmate**

Any person kept in an institution.

**Military Prisoner**

A prisoner convicted by court martial.

**Remand Prisoner**

A person who has been remanded by court to prison custody, pending investigation by the police.

**Under-Trial Prisoners**

A person who has been committed to prison custody with pending investigation or trial by a competent authority.

**Young Offender**

A person who has attained the age of 18 years and has not attained the age of 21 years.
1.13 Review of Literature

The available literature on prisons and human rights includes various books, articles and research papers appearing in different periodicals. A brief review of the same is given below:

H.S. Sandhu\textsuperscript{70} in his book "A study on Prison Impact" (1968) tried to analyse statistically the effects of short term imprisonment on inmates. The author, in his first sample of two hundred convicts of District jail, faridkot found that a prison, the prisoner's hostility in the prison increases towards police, the convicting Court, warders and the witness who deposed against them. He also observed increase in their delinquency potential and held that a prisoner gets more eritied in his values during incarceration. During his study of another sample of 100 long term prisoners, drawn from different jails of the state, the author found that the impact scares in respect of delinquency, severity of values and hostility is in the same direction.

P.D. Sharma\textsuperscript{71} in his book "Police and criminal justice Administration in India" (1983) has examined the philosophical goals and theoretical principles of criminal justice Administration. While depicting the horrifying conditions in Indian Prisons, the author expresses the views that the job of prison Administrators is of heavy responsibility as they are expected to strike a became between their traditional custody oriented role and modern tasks of correction and social rehabilitation. The author advocates for establishment of new feral prisons, revision of jail manuals, jail management and creatively of Police juvenile Bureau.

Kunkum Chadha\textsuperscript{72} in her book entitled "The Indian Jail: A contemporary Document" (1983) has dealt with the problem of inhuman treatment being meted out to prisoners and the rampant corruption in jails. The study relates to Tinar Jail and is empirical in nature. The book gives an insight into the deplorable conditions in
Indian jails and throws light on unauthorized punishment being awarded to prisoners. She has also explored the cause of maladministration such as insufficient accommodation, unhygienic conditions, substandard food etc. She is also critical of jail administration and the officers who manage it.

S.P. Srivastva's book "The Indian Prison Community" (1977) describes graphically a full picture of the community of prisoners. He has very carefully focused upon the imamates' grievances that arise out of prison officer's exercise of authority and other function is related to prison's working. He has examined and related the role performance of the inmates and the staff in the field of reformation and rehabilitation and has more valuable suggestions for bringing improvements in prison administration.

Vidya Bhushan in his book "Prison Administration in India" (1970) has dealt with organization of prison. Classification of prisoners, discipline, education, health and prison labour in the state of U.P. The Author has dealt at length with existing legislation governing prisons and has emphasized the need of introducing new legislation. He has recommended the creation of a research cell under the Inspector General of Prison to assess the efficacy of the treatment methods. He holds that the success of treatment can be judged only from its result.

B.V. Trivedi in his book 'Prison Administration in India " (1987) has mentioned that doing some exude work in prisons should not be concerned as additional punishment but as a means for facilitating, resocialization of inmates. He has stressed that some specific strategies for the treatment of inmates should be worked out involving attitude of prison officials and their positive attitude towards prisoners.
Howard I Asofsky\textsuperscript{76} in his book "Psychiatry behind the walls: mental health services in the jails and Prisons" ( ) has examined the rise in number of mentally ill-inmates and the need for appropriate mental health services in jails.

Naresh Kumar\textsuperscript{77} in his book "Constitutional Rights of Prisoners"(1983) has stated that prisoners' rights are valuable and beyond measure. In India, the judicial decisions and jail manuals have conferred a number of rights on the prisoners which includes determines' right to physical protection against arbitrary intrusion by police. The study is not only confined to India but also refers to right of prisoners in the U.K. and U.S.A.

Robert Albert\textsuperscript{78}, in his book Correctional Treatment of Offenders lays stress on the various aspects of rehabilitation of offenders like role of environment in the field of rehabilitation, treatment for juvenile delinquents etc. More so, he has provided a model of secondary education in prisons in detail. However, we do not find the phenomenon of human rights focusing on the fundamental needs mentioned above, on which the present researcher desires to concentrate.\textsuperscript{40}

Duffe and Fitch\textsuperscript{79}(1976) deal with prisons institutions and the origins of contemporary prisons in detail and also throw light on future prisons. More so, the regular functioning and day-to-day routine of prisoners have been touched in an evaluative way to justify the yardsticks of criminal justice system. But the basic phenomena like food, clothing, drinking water as well as speedy justice are missing, which are fundamentals of human rights. Much stress has been laid on impact of preconvictional operations on the correctional strategies. The rights of indigent dependents in correctional systems have been discussed in detail, but human rights of undertrials are not touched.
Jones and Cornes\textsuperscript{80} (1977) describing the concept of open prisons, highlight on the successful working of open prisons along with requisite infrastructure required. However, the basic needs and rights of prisoners are missing.

Carter and Glaser\textsuperscript{81} (1977) underline correctional institutions with special reference to the topics like use of prisons with comparative outlook with the concepts like crisis in prison population from various angles. Organizational and administrative aspects have been elaborately discussed in this work.

Rahi Malkiat Singh\textsuperscript{82} (1987) in his study \textit{The Functioning of Punjab Prison} has contributed in the field of historical development of prisons and operational impact of correctional system in Punjab. This research work deals with structure of prisons staff, educational programmes in prisons, trade and vocational training, cultural, religious as well as sports programmes.

Goffman Erving \textsuperscript{83} (1961) in his essay \textit{Characteristics of Total Institutions} provides us a summary of one of his key concepts, that of the “Total Institution.” In defining this concept, Goffman delineates the key features of totalitarian social systems. Should a person reside in such a system, it encompasses his or her whole being. It undercuts the resident’s individuality. It disregards his or her dignity. It subjects the individual to a regimented pattern of life that has little or nothing to do with the person’s own desires or inclinations. And it is inescapable. A prison is a kind of Total institution and a prisoner is an inmate as per this principle.

Parmesh Dangwal \textsuperscript{84} (1995) in Kiran Bedi’s biography states her viewpoint, “my day and night observation rounds of the jails revealed that a nexus of staff, drug peddlers and prisoner addicts were holding jail no. 4 of Tihar to ransom. The dispensaries were pathetically short of alternative drugs for prisoner-addicts and they had no option but
to continue with their habits and become totally dependent on, and subservient to, the drug mafia operating within the jail. Nothing was possible; nothing could be done for the prisoners, till this rampant evil was rooted out.” This work is quite revealing regarding the jail administration.

According to Kiran Bedi (2005), the foreign inmates’ plight was no different from that of their Indian counterparts. But their agony was magnified due to problems of communication, food habits, cultural differences, lack of visitors, shortage of money and shabby clothing. Bedi expressed that women prisoners were subjected to the most humiliating experiences, which robbed them of what little dignity and self-respect they reached the prison with.

Rajni Malhotra (2003) deals with promotion of human rights on the part of nongovernmental organizations. A complete Chapter has been contributed to the introduction and classification of Non-Governmental Organisations (NGO). This project evaluated the critical aspects of NGO’s functioning.

Ritu (2004) observed that crime was less among educated females since they were more aware of the law and can evaluate their actions.

Sudipto Roy, (2003) in the paper ‘Jail Reforms in India: A Review' has given details about structure and management of prison administration in India. The article throws light on the problem of overcrowding, maltreatment, lack of basic amenities, rehabilitation mismanagement and inhuman behavior of jail authorities on the basis of various case studies and NHRC reports. Writer have discussed steps taken in India to reform prison administration and mentioned case studies of Tihar Jail- delhi, Madhya Pradesh, Uttar Pradesh, West Bengal, Tamilnadu and karnataka in the wake of Delhi Prisons Act, 2000.
Peter M. Carlson, (2009) has presented a comprehensive study on prison administration with special reference to United States of America in the book titled ‘Prison and Jail Administration: Practical Theory’. This book is divided into four sections i.e.- corrections past and present; American jails; prison architecture and technology usage in prisons. These sections deals with history and prison reforms in USA, health care, mental illness, substance use in prisons of USA, models of prisons on the basis of their architecture and examine the use of ICT in the field of correction.

Anju Sinha, (2013) in the article ‘Open Prisons, Their Working and Utility as Institutions of Reformation and Rehabilitation’ has explained how concept of ‘Open Prisons’ can be utilized for the rehabilitation of prisoners. Considering sociological & criminological approaches to rehabilitate prisoners this article justifies the utility of open prisons. It describes how prisoners can be readjusted in the mainstream of society. Writer has supported the concept on the basis of fruitful outcomes of Open Prisons’ at national and international scenario.

Hitesh Bhatt, and Arpita Rawat, (2014) in the paper ‘Prison Reforms in India’ have presented a multi-dimensional study about prison conditions in India. In this paper international obligations regarding prisoners’ rights, history of prison establishment in India, problems prevalent in prisons of India, differential treatment of prisoners on the basis of gender, age, socio-political study and intensity of crime have been discussed. In the end steps to be taken for proper rehabilitation of prisoners have been discussed.

Nawaz F. Khan, (2014) has suggested to adopt a new approach regarding imprisonment in his paper ‘Prison a Changing Concept from Institution of Punishment to System of Reformation and Social Re-entry’. Apart from traditional theory of imprisonment that
is to punish the criminal, writer suggests to decrease the crime by reformation and social re-entry. Logical arguments have been given in support of reformation and after release programmes to discipline and socialize the prisoners.

Sarju Gupta, (2015)\textsuperscript{93} has discussed in the paper titled ‘Training Infrastructure and Training Needs of Prison Personnel’ the loopholes in the prison personnel system of India as per records of National Crime Records Bureau (NCRB). Writer has emphasized the need of proper training of prison personnel regarding psychiatric dimensions of reformation and rehabilitation. This issue is discussed in the three segments i.e. recruitment and promotions of personnel; training need and need of training infrastructure of personnel and evaluation of training.

P. Prathapan, (2015)\textsuperscript{94} in his book ‘Mahatma Gandhi on Prison Reforms’ has questioned the correctional system of India. Which is still based on Prisons Act, 1894. Issues of human rights violation have been discussed in this book. To change the atmosphere of prisons in a positive way in order to reform prisoners and to preserve human rights in prisons writer has supported the ideology of Mahatma Gandhi on prison reforms.

1.14 Significance of the Study:

The prisoners are human beings and possess all respect and dignity even in the prisons subject to certain restrictions of their right of liberty and others as imposed by the judicial authority while sending there. It is always significant to study about the prisoners whether they are being treated as human in prisons or not. Therefore, studies on prisons and prisoners have always been a key focus for those who are interested in human rights, the rule of Law and other related matters. This issue is no longer limited to the national level. International Organizations and institutions have started giving
prime focus on status of prisoners and protection of their basic human rights in the prisons.

The status of human rights of prisoners in prison reflects that to what extent the State Government is serious in implementation of laws relating to the human rights. Nelson Mandela once wrote, 'No one truly knows a nation until one has been inside jails.' Prathapan, P. (2015) in the book 'Mahatma Gandhi on Prison Reforms' has critically analyzed reform system of India. Issues regarding violation of human rights of prisoners, their reforms and protection of their human rights needs to be addressed.

1.15 Objectives of the study:
1. To study national and international human rights provisions for prisoners.
2. To examine the organizational and administrative setup of prisons in Haryana State.
3. To examine the status of observance of Human rights of prisoners in the jails of Haryana state.
4. To examine the level of awareness and training of officials regarding human rights of prisoners in Haryana State.
5. To offer suitable suggestions for maximizing human rights standards in prisons of Haryana state.

1.16 Hypotheses of the study:
1. The human rights regime for prisoners at the National and International level are quite comprehensive and satisfactory.
2. The organizational and administrative setup of Prisons in Haryana State is quite satisfactory.
3. There is no significant difference in the observance of Human Rights in district and central jails regarding the category of
adequate standard of living comprising (a) Accommodation, (b) Right to Adequate Food and Drinking water (c) Rights to clothing & bedding.

4. There is no significant difference in the observance of Human Rights in district and central jails regarding the category of Health Rights of Prisoners comprising (a) Health Screening for all new prisoners, (b) Right to have access to health care, (c) Healthy Conditions in custody.

5. There is no significant difference in the observance of Human Rights in district and central jails regarding Making the and best use of prisons and turning them into safe place comprising (a) Security, (b) Good Order and Control, (c) Discipline and Punishment. (d) Work, (e) Education (f) Cultural Activities & Religion.

6. There is no significant difference in the observance of Human Rights in district and central jails regarding the category of Prisoners contact with the outside world comprising (a) Right to communicate with the family, (b) To be kept informed of important items of news, (c) Right to be kept in prison near their homes.

7. There is no significant difference in the observance of Human Rights in districts and central jails regarding the category of Prisoners Complaints and Inspections comprising (a) Right to make complaint, regarding his/her treatment (b) Access to written information of rules (c) Right to bring the rejected complaints before judiciary and other authority.

8. There is no significant difference in the observance of Human Rights in districts and central jails regarding the Category of no Discrimination comprising (a) Prohibition of all forms of
discrimination (b) Right to enjoy equal protection of law (c) Right to enjoy cultural liberty.

9. There is no significant difference in the observance of Human Rights in districts and central jails regarding living Conditions of Prisoners.

10. There is no significant difference in the observance of Human Rights in districts and central jails regarding Awareness and Training of Officials.

11. Lack of Legal Aid, functional autonomy and Awareness of Human Right leads to Violation of Human Rights.

1.17 Research Methodology:

The present study have been conducted in the state of Haryana. For the present study two central jails i.e. Ambala and Hissar, two district jails i.e Rohtak and Kurukshetra have been selected.

We shall however focus on some of the most important human rights of prisoners specially those which can not be suspended in any circumstances and hence prisoners must enjoy. These rights include the following.

- Right to dignity
- Right to life
- Right to equality
- Right of protection from discrimination
- Right of protection from cruelty inhuman torture

For the convenience of presentation we have organized these important human rights of prisoners into following seven categories

(1) **Right to Adequate standard of living**: The variables / parameters on which these are to be assessed are (a)
Accommodation, (b) Right to Adequate Food and Drinking water (c) Rights to clothing and Bedding.

(2) **Health Rights of Prisoners:** The Variables on which these will be assessed are (a) Health Screening for all new prisoners, (b) Right to have access to health care, (c) Healthy Conditions in custody.

(3) **Making prisons safe place:** These will be examined in terms of (a) Security, (b) Good Order and Control, (c) Discipline and Punishment.

(4) **Making the best use of prisons:** These will be assessed in terms of (a) Work, (b) Education (c) Cultural Activities, Religion.

(5) **Prisoners contact with outside world:** These will be judged in terms of (a) Right to communicate with the family, (b) To be kept informed of important items of news, (c) Right to be kept in prison near their homes.

(6) **Prisoners complaints and inspections:** These will be rated in term of (a) Right to make complaint, regarding his/her treatment (b) Access to written information of rules (c) Right to bring the rejected complaints before judiciary and other authority.

(7) **Non discrimination:** These will be examined in terms of (a) Prohibition of all forms of discrimination (b) Right to enjoy equal protection of law (c) Right to enjoy cultural liberty.

Keeping in view the objectives of the study, both primary and secondary sources of data have been used. The primary data is collected from the jail officials, district prison administration and prisoners. The primary date have been collected with the help of well structured interview schedules.
The secondary data has been collected from reports and files of jail department, books, journal, magazines, newspapers, NGOs reports, National crime records, Bureau reports, National Human Rights Commission Reports, etc. The data will be analyzed with the help of appropriate statistical techniques.

1.18 Sampling Design

There are 19 jails in Haryana which include 3 central jails i.e. Ambala, Hisar -1, Hisar-2 and 16 District Jail i.e. Gurgaon, Bhiwani, Narnaul, Sirsa, Sonepat, Jind, Kurukshetra, Rewari, Yamuna Nagar, Faridabad, Palwal, Panipat, Kaithal and Jhajjar. To have a representative sample of prisoners from central and district jails we have divided prisons in Haryana State into two broad strata; central and district jails. To assess and compare the status of observance of human rights of prisoners in central and district jails of Haryana state of two central jails namely Ambala and Hisar-I were purposively selected, while, two district jails Rohtak and Kurukshetra were randomly selected. A proportionate sample of 361 comprising of 123 from Ambala central jails and 238 from Hisar central jail was randomly selected. Similarly a proportionate sample of 181 comprising of 134 from district jail Rohtak and 47 from district jail Kurukshetra was randomly selected. Views of 10% official staff (49 in all) of central jail i.e. Ambala and Hisar, and 32 official staff of district jails i.e. Kurukshetra and Rohtak have been evaluated.

Prisoners and officials were asked to rate the observance of their human rights on each parameter on the following five-point scale and assign score as per details in table 1 below.

**TABLE 1**

<table>
<thead>
<tr>
<th>FIVE-POINT SCALE OF RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rating</strong></td>
</tr>
<tr>
<td>Score Assigned</td>
</tr>
</tbody>
</table>
TABLE -1A
OUR FIVE POINT SCALE OF RATING

<table>
<thead>
<tr>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Fully Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

The status of observance of human rights has been examined in central and district jails of Haryana from prisoners’ viewpoint on the basis of above define categories of human rights. The comparison will be made in respect of mean score of the prisoners rated on above five point scale. In this context we shall follow the following rules of thumb (i) All fractions greater than half will be rounded up to the nearest next higher digit. (ii) Similarly all fractions less than half will be round up to the nearest lower digit. (iii) While making comparison difference less than 10 percent would be ignored. (iv) In case of standard deviation is less than one. It will be treated insignificant.

1.19 Chapterisation:

1. **Chapter I: Introduction** - This chapter will focus on overview about prisoners human rights and their violation.

2. **Chapter II: Prisons and Human Rights: Historical Perspective** - This chapter will be devoted to historical description about prisons and human rights with reformative steps taken in India.

3. **Chapter III: Human Rights Provisions: Statutory Frameworks.** This chapter will include national and international human rights provisions regarding prisoners.

4. **Chapter IV : Observance of Human Rights In Central and District Jails:** In this chapter observance of human rights of prisoners of central and district jails have been evaluated.
5. **Chapter V: Observance of human rights in central and district jails: Official views** - In this chapter views of prison officials of central and district jail have been evaluated.

6. **Chapter VI: Conclusions and Suggestions** – This chapter will comprise of conclusions and suggestions, based on analysis of data, for perseverance of human rights of prisoners.
REFERENCES


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