CHAPTER – II

PHILOSOPHY OF PUNISHMENT

AND CONVENTIONAL PROVISIONS

IN RELATING TO TREATMENT OF

OFFENDERS
Crimes are committed everywhere in the world, so none of the philosophies of treatment or punishment can completely remove the crime from society. But, there will always be wide variations in the intensity with which crimes are committed. It is agreed by almost all penologists that punishment is necessary for the offenders in all the civilised countries. When any criminal commits the crime, he causes loss to the society and the State, so he has to pay back something in any form to the society or State. If a criminal will not pay anything to the society or to the State, then there is no possibility of maintaining peace in the society, there will be disorder, and ultimately all the rich and brave persons will harass and crush the poor in the society. Due to this, poor will not have any means to the rights guaranteed to them by the law of land. In other words, we can say big fish will eat the small. Various penal systems have adopted different theories of punishment but all theories want to give punishment to the offenders. In present time when it is established that, germs of the crime are within society, not within only the criminal, the ragging question is why we want to punish him only. He can be corrected by the therapeutic treatment or any other kind of correctional treatment.
### 2.1 Goal of the punishment:

In retaliation for wrong-doing, societies seek to punish individuals who violate the rules. Criminal punishment is also intended as a deterrent to future criminality. Offenders who are punished may be deterred from future wrong-doing because they fear additional punishment. Others who contemplate crime may also be deterred from criminal behaviour. Societies also impose punishment in order to incapacitate dangerous or unlawful individuals by restricting their liberty and they also rehabilitate these wrongdoers after correcting their behaviour. Punishment may perpetuate criminal dispositions and behaviour rather than eliminate them.

The punishment is inflicted on an offender in order to teach him a lesson so that he may not commit the crime again. The second aim of the punishment is to open the eyes of would-be criminals that they are to be dealt with likewise in case they indulge in criminal activities. The infliction of the offender also serves as an ointment on the wounded feeling of the society because whenever a crime is committed, it is not only the victims who suffer on that score, but the conscience of the entire nation is shaken to its very foundation and there is hue and cry that the offender should be brought to book. It is that stage where the State applies a soothing balm on the wounds of the society by punishing the offender. The Hon’ble Supreme Court held that sentence must bring home to the guilty person consciousness that the offence committed by him was against his own interest as also against the interest of the society of which he happens to be a member.\(^1\)

---

\(^1\) *Modiram v. State*, AIR 1972 SC 2438
2.2 Philosophy of the punishment:

Punishment for reform is intended to benefit the offender and society by changing the offender into a contributor to the society. Punishment as deterrence is intended to benefit society by discouraging would-be offenders. Punishment to extract compensation is intended to benefit the victim of the offender. Retribution is the only motive for punishment that is primarily intended to harm the offender. Those who advocate punishment as a means of reform or as a means to deter certain activities use social-engineering arguments. Those who advocate punishment for retribution or to compensate the victim of an offence, argue on the basis of on individual rights. The Hon'ble Supreme Court held that the interest of the society is one of the objects behind penal statutes enacted for larger good of the society. While punishing the offender it should be kept in mind.²

The Hon'ble Gujarat High Court observed that one of the purposes of punishment is to have its deterrent effect. If offenders found guilty of somewhat serious offence, of causing injuries with some sharp cutting instrument are dealt within a very lenient manner, the punishment will lose its deterrent effect. On the contrary, such offenders would be encouraged to indulge in repetition of such offences. It would be in the interests of the society, if, such offences are dealt with quite seriously and severely keeping in mind the nature of offence and injuries caused to the victims.³

---

² AR Antulay v. RSNayak, AIR 1984 SC 718
³ State of Gujarat v. Mustufakhan B Pathan, 1997 Cr LR (Guj) 380
2.3 Components and ingredients of punishment:

The Hon’ble Gujarat High Court explained the components and ingredients of punishment and held the following ten most important components and ingredients of punishment.\(^4\)

1. Punishment is applied by employing coercion and can be enforced even against the will of the punished.

2. Punishment is a measure adopted and enforced by the State. Private punishment meted out by parents, teachers, employers, the community, etc. is outside the scope of penological consequences of a crime.

3. Punishment or the limits of punishment are stipulated in advance by the State. Punishment very clearly embodies the principle of *nulla poena sine lege*, there is no punishment without the law.

4. Punishment is applied by competent organs of the State in a properly constituted legal procedure. Due process is the name of the game. Thus if a murderer is lynched by the people, then such a punishment is not punishment in the criminological sense.

5. Punishment is generally believed to be directly enforced on each individual personally. Any sort of ‘collective punishment’ is outside the scope of penological punishment.

---

\(^4\) *State of Gujarat v. Raghu*, 2003 Cr. LR (Guj) 393 2003 (1) GLR 205
(6) Punishment is a disadvantage designed to act as a negative and to hurt the receiver of the punishment mentally, emotionally, physically or financially.

(7) Punishment is the consequence of crime. The prohibited act must be listed and defined as a crime in the law books.

(8) Punishment is applied in the name and defence of the society.

(9) Punishment is disapproval and expresses condemnation by the State.

(10) Prevention of crime is main reason for the existence of penal provisions in law books.

2.4 Approaches to the reaction of crime (punishment):

The reactions to crime (punishment) have been different at different stages of human civilisation and even at a given time they have been different in the various societies. The attitude towards punishing criminal represents the basic value of the society and has always been coloured by extreme type of emotional display by society. As a result of changing attitudes, three types of reactions can be discerned in the various societies. The Hon’ble Supreme Court summarising the philosophy of punishment with reference to various approaches, held that, on the commission of crime, three types of reactions may generated. First is the traditional reaction of universal nature, termed as punitive approach, which regards the criminal as a notoriously dangerous person who must be inflicted with severe punishment to protect the society from his criminal assault. The other
approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment. Third is the preventive approach which seeks to eliminate those conditions from the society which were responsible for crime causation.5

All three approaches are expended by the Hon’ble Gujarat High Court, where the bench observed that the reaction to crime has been different at different stages of human civilisation and even at a given time, they have been different in various societies. It has been said that the attitude towards crime and criminals at a given time in a society manifest the basic features of that society. The attitude towards the criminals has always been exalted by types of emotions displayed by the society. As a result of the changing attitudes, three types of reactions can be discerned in various societies. The first is the traditional reaction, of a universal nature, which can be termed as a “punitive approach”. It regards the criminal as a basically bad and dangerous sort of person and the object under this approach is to inflict punishment on the offender in order to protect the society concerned from his onslaught. The second, of relatively recent origin, considers the criminal as a victim of circumstances and the product of various factors within the criminal and the society. This approach, since it regards the criminal as a sick person requiring treatment, is termed as a “therapeutic approach”. Finally, there is a preventive approach which instead of focusing the attention on particular offenders, seeks to eliminate those conditions which are responsible for crime causation. It should, however, be understood that the three approaches are not merely exclusive. Not only do they overlap with each other, but sometimes, they may co-exist as parts of the overall system.

in the society. It should, however, be understood that the theories reflecting these approaches are not theories in normal sense, they are not assertions, but are in nature of moral claims, also.\(^6\)

### 2.5 Theories of the punishment:

It was observed by Hon'ble Supreme Court that sentencing the guilty is most important, albeit a difficult chapter in trial. Theories of punishment are many — *reformative, preventive, deterrent, retributive and denunciatory*. Retributive and denunciatory theories have lost their potency in the civilized nations. Deterrent and preventive sentence is sometimes necessary in the interest of society. The modern trend places emphasis on the reformation of an offender and his rehabilitation. Reformation and not retribution is the sentencing lodestar.\(^7\)

It is a social persuasion defence to extend whenever possible the key note on modern penology, viz., reformation of the delinquent. The probation is a part of the reformatory process. Many offenders are not criminals but circumstances made them criminals and through misfortunes are brought within the operation of judicial system. By extending benefits of probation, courts encouraged their own sense of responsibility of future of the accused and saved him from the stigma and possible development of criminal propensities. It is thus in tune with the reformative trend of modern criminal justice to rehabilitate the young offenders as useful citizens.\(^8\)

---


\(^7\) Saradhakar Sahu v. State of Orissa, 1985 Cr LJ 1591

\(^8\) Punchu v. State of Orissa, 1993 Cr LJ 953
The Hon'ble Madhya Pradesh High Court observed that criminal jurisprudence dealing with imposition of sentence has undergone a change and the Probation Act is a milestone in the progress in the modern liberal trend of reform in the field of penology. It is the result of recognition of this doctrine that the object of the criminal law has become more to reform than to punish the individual offender. Section 361 of the Code of Criminal Procedure, requires the court to state special reasons for not extending the benefits of the probation to the accused person.9

To punish criminals is a recognised function of all civilized States from centuries. But with the changing pattern of modern societies the approach of penologist towards punishment has also undergone a radical change. The penologist today is concerned with a crucial problem as to the end of punishment and its place in the penal policy. Though opinions have differed with regard to the punishment of offenders varying from age-old traditionalism to recent modernism, broadly speaking, five types of views can be distinctly found to prevail.

2.5.1 Retributive theory of punishment:

Retribution means something done or given to somebody as punishment or vengeance for something he or she has done. It is a just retribution for their crime. This theory says to return the same injury to the wrongdoer, which he had committed against the victim. It says “tit for tat”. Retributive theory is the oldest theory of punishment, tracing its roots to the Bible. The Bible states that when one man strikes another and kills him, he shall be put to death. Whoever strikes a beat and kills, shall make restitution,

life for life, when one injures and disfigures his fellow countryman, it shall be done to him as he has done; 'fracture for fracture', 'eye for eye', 'tooth for tooth', the injuries and disfigurement that he has inflicted upon another shall in turn be inflicted upon him.\(^{10}\)

Retribution is often assimilated to revenge, but a public rather than a private revenge. Retributive theory punishes offenders because they are deserving of punishment. It says to offender "you have caused harm to society, now you must pay back to society for that harm. You must atone for your misdeeds". Implicit in retribution is the condemnation or denunciation of both the offender and the offending behaviour. Retribution, however, does not mean that society rapes the rapist or steals from thieves. Instead the law attempts to convert the offence into currency and to impose a sentence, which is proportional to the harm caused.

Retribution is probably the oldest goal of criminal punishment. The Babylonian Code of Hammurabi, dating from the 18th century BC, contained this principle of equal retaliation. Similarly, the laws of the ancient Hebrews demanded "an eye for an eye and a tooth for a tooth". The corporeal punishments used in England and the American colonies were based on retribution.

Over the time many people came to believe that the brutal punishments imposed on offenders far exceeded the seriousness of the crimes. French novelist Victor Hugo satirised criminal punishment in France during the 19th century in his novel La Miserables (1862), in which a character is sentenced to 20 years of hard labour after stealing a loaf of bread

\(^{10}\) Leviticus 24: 17-22 of the New English Bible
to feed his family and when the character later escapes, officials hound him for years.

In the United States, the retributionist philosophy remains apparent in the sentencing practices of courts, the laws enacted by State Legislatures and Congress, and the rules and regulations of various correctional programmes.

*Immanuel Kant*, philosopher (1724-1804) believed that, murderers ought to be executed and that it would be wrong not to execute them, regardless of the circumstances. Even if a civil society was to dissolve itself by common agreement of all its members (for example, if the people inhabiting an island decided to separate and disperse themselves around the world), the last murderer remaining in prison must first be executed, so that everyone will duly receive what his actions are worth and so that the bloodguilt thereof will not be fixed on the people because they failed to insist on carrying out the punishment; for if they fail to do so, they may be regarded as accomplices in this public violation of legal justice.11

If justice means giving everybody what they deserve, and if offenders deserve retribution, then it is unjust to fail to punish them. If an offender isn't caught until 50 years after his offence, the mere passage of time has no bearing on what he deserves, so he should be punished mercilessly.

It must be stated that the theory of retribution has its origin in the crude animal instinct of individual or group to retaliate when hurt. The modern view, however, does not favour this contention because it is neither

---

wise nor desirable. On the contrary, it is generally condemned as vindictive approach to the offender.

The critics of this theory say that retributive punishment is barbaric and brutal. Bentham in his utilitarian theory criticises retributive punishment seriously. Salmond says crimes are not similar to those of debit or credit accounts in the bank. Revenges cannot be reattributed just like bank account. If you injure the criminal, again the criminal is compelled to do criminal act to take revenge and therefore this creates chain reaction in the society. The primary function of the criminal justice system is to punish the wrong-doer, and to see that the similar types of the crime should not re-occur in future, and to prevent the criminal behaviour in the society, and to see that the peace and prosperity should prevail in the society.12

The Hon’ble Supreme Court held that the whole goal of punishment is curative. Accent must be more and more on rehabilitation rather than on retributive punitivity inside the prison.13 The retributive theory had its day and is no longer valid. Deterrence and reformation are the primary special goals which make deprivation of life and liberty reasonable as penal panacea.14

2.5.2 Deterrent theory of punishment:

Jermy Bentham (1748-1832) said that, I will address the right to punish per se after I consider the practical reasons for punishment to reform and deterrence. One of the goals of punishment is the prevention of crime.

---

12 Salmond · Principles of Jurisprudence
13 Nadella Venketkrishna Rao v State of AP, AIR 1978 SC 480
14 Rajendra Prasad v. State of UP, AIR 1979 SC 916
through deterrence. There are two types of deterrence - specific and general. Specific deterrence refers to the preventive effect of a specific punishment, such as a large fine and a long term prison sentence, on a specific individual for committing a specific crime. This theory believes that imposing a sufficiently severe punishment on an offender will deter that individual from future crime and set a lesson for others. General deterrence is intended to apply to any person who contemplates committing a crime. For example, advocates of the death sentence believe that imposition of such a severe punishment on murderers will prevent others from killing people.

The utilitarian theory says that greatest pleasure ought to be given to the greatest number of people. The people will calculate their every act with their profit. No person can do any act, which is not profitable to him. In the same manner, if the punishments are stricter and serious, the general people will not commit such offences, which are not beneficial for them. Generally, deterrence is concerned with other would-be offenders. The idea is to make an example of the actual offenders so that others will learn from their experience and not get tempted into criminal activity. It is believed that the infliction of pain in the form of punishment or its apprehension generally keep people away from committing the acts forbidden by law.

This theory suggests that the punishment should be executed openly, not within four walls. This type of punishment will definitely create tension, fear in the majority of people. This theory says that strict and severe punishments should be imposed depending upon the nature of offences. Capital punishment, forfeiture of property of the wrongdoer, imprisonment, etc. are the punishments suggested by the theory. When one criminal is
punished seriously and severely, then the remaining people of the society will fear to commit such type of offences.

One alleged benefit of punishment is that, it deters potential offenders. It definitely deters some people from breaking some laws. It is an essential deterrent to the breaking of victimless criminal laws. However, outlawing victimless "crimes" does not necessarily reduce the number of such "crimes". When drug trafficking is made illegal, middle-class people with jobs and a sense of responsibility may reduce their consumption of the prohibited drugs, but many low class people with less to lose may be attracted to drug dealing by the opportunity to make a lot of money without having to work hard. The result can be a net increase in illicit drug use as more low class people enter the drug trade than the number of middle class people who leave.

It is a fact that deterrent theory is somewhat helping in reducing the crimes but it is not very effective. The effect of enforcement of personal law is more important than the presence of provisions for punishment in the statute books. It is counterintuitive to say that punishment does not deter the offenders. Even though the prohibition of drug traffic in the USA has apparently created more drug traffic than it has deterred, we do not think that the increase in drug use implies that more people want to be punished than want to avoid being punished. The explanation has to do with the court system and its rules of evidence that are so inefficient that only a small percentage of drug traffickers ever get punished. If punishments were more certain and severe enough, even low class people would be deterred from drug dealing. Punishment has worked better in Turkey and Iran than it has in the USA, because in those countries the punishment is more severe and more
certain. If the USA is to get serious about its war on drugs, it must relax the restrictions on admissible evidence and invasion of privacy and build a lot more prisons.15

It is hard to see how society benefits from deterring victimless exchanges. The would-be parties to such exchanges believe they would benefit from the exchanges. It is not at all clear that society wouldn't benefit more by permitting such exchanges than by prohibiting them. Brutal punishment hardly corrects; rather, it brutalises both the criminal and the community and hardens the attitude of the former towards the conventional society. The Hon’ble Supreme Court observed that “hard labour in section 53 of IPC has to receive a humane meaning. A girl student or a male weakling sentenced to rigorous imprisonment may not be forced to break stones for nine hours a day. The prisoners cannot demand soft jobs, but they may reasonably be assigned congenial jobs. Sense and sympathy are not enemies of penal asylums.”16

Realising that it is not the brutality of punishment but its surety that serves as a greater deterrent, our Hon’ble Supreme Court held that a barbaric crime does not have to be visited with a barbaric penalty such as public hanging which will be clearly violative of Article 21 of the Constitution.17

The Hon’ble Supreme Court while refusing to interfere with a death sentence, observed that “it will be a mockery to justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to

15 Article on Criminal, and punishment-Encarta Reference Library 2005
16 Sunil Batra v. Delhi Administration, 1980 Cr.LJ 1099 (SC)
17 Attorney General of India v Lachma Devi, AIR, 1986 SC 467
render the justicing system of the country suspect. The common man will be losing faith in courts. In such cases he understands and appreciates the language of deterrence more than the reformatory jargon.”18 Again, observed that failure to impose death sentence in the case where the accused brutally murdered two girls aged 14 and 20 only, where it is crime against the society particularly in cases of murders committed with extreme brutality would bring to naught the sentence of death provided by section 302 of the IPC. It was the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the appellants were confirmed with death sentence.19 The Hon’ble Gujarat High Court held that deterrent punishment is necessary in the offence of smuggling. In their view, there cannot be many disputes that for such offences under the Customs Act which affect the economy of the nation, deterrent punishment have to be meted out.20

2.5.3 Preventive theory of punishment:

Preventive means with the purpose of preventing something used or devised to stop something from happening, or to stop people from doing a particular thing. Preventive theory punishes the offenders, to prevent the future crime in the society, by isolating the criminals from society. This theory believes that, the goal of punishment is restraint. If, a criminal is confined, executed, or otherwise incapacitated, such punishment will deny

18 Mahesh v. State of MP, AIR 1987 SC 1346
19 Asharfi Lal v. State of UP, AIR 1987 SC 1721
20 Linder Frank Wolfgang v. Yogesh D Shah, 2002 Cr. LR (Guj) 220
the criminal ability or opportunity to commit further crimes and prevent the society from that harm.

Preventive philosophy of punishment is based on the proposition "not to avenge crime but to prevent it". It presupposes that need for punishment of crime arises simply out of social necessities. In punishing a criminal, the community protects itself against anti-social acts, which are endangering social order in general or person or property of its member.

This theory seeks to prevent the recurrence of crime by incapacitating the offenders. The supporters of this philosophy believe that imprisonment is the best mode of punishment because it serves as an effective deterrent and is a useful preventive measure too. It presupposes some kind of physical restraint of offenders. According to the supporters of this theory, murderers are hanged not merely to deter others from meeting similar end, but to eliminate such dreadful offenders from society.  

Isolating criminals from society through confinement or incarceration is the most direct method of crime prevention. Containing offenders in prisons and jails prevents them from harming others or damaging property. It is believed that incarceration of offender, gives psychological pain to him. Most of people consider incarceration a sound defensive strategy to protect the public and combat crime. However, because many criminals remain undetected, un-apprehended, and unrestrained, the defensive value of incarceration may be overrated.

---

21 Article on “Punishment, Crime” - Encarta Reference Library 2005
In the United States about one-fourth of all persons, who are convicted of a crime, are incarcerated. Canada incarcerates about one-third of all convicted offenders. However, inmates in Canada are eligible for parole at earlier points in their sentence. Criminals may be incarcerated in jails or in prisons. Jails are locally operated facilities that house criminals sentenced to less than one year of incarceration. Jails typically house persons convicted of misdemeanours (less serious crimes), as well as individuals awaiting trial. Prisons are State or federally operated facilities that house individuals convicted of more serious crimes, known as felonies. Offenders sentenced to a year or more of incarcerations are housed in prisons rather than jails. Canada uses a similar bifurcated system of local correctional centres and provincial and federal prisons.

Prisons deprive inmates of virtually all liberty and control over their lives. Each aspect of an inmate’s daily life is regulated by others and highly structured. Many prisons offer self-help educational and counselling programmes. In some prisons, inmates may be able to work at different trades to acquire vocational and technical skills. However, a majority of inmates do not utilise these rehabilitation-oriented programmes because the programmes typically are not compulsory. Instead, prisons often function as long-term warehouses where offenders are merely housed and forgotten. Rates of recidivism are fairly high for former inmates in the United States, averaging about 60%. Rates in Canada are substantially lower at 40%.22

In India, prisoners are not deprived of all the rights, but they are still human beings and entitled to all the human rights and all fundamental rights

22 Encarta Reference Library 2005
with some restrictions on them. In India around 70% prisoners are undertrial and only around 30% are convicted.\textsuperscript{23} The Hon’ble Supreme Court has held that sentencing the guilty person is most important, albeit a difficult chapter in trial. Deterrent and preventive sentence is sometimes necessary in the interest of society.\textsuperscript{24}

\textbf{2.5.4 Reformative theory of punishment:}

Another possible goal of punishment is reformation of the offender. Supporters of reformation seek to prevent crime by providing offenders with the education and treatment necessary to eliminate criminal tendencies, as well as the skills to become productive members of society.\textsuperscript{25}

Reformation is synonymous to the word ‘improvement’, ‘modification’, ‘transformation’, ‘alteration’, ‘change’, ‘development’, ‘amendment’. Reform means change and it improves somebody by correcting faults, removing inconsistencies and abuses, and imposing modern methods or values or to adopt a more acceptable way of life and mode of behaviour or persuade or force somebody else to do so. Reformation is the act or process of reforming somebody especially a general improvement in his behaviour.

This theory claims that a criminal can be reformed into a good citizen as law-abider by giving him competent treatment during his imprisonment period. He is in the need of a \textbf{doctor-cum-guide} and not of the jailer. This theory is not giving punishment on the seeing of the past but of the future. This theory says that the offender should not be punished but he should be

\textsuperscript{23} Data is released by NHRC and BPRD as on 1\textsuperscript{st} Jan, 2006
\textsuperscript{24} \textit{Saradakar Sahu v. State of Orissa}, 1985 Cr LJ 1591
\textsuperscript{25} Article on Criminal Law - Encarta Reference Library 2005
treated and converted into a law-abiding citizen by giving training. He should be trained to rehabilitate in the society after completion of his sentence.

Two things are combined in this theory, namely: (a) the offender should be treated in a form by which he can be converted into a law-abiding citizen, and (b) he should be trained for some work during the period of imprisonment, so after completion of sentence he can re-establish himself into the society and he should not commit the crime in future. The aim of reformative theory is found in the poem of George Bernard Shaw, which reads as -

"If you are going to punish a man retributively - You must injure him,

If you are to improve him - You must improve him,

And men are not improved by injuries."\(^26\)

The reformative views of penologist suggest that punishment is only justifiable, if it looks to the future and not to the past. They say that "punishment should not be regarded as settling an old account but rather as opening a new one". Thus, the supporters of this view justify prisonisation not solely for the purpose of isolating criminals and eliminating them from society but bring about a change in their mental outlook through effective measures of reformation during the term of their sentence.

The major emphasis of the reformist movement is on rehabilitation of inmates in peno-correctional institutions, so that they are transformed into good citizens. As against deterrent, retributive and preventive theories the

\(^{26}\) Quoted by Supreme Court in the case of \textit{Mohd. Giasuddin v. State of AP}, AIR 1977 SC 1926
reformativists approach to seek to bring about a change in the attitude of offender so as to rehabilitate him as a law-abiding member of society. Thus this punishment is used as a measure to reclaim the offender and not to torture or harass him. Reformative theory condemns all kinds of corporeal punishments.

The reformists advocate humane treatment of inmates inside the prison institutions. It also suggests that the prisoners should be properly trained to adjust themselves to free life in society after their release from the institution. The agencies such as parole and probation are recommended as the best measures to reclaim offenders to society as reformed persons.

Undoubtedly, modern penologists reaffirm their faith in reformative justice but they strongly feel that it should not be stretched too far. The reformative method has proved useful in cases of the juvenile delinquents and the first offenders. Harder criminals, however, do not respond favourably to the reformist ideology. It, therefore, follows that punishment should not be regarded as an end in itself but only a means, the end being the social security and rehabilitation of the offender in the society.

Stressing upon the rehabilitatory aspect of penology, the Hon’ble Supreme Court held that crime is a pathological aberration, the criminal can ordinarily be redeemed and the State has to rehabilitate rather than avenge. The subculture that leads to anti-social behaviour has to be countered not by cruelty but by re-culturalisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past regressive times. Today humanitarian view is that sentencing is a process of re-shaping a person who
has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as the means of a special defence, hence a therapeutic, rather than an “interrorem” outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.27 The modern trend places emphasis on the reformation of an offender and his rehabilitation. Reformation and not retribution is the sentencing lodestar.28

It is a social persuasion defence to extend whenever possible the key note on modern penology, viz., reformation of the delinquent. The probation is a part of the reformatory process. Many offenders are not criminals but circumstances made them criminals and through misfortunes are brought within the operation of judicial system. By extending benefits of probation as per section 360 of the Code, courts encouraged their own sense of responsibility of future of the accused and saved him from the stigma and possible development of criminal propensities. It is thus in tune with the reformatory trend of modern criminal justice to rehabilitate the young offenders as useful citizens.29

The Hon’ble Madhya Pradesh High Court held that criminal jurisprudence dealing with imposition of sentence has undergone a change and the Probation Act is a milestone in the progress in the modern liberal trend of reform in the field of penology. It is the result of recognition of this doctrine that the object of the criminal law has become more to reform than to punish the individual offender. Section 361 of the Code requires the court

28 Saradakar Sahu v. State of Orissa, 1985 Cr LJ 1591
to state special reasons for not extending the benefits of the probation to the accused person.\textsuperscript{30}

\subsection*{2.5.5 Expiation theory of punishment:}

Expiation means "the act of expiating, reparation, amends, compensation". It means atoning or suffering punishment for wrong-doing or making amends, or showing remorse, or suffering punishment for a wrongdoing.

This is not the new concept, if we look towards the epic period. \textit{Valia} a famous dacoit turned into a sage (Maharishi) Balmiki and wrote the \textit{Ramayana}. It is the greatest example of the expiation and reformation.

The theory of restoration takes a victim-oriented approach to crime that emphasizes restitution (compensation) for victims, rather than focus on the punishment of criminals and advocates restoring the victim and creating constructive role for victim in the criminal judicial process. For example, relatives of a murder victim may be encouraged to testify about the impact of the death when the murderer is sentenced by the court. The promoters of this theory believe that such victim involvement in the process helps in repairing the harm caused by crime and facilitates community reconciliation.\textsuperscript{31}

According to this theory compensation is awarded to the victim from the wrongdoer. By awarding compensation from the pocket of the

\textsuperscript{30} Prakash v State of MP, 1993 Cr LJ 119 (MP)
\textsuperscript{31} Article on Criminal Law - Encarta Reference Library 2005
wrongdoer he is punished and is prevented from doing such offences in his remaining life. This also becomes a lesson to the remaining people.

One view of fundamental importance and great antiquity is that the purpose of the punishment is expiation. Many different strands of thought come together in this idea. The offender must atone for his crime, with suffering, whereas on the other hand, once the punishment has been inflicted, there is implicit in expiation, the idea of squaring up of accounts. The crime has been paid for by the punishment and accordingly the slate is clean again. This principle of some sort of balance between crime and punishment occurs in the doctrine of retribution and it is often difficult to disentangle one concept from the other. Even the oft cited *lex talionis* itself could justifiably be quoted within the content of expiation.

It may even be said that atonement in the religious sense of repentance, has made penal reform possible. Certainly, once a crime has been paid for, and the society feels that the account has been squared, there is greater readiness to come to the offender’s help for rehabilitating him in normal citizen life. Yet this possible result is sometimes counterbalanced by negative effect born out of the belief that expiation has no effect some offenders. They come to feel that when they have served their sentence, the slate has been wiped clean.

The idea that the element of expiation should deliberately enter punishment is rejected by many. *Sir Leo Page* states that he believes it to be not only wrong but actively mischievous. To do this would impose on court the duty to determine the degree of pain preciously adequate to expiate moral guilt. This is patently impossible. To assess the moral culpability of a
man involves the ability to look into his heart, to take account of the strength of the temptations to which he was subjected as well as the conditions which have made him what he is. Moreover, the theory of expiation rests upon the premises that it is man's duty to punish sin which is a legacy from the times of taboo-breaking, when crime and sin were in fact synonymous. But now it is recognised that there are many sins which are not crimes, and equally there are many offences which are not sins.\textsuperscript{32}

The Italian Criminologist \textit{Enrico Ferri} put the matter succinctly and said that "The question of moral guilt of criminal or of any other human being lies within the domain and moral philosophy ... the State and its system of criminal justice can do no more than adopt such measures to defend the community against criminals as are reasonable in themselves and proportionate to the danger threatened to society"

Ferri summarized his theory by defining criminal psychology as a "defective resistance to criminal tendencies and temptations, due to that ill-balanced impulsiveness which characterises children and savages".\textsuperscript{33}

The theory of expiation thus presents practical difficulty in the matter of assessment of quantum of punishment which may be equal to and which may be capable of washing off the moral guilt. It puts on the judge the work incapable of accomplishment by human agency. On the point of stopping offenders from repeating the crime, apart from uncertainty about repentance, one after undergoing punishment may feel that he had paid the debt and

\textsuperscript{32} Sir Leo Page - \textit{Crime and the Community} p-67
\textsuperscript{33} Enrico Ferri : \textit{Criminal Sociology} (1905) p-347. Ferri was born in Lombardy in 1856, and worked first as a lecturer and later as a professor of Criminal law, having spent time as a student of Cesare Lombroso. While Lombroso researched anthropological criminology, Ferri focused more on social and economic influences on the criminal and crime rates
therefore undertake further debt of committing crime again without much weight on his conscience.

The Hon’ble Supreme Court held that the object of section 357 of the Code is to provide compensation payable to the people who are entitled to recover damages from the person sentenced even though fine does not form part of the sentence. In awarding compensation it is not necessary for the court to decide whether the case is fit one in which compensation has to be awarded. If it is found that compensation should be paid then the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation. For imposing a defending sentence for non-payment of fine would not achieve the object. Further, the Supreme Court said that it is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of the fine or compensation. In this case the conviction was under sections 302 and 149 of IPC.34

The Hon’ble Gujarat High Court directed the accused, to pay Rs. 20,000/- to family of deceased instead of fine. The amount of fine/compensation shall be paid to the heirs and legal representatives of the

deceased.\footnote{Abhubhai Fatabhai v. State of Gujarat, (DB) 2000 Cr.LR. (Guj) 207} In the instance case, the deceased left behind widow and four sons.

The Hon’ble Supreme Court while upholding the principle held that, it is open to the court under section 357 (3) of the Code, to award compensation to the victim or his family. In our opinion it was well within the jurisdiction of the High Court. It is clear from the section that the jurisdiction of the court to grant compensation is accepted by the Supreme Court. In instant case the Session Court awarded death sentence with fine of Rs. 5000 under section 302. The High Court, in appeal, altered the sentence to imprisonment for life and order to pay Rs. 2 lac by each convict to the victims. The Supreme Court upheld the imprisonment for life but reduced the compensation to one lac only.\footnote{Rachhapal Singh v. State of Punjab, AIR 2002 SC 2710}

The Andhra Pradesh High Court gave a sensational judgment on 25-11-1996 covering this expiation theory. In the instance case, Sayyaduddin and his brother raided Maslehuddin due to personal grudges and as a result Maslehuddin was killed. The High Court imposed three years imprisonment on the accused and awarded Rs 60,000 as compensation payable by the accused to the family members of Maslehuddin. Delivering the judgement, Justice Motilal Naik observed, “By imposing imprisonment on the accused could not be helpful to the family members of the victim. In my opinion it is better to help the victim’s family members, as there is no one to look after them after the death of the bread earner. Therefore, it is justified to impose a

\footnote{Abhubhai Fatabhai v. State of Gujarat, (DB) 2000 Cr.LR. (Guj) 207}
\footnote{Rachhapal Singh v. State of Punjab, AIR 2002 SC 2710}
penalty/fine of Rs 60,000/- on the accused besides sending him to prison for three years.\textsuperscript{37}

This theory is sufficient to meet the less serious type of offences, such as abuse, assault, defamation, trespass, torts, etc. However, this theory could not be a solution in cases of murder, plunders, rapes, kidnapping, thefts, etc., serious nature offences. If the compensation is allowed in the case of rape, the incidents of rape will increase.

Even if some amount of punishment or compensation were proper, it would be wrong to inflict more than the proper amount. Because there is no way to determine the proper amount of punishment or compensation for any offence, we cannot be sure that any punishment or compensation is justified in any particular case and, therefore, there might be risk of some individuals becoming criminals if we impose as punishment or compensation at all.

\textbf{2.6 Universal Declaration of Human Rights, 1948 :}

Universal Declaration of Human Rights was adopted on 10th December, 1948, by all the State Members of United Nations. This Declaration declares 30 principles of all human being, without any discrimination, all the State members have to maintain these principles of individuals. Rights relating to prisoners declared by this Declaration may be summarised as -

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\textsuperscript{38} Everyone has the right to an effective remedy by

\begin{footnotesize}
\textsuperscript{37} State of Andhra Pradesh v. Sayyaduddin and others, AIR 1996 AP
\textsuperscript{38} Article 5 of the UDHR, 1948
\end{footnotesize}
the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Further said that, no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.  

2.7 International Covenant on Civil and Political Rights, 1966:

International Covenant on Civil and Political Rights, 1966 was adopted by UN General Assembly Resolution 2200 A (XXI) of December 16, 1966 and came into force with effect from March 23, 1976. All parties to this Covenant assure following rights regarding punishment and correction of the offenders.

Every human being has the inherent right to life and this right shall be protected by law. No one shall be arbitrarily deprived of his life. In countries, which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the

---

39 Article 8 to 11 of the UDHR, 1948
provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.\(^40\)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.\(^41\) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.\(^42\)

In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a

\(^{40}\) Article 6 of ICCPR
\(^{41}\) International Covenant on Civil and Political Rights, 1966, Article 7
\(^{42}\) Ibid, Clause (5) of Article 9
sentence to such punishment by a competent court is not included, forced or compulsory labour.\textsuperscript{43}

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.\textsuperscript{44}

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.\textsuperscript{45}

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.\textsuperscript{46}

\textsuperscript{43} Ibid, Clause (3) of Article 8
\textsuperscript{44} Ibid, Clause (1) & (2) of Article 10
\textsuperscript{45} Ibid, Clause (3) of Article 10
\textsuperscript{46} Ibid, Clause (5) & (6) of Article 14
2.8 The Standard Minimum Rules for the Treatment of Prisoners, 1955:


These rules are not intended to describe in detail a model system of penal institutions. But, they seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations. On the other hand, it will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.47

47 Rules 2-3, the Standard Minimum Rules for the Treatment of Prisoners, 1955
These rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. But, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.48

2.8.1 Aim of punishment to imprisonment:

Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore, the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.49

The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings. Before
the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner's gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.50

The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him and towards his social rehabilitation.51

50 Rules 60-61, Ibid
51 Rule 64, Ibid
2.8.2 **Treatment of offenders**:

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.\(^5^2\)

To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release. For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the relevant matters. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.\(^5^3\)

2.8.3 **Categorization of prisoners**:

According to Rule 8, the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex,

\(^{52}\) Rule 65, Ibid
\(^{53}\) Rule 66, Ibid
age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.

The purposes of classification of convict prisoners shall be: (a) to separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence; and (b) to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.54

2.8.4 Accommodation:

Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. It is not desirable to have two prisoners in a cell or room, except on reasonable grounds. All accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation. All places where prisoners are required to live or work, shall be equipped with natural or artificial ventilation, sufficient artificial lights, and adequate bathing facility. All pans of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.\textsuperscript{55}

2.8.5 Personal hygiene:

Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.\textsuperscript{56}

2.8.6 Clothing and bedding:

Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or

\textsuperscript{55} Rules 9-14, Ibid
\textsuperscript{56} Rules 15-16, Ibid
humiliating. All clothing shall be clean and kept in proper condition. In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorised purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.\textsuperscript{57}

\textbf{2.8.7 Food and water :}

Every prisoner shall be provided with the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.\textsuperscript{58}

\textbf{2.8.8 Medical services :}

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. The services of a qualified dental officer shall be available to every prisoner. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary.\textsuperscript{59}

In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate. Where nursing infants are allowed to remain in the

\textsuperscript{57} Rule 17, Ibid
\textsuperscript{58} Rule 20, Ibid
\textsuperscript{59} Rules 22 & 24, Ibid
institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.  

The medical officer shall report to the director whenever he considers after examination that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment. The medical officer shall regularly inspect all the facilities, which affect the health of prisoners and advise the director upon.

2.8.9 Discipline and punishment:

Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life. No prisoner shall be employed, in the service of the institution, in any disciplinary capacity, except on reasonable grounds for the purposes of treatment.

No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence. No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence, where necessary through an interpreter. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences. Punishment by close confinement or reduction of diet shall never be inflicted.

---

60 Rule 23, Ibid
unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. The medical officer shall visit daily, prisoners undergoing such punishments and shall advise the director accordingly.63

2.8.10 Instruments of restraint:

Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances - (a) as a precaution against escape during a transfer, but, they shall be removed when the prisoner appears before a judicial or administrative authority; (b) on medical grounds by direction of the medical officer; or (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.64

2.8.11 Information to and complaints by prisoners:

Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his

63 Rules 30 to 32, Ibid
64 Rules 32 & 34, Ibid
obligations and to adapt himself to the life of the institution. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.65

Every prisoner shall have the opportunity weekly of making requests or complaints to the director of the institution or the officer authorised to represent him. The prisoner shall have the opportunity to talk to the inspecting officer without the director or other members of the staff being present. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.66

2.8.12 Contact with the outside world:

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorised or controlled by the administration.67

2.8.13 Library with books:

Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.68

2.8.14 Religion:

If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. A qualified representative shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times. Access to a qualified representative of any religion shall not be refused to any prisoner. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.69

2.8.15 Women cell shall be maintained by women:

In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution. No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer. Women

68 Rule 40, Ibid
prisoners shall be attended and supervised only by women officers, but doctor and teacher, etc., are exceptional.\textsuperscript{70}

\textbf{2.8.16 Prison labour:}

Prison labour must not be of an afflictive nature. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day. So far as possible the work provided shall be such as maintains or increases the prisoners' ability to earn an honest living after release. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoner shall be able to choose the type of work wishes to perform.\textsuperscript{71}

The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life. Preferably institutional industries and farms should be operated directly by the administration and not by private contractors. The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.\textsuperscript{72}

\begin{footnotes}
\item[70] Rule 53, Ibid
\item[71] Rule 71, Ibid
\item[72] Rules 72-74, Ibid
\end{footnotes}
The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners. There shall be a system of equitable remuneration of the work of prisoners.\textsuperscript{73}

2.8.17 Education and recreation:

Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.\textsuperscript{74}

2.8.18 Social relations and aftercare:

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation. Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall

\textsuperscript{73} Rules 75-76, Ibid
\textsuperscript{74} Rules 77-78, Ibid

55
ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.75

2.8.19 Rules for insane and mentally abnormal prisoners:

Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible and should be kept under the supervisions of medical management in specialized institutions.76

2.8.20 Rules for undertrial prisoners:

(i) Unconvicted prisoners are presumed to be innocent and shall be treated as such. (ii) Untried prisoners shall be kept separate from convicted prisoners. (iii) Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. (iv) Untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food. (v) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable. If he wears prison dress, it shall be different from that supplied to convicted prisoners. (vi) An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses

75 Rules 79-81, Ibid
76 Rule 82, Ibid
to work, he shall be paid for it. (vii) An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security. (vii) An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist on his own expenses, if there is reasonable ground for his application. (viii) An untried prisoner shall be allowed to inform immediately his family and friend of his detention and shall be given all reasonable facilities for communicating. (ix) For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid.77

2.8.21 Rules for civil prisoners:

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.78

2.9 Basic Principles for the Treatment of Prisoners, 1990:

68th Plenary Meeting of the General Assembly of United Nations, on 14th December, 1990, passed a Resolution A/RES/45/111. The General Assembly, bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and also that sound policies of crime prevention and control are essential to

77 Rules 84-93, Ibid
78 Rule 94, Ibid
viable planning for economic and social development, recognising that the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, are of great value and influence in the development of penal policy and practice, considering the concern of previous United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, regarding the obstacles of various kinds that prevent the full implementation of the Standard Minimum Rules, believing that the full implementation of the Standard Minimum Rules would be facilitated by the articulation of the basic principles underlying them.

The United Nations desiring to reflect the perspective that the function of the criminal justice system is to contribute to safeguarding the basic values and norms of society, recognized the usefulness of drafting a declaration on the human rights of prisoners. Hereby affirms the Basic Principles for the Treatment of Prisoners and requests the Secretary-General to bring it to the attention of Member States. The Basic Principles for the Treatment of Prisoners are as follows -

(1) All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

(2) There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
(3) It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

(4) The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

(5) Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants.

(6) All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

(7) Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

(8) Conditions shall be created enabling prisoners to undertake meaningful and remunerated employment which will facilitate
their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

(9) Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

(10) With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

(11) The above principles shall be applied impartially.

2.10 The Asian and Pacific Conference of Correctional Administrators:

In 1980, the Asian and Pacific Conference of Correctional Administrators (APCCA) was established. Thereafter, the conference is being organized annually by the member countries rotationally, with a view to provide a forum for government officials responsible for prison or correctional administration within the Asian-Pacific region to share ideas and work in the professional areas of Correctional Administration and to develop a network aimed at fostering cooperation among the Asian-Pacific region.

The 26th APCCA was held in Auckland, New Zealand from 26th November to 2nd December, 2006. The agenda items of this conference were
(i) National Report on Contemporary issues in Corrections; (ii) Maintenance of Institutional Order; (iii) The well being of Correctional Staff; and (iv) Improving the Reintegration of Offenders into the Community. 

2.11 Amnesty International:

Amnesty International is an organisation working for the welfare of prisoners. The idea for Amnesty International was born when British lawyer Peter Benenson and other political activists launched appeal for Amnesty in 1961, a one-year worldwide campaign calling for the release of all prisoners of conscience. Benenson started the campaign in response to the imprisonment of two students in Portugal who had made a toast to freedom in a public restaurant. The toast was considered a form of political opposition to Portugal’s dictator Antonio Salazar, and both the students received seven-year prison sentences in 1960. Benenson published an article titled 'The Forgotten Prisoners' in the London Observer in May 1961, urging people to write letters to Government officials around the world to protest against the imprisonment of all prisoners of conscience. The campaign gained much attention and the article was reprinted in numerous newspapers in many countries. By the end of 1961, more than 1,000 people had pledged their support to the campaign. Amnesty International was established at the end of that year.

The original mission of the Organisation was based on a doctrine adopted by the United Nations in 1948 to recognise the fundamental rights of all people regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

79 Information was issued by BPRD, on the website, www.brpd.gov.m (25 Feb, 2007)
Among the founders of Amnesty International was Seán Mac Bride, Irish human rights advocate who received the Nobel Peace Prize in 1977, for its efforts in defending human dignity against violence and subjugation. Mac Bride served as chairman of Amnesty International from 1961 to 1974. By 1974 many prisoners of conscience had been released from countries such as Ireland, Romania, Greece, and Egypt due in part to the organisation's campaigns.

In 1972, Amnesty International mounted a worldwide campaign to abolish all torture (including sexual abuse and rape) committed by law enforcement officials. The organisation put together a 12-step programme that outlined ways to eradicate torture in prisons. It included recommendations to outlaw secret detentions to ensure that prisoners are held in "publicly recognised places," conduct immediate investigations of any prisoner's allegations of torture, and enact legislation to make any abuse committed by law officials punishable under criminal laws.

In 1974, the Organisation started the Urgent Action Network to make phone calls and send letters on behalf of prisoners, who need immediate medical or legal help. Also in 1977, the Organisation launched a global campaign to abolish all court-ordered death sentences. Amnesty International claimed the death penalty had never been proven to deter criminal, had been inflicted on innocent people, and violated one of the most fundamental human right, 'right to life'.

By 1990, Amnesty International had investigated more than 40,000 cases involving prisoners of conscience. In the same year, the organisation developed numerous task forces to concentrate on specific human rights
violations. For example, Amnesty International Medical Network consists of doctors and volunteers who investigate medical-related misdeeds in more than 30 countries. The group found that doctors and nurses were sometimes forced by government officials to give false medical evaluations of prisoners in order to conceal Government acts of torture. Other reports concluded that some health officials voluntarily assisted Government leaders in covering up human rights abuses. In 1996, the group published its first annual report, Prescription for Change. Among the nations facing the most serious allegations of medical abuse were Brazil, Israel, Kenya, and Turkey. The organisation also has campaigned to protect human rights for women, refugees, children, gays and lesbians.

2.12 Conclusion:

As it is clear from the philosophy, imprisonment is given as a punishment, not for punishment. Contemporary criminal punishment seeks to correct criminals and transform their behaviour, rather than merely penalise wrongdoers. With the passage of time, developments in the field of criminal science brought about a radical change in the criminology thinking. There was a fresh approach to the problem of crime and criminals. Individualised treatment becomes a cardinal principle for reformation of the offenders. This view found expression in the reformative theory of punishment.

As against deterrent, retributive and preventive theories, the reformativists seek to bring about a change in the attitude of offender so as to rehabilitate him as a law-abiding member of society. Thus this punishment is used as a measure to reclaim the offender and not to torture or
harass him. Reformative theory condemns all kinds of corporal punishments. The major emphasis of the reformist movement is rehabilitation of inmates in peno-correctional institutions so that they are transformed into good citizens. These correctional institutions have either maximum or minimum security arrangements.

* * * *