CHAPTER – III

CORRECTIONAL JURISPRUDENCE

IN INDIA
CHAPTER – 3
CORRECTIONAL JURISPRUDENCE IN INDIA

The prime object of the punishment was to give a lesson to either the person, who had committed an offence or the person who was mentally preparing for commission of a crime. It was in deterring form, from the being of the criminality. Initially, the correctional jurisprudence stated that the punishment was given to deter the 'would be offender' and not to correct the offenders. The fear of punishment was the lesson for the person who is mentally preparing for commission of crime, not to commit the offence and be a law-bidder citizen.

Correction in its broader sense, means reshaping, re-educating and reforming the individual behaviour, attitude and feelings of the anti-social nature which have culminated into his incarceration or committal to some penal institution for custody. In penological parlance, it is a process of treatment, reformation, and rehabilitation of the offender with a view to converting him into self-respecting law abiding and socially responsible citizen of a particular society.¹ Similar views were held by Harihar Aswain, who said that in a developing State, correctional administrations have important role to play. It should consist of three broad phases preventive, curative, and rehabilitative.²

¹ Srivastav SP : An article titled “the Nature of crisis of correction”, published in ‘Indian Journal of Criminology’, Vol.9 No 1 January 1981, Madras, p.23
A person who is once a criminal, need not always be a criminal. As a matter of fact, nobody is born as a criminal. Criminal behaviour is the result of social, psychological and mental factors and they can often be cured by sympathetic understanding and scientific treatment. Society is responsible for converting criminals into good citizens. Correctional work means two things, namely - (i) prevention of crime and (ii) treatment of offenders. This is like prevention of the disease and treatment of the disease.  

Prisons in India are not governed uniformly with every State applying different rules and regulations. In 1959, a Model Prison Manual was prepared by the Government of India for the purpose of updating and revising the State Manuals. It was also meant to lend uniformity to rules and regulations as also to procedure and mode of punishment. Twenty years later, inter-state conference admitted that model but, unfortunately, a study on implementation of it, found in 1983 that, the Model Prison Manual had not been implemented in most of the States.  

The Government of India has been providing all possible financial and technical assistance to State Governments to modernize prisons as also to achieve more efficaciously the overall objectives of prisons in terms of the reformation and rehabilitation of offenders.  

In 1995, the work relating to prisons was transferred to the Bureau of Police Research and Development by the Ministry of Home Affairs. Earlier,  

---

the All India Committee on Jail Reforms (1980-83) had also emphasized the need for a consolidated law on prisons. In 2003, BPRD formulated a Model Prison Manual, 2003.

3.1 Origin of prison institution in India:

The historical account of jails in our country can be traced back to the Epic age. In Ramayana, when Bharata meets Rama at Chitrakut, the latter, while making detailed inquiry about the State of polity and welfare of people of Ayodhya, did not forget to elicit information on the situation in jail there. References of jail are also found during the period of Mahabharata. In those mythological periods eighteen important state officials were there and one of them was the head of the institution of jail (karagriha). In Manusmriti it is stated that "the King should have all the prisons built on the royal highway, where the suffering and mutilated evil doers can be seen". There were also horrific punishments like feeding wrongdoers live to animals, mutilations, etc. We have locked up people in our country in cellular jails to get them out of sight and often to make them for wait some other punishment such as banishing, ostracizing, and death. This includes the locking up of Krishna's parents in a Dungeon in Mathura where Krishna was born. The Archeological Survey of India has found the jail in which Ajatasatru confined his father Bimbisara at Rajgriha, the capital of Magadha (the modern Bihar). The pre-Buddhist jails were said to be very cruel. Here, the inmates were, kept in chains and under heavy loads. Whipping was a daily routine in these jails. Account of Ashoka's Naraka (hell) was included in the writings of Huien Tsang and Fa-Hien. Polished treatment of prisoners was unknown in this period. During Muslim period, old forts and castles served the purpose of regular prisons. These prisons were not as cruel as the pre-
Buddhist era prisons. To study the correctional jurisprudence in India, researcher wants to start from theories of punishment during ancient India.

3.2 Theories of punishment during ancient era:

Punishment has been given the most important place in the administration of justice, because punishment removes the dispute of Matsvanayaya. It means that if the king did not untiringly inflict punishment on those to be punished, the stronger would roast the weak like fish on a spit.\(^5\) \textit{Manu} has also observed, "\textit{Punishment rules all the men}". He strongly advocated that punishment alone protects them, punishment is watchful while they sleep; the wise know punishment to be justice. He further added that, inflicted properly after consideration, punishment delights all people, but inflicted without consideration it together destroys them.\(^6\)

But, \textit{Yajnavalkya} said that punishment would be inflicted after taking into consideration the nature of the offence, country (or locality), time, physical strength, deed (karma) and wealth.\(^7\) \textit{Mitakssara} says that the supreme duty of a king is to protect his subjects and this duty cannot be fulfilled without the punishment given to criminals, so the king should do justice.\(^8\) Kane has admitted that ancient \textit{Smriti} writers were quite aware of the several purposes served by punishment for crimes, though they do not develop a regular science of penology. The individual, however, could not in civilised societies, take the law into his own hands and therefore, the state

---

\(^5\) Manu VII 16, www.sacred-text.com
\(^6\) Manu VII pp18-20 www.sacred-text.com
\(^7\) Yajnavalkya-I p-367
\(^8\) Mitakssara on Yaj II.1
saw to it that the emotions for retaliation or revenge were to some degree satisfied by the adequate punishment of the wrongdoer.\(^9\)

The author of *Sukranitisara*, like the earlier *Smriti* writers also enjoins the administration of justice by inflicting punishments. The regional sources also lay emphasis on punishments. The earlier sources like *Nilamatpurana* states that all people should be penalised in accordance with their crimes. The king should neither be very hard in giving punishments nor should forgive anyone. He should carry on administration in accordance with the instructions of the treatise on polity.\(^10\) *Kalhana* expressly states that the wise man valued highly the quick punishments which the king named *Uccala* of mighty glory meted out to the cruel *Kayasthas*. Because, who know the wise use of punishments do not recommended delay in the punishment of low bred horses, *Kayasthas*, persons possessed by goblins and enemies. For if they are not punished at the proper time they can pose a great threat to the king.\(^11\)

The general principle adopted was that rights, duties and liabilities varied with caste or sex and punishment and damages were determined by the state of the accused or defendant and that of the complainant or plaintiff.\(^12\) Naturally, the *Brahman* was the most privileged class. The law givers prescribe that a *Brahman* was not to be sentenced to death or corporal punishment for any offence whatever. If, he was guilty of an offence deserving the death penalty, he must be punished with exile from the country

---


\(^10\) *Nilamatpurana*, 72-73

\(^11\) *Rajatarangiri VIII* 113-115, also the considerate king in on case harmed the sons, wives, friends and whom he punished

\(^12\) *Aiyer, P.S.S. Op.Cit. p-94*
or he might be branded with appropriate mark on his forehead for the grave sin committed by him or he might be paraded on an ass.  

Though in ancient India, the caste system had not attained full rigidity, but we find that only Brahmans were the most privileged class. The Rajatarangiri refers to a case in the reign of king Candrapida of Kashmir, when a Brahman guilty of murder of a Brahman was exempted from death sentence because of Smriti rule. Kalhana expresses the view that none is to be punished till the charge is established and that a Brahman even if proved guilty, is exempted from capital sentence. Kahana has further remarked that, a Brahman could either be banished or humiliated, in accordance with law, and branded with a dogs foot on his forehead or could be fined. But, we know for certain that kings of India sometimes punished the guilty man at their own will. So, we have doubt how far the Brahmans enjoyed the privilege of not being put to death. The Rajatangiri records several instances where Brahmans were executed by naughty tyrants and rebels. Sometimes king allowed them to die through preyopavesa. It was during the region of Jayapida, that because of their (Brahman’s) opposition to stop the fiscal oppression, many of them preferred to leave the country. Those who resisted were either imprisoned or executed. Their land was confiscated and king Jayapida himself announced that “let it be reported to me if a hundred Brahmans less than one dies in a single day”. Also during the region of Harsha, Kalhana refers that when furious dammars fully utilized the

---

13 Gaut XII 43 Kaut, IV 8, Manu VII 125, 380-381 Yaj III 270 Narada, 9-10 Vishnu
14 Rajatarangiri IV 96-106
15 Rajatangini VI 109
16 Rajatangiri IV 630, normally it was the responsibility of the State to prevent any death caused through Praya. In another instance, a Brahman named Tukka was killed along with other chief man in Sussala force
anarchical condition and had become over powerful, he took serious steps to crush them. Kalhana says while he was killing the lavanyas, he left in Madavarajya not even a Brahman alive if he wore his hair dressed high and was a prominent appearance.17

3.3 Mode of punishment during ancient era:

During the ancient era the punishment was inflicted by the kings in the form of fine, corporeal punishment, imprisonment, banishment, branding, and capital punishment. The range of fine was fixed or not fixed, sometime fine imposed was nominal or sometimes confiscation of entire property.

Corporeal punishment has been recommended by the Hindu law giver for serious crimes. Manu had selected ten places of body where punishment should be inflicted in case of non-Brahmins, but Brahman as are to be banished without inflicting the least hurt. With regard to the cruelty inflicting corporal punishment Rajatangiri contains many references; the instance of culprits and suspected criminals being executed on the pale or by a rope down round the neck during night. The other punishment prevalent in ancient India relating to corporal punishment is cutting off ears and nose, mutilation of the limbs. The most brutal form of punishment for showing dissension and indulging in treason was torture with sparks of fire, needles and other means.18

17 Anjali Kaul: Administration of Laws & Justice in Ancient India -Published by Sarup & Sons - New Delhi, First Ed. 1993 p 178-180
18 Rajatangiri VI-VIII
Imprisonment was another mode of punishment prevalent in ancient India. Manu has stated that all jails should be so built on the royal road where offenders suffering with pain and bad conditions would be seen by all in order to deter others from committing offences.\textsuperscript{19} In the same way Kautilya has also prescribed that jail should be constructed in the capital providing separate accommodation for keeping men and women apart and it should be well guarded at the entrance. \textit{Arthashastra} provides that among the duties of the \textit{nagaraka} is to let out of the jail on the day of festival of the birth constellation of the king and on the full moon day (of every month) such persons as are young, very old, suffering from disease and helplessness.\textsuperscript{20}

Banishment was used in ancient India for two purposes, namely, to get rid of undesirable persons and to serve as punishment for offenders. Undesirable persons were banished not only as the offenders in a legal sense, but their presence was prejudicial to the best interest of the State; in another words they were undesirable for the State. The second purpose, as a means-of punishment, banishment was generally inflicted on Brahman offenders as they were exempted from capital punishment. The punishment of banishment was also prescribed by \textit{Yajnavalkya} for these taking bribes, for a Brahman giving false evidence, etc.\textsuperscript{21}

Brandining was generally used as a supplementary punishment to exile for a particular crime. There was a particular sign which had to be imprinted,

\begin{footnotesize}
\begin{itemize}
\item[19] Das Gupta R.P. op.cit. p.32
\item[20] Kautilya II 36
\item[21] Das Gupta R.P. op.cit. p.33
\end{itemize}
\end{footnotesize}
the branding of the mark and mark of a ‘dog’s foot on the forehead was the most common punishment among the kings.\textsuperscript{22} 

3.4 The middle ages Period (Hindu and Muslim regimes):

The Middle Ages period, witnessed entire families taking revenge against members of rival families for crimes or wrongs committed by one or more members of the rival family. Some of these blood feuds lasted for many years, even for several generations. In some tribal societies, entire tribes would feud with other tribes, and members of rival tribes would hunt and kill one another. Because ongoing feuds among kin groups were disruptive, various European countries drafted agreements setting societal policies concerning punishment. For example, in 1215 King John of England signed the \textit{Magna Carta}, which provided that accused criminals could not be executed or incarcerated prior to a trial by a jury of their fellow citizens.

During the days of \textit{Mughal rule} in India, Islamic tenets of criminal law were in force. According to the Encyclopedia of Islam, Muslim law classified punishment under four heads, namely (i) \textit{Hadd}, (ii) \textit{Qisas}, (iii) \textit{Diya}, and (iv) \textit{Tazir}. \textit{Hadd} is that punishment which has been specifically defined in the \textit{Quran} or the \textit{Hadis} by the Prophet. The penalties prescribed for these offences are liquidation, death, cutting off hands and feet, and strokes of whip varying from forty to hundred. \textit{Qisas} means retaliation, which was of two kinds. \textit{Qisas-fil-nafs} or blood vengeance which was applicable in cases of homicide and the other called \textit{Qisas-fil-ma dun al-nafs}

\begin{footnote}{Manu IX, 236-37, For violating, Gura’s bed a female part was branded, liquors sign for drinking excessive spiritual liquors, a dogs foot for theft, headless man for slaying another Brahmans. [Das Gupta R.P. op.cit. p.34]}

73
applicable in cases which did not prove fatal. If a person committed a willful murder or inflicted a wound which did not prove fatal, he was liable to Qisas or retaliation. Wali or next of kin of the slain person had the right to kill the offender under certain circumstances and under the supervision of a judge. In cases of retaliation short of life, a hand was cut off for a hand, a foot for a foot, a nose for a nose, and a tooth was extracted for a tooth. Diya means a sum extracting for any offence upon the person, in consideration for the claim of Qisas or retaliation. Tazir literally means 'to censor or repel'. In awarding tazir, the judge exercised the discretion. Consequently, the sentence could be anything from a public reprimand to whipping or banishment. Thus imprisonment was not the most often sought form of punishment and jails were used basically as places for detention of undertrials or nobles and political offenders.

3.5 Journey towards reformation:

There are different views on the origin of prison administration in India. Some scholars believe that the origin in India started from the Vedic period, Gupta period and British India. Even though all the scholars are agreed that reformation in Jail Administration started from 1835. Before that no one has thought of improving the condition of the prisons.

The modern prison administration is the product of British activity and their rule over India. While Mulla Committee reviewing prisons

---

24 All India Committee on Jail Reforms, 1980-83, para 2.1
reforms in India, stated that "our contemporary prison administration is a legacy of the British rule" adding that Lord McCauley as the author of Indian Penal Code, provided for imprisonment as the most commonly used instrument of penal treatment. McCauley said that "imprisonment is the punishment to which we must chiefly trust. It will probably be resorted to in ninety cases out of every hundred." Beginning of the modern prison system in India may be sketched from McCauley's plan of setting up large central prisons and smaller district jails. Lord McCauley, as the first Law Member of the Governor General's Council, in his minutes dated December 14, 1835, made out a case for the appointment of Committee for collecting information on the state of Indian prisons and prepared a plan for improving prison discipline.25

E.C. Wines observed that, 'the prison system in Indian Empire, like the British rule itself in that country, has grown up by degrees, until as the empire was consolidated and order introduced into all departments of the Government, the treatment of criminals took its place among the recognised branches of the judicial administration'. H.S. Stratchey made a survey of jail accommodation throughout the territories of the East India Company in 1805. Before 1835, 'there were 43 civil, 75 criminal and 68 mixed jails' in the territories under the company.

3.5.1 First Commission on Prison Discipline, 1834:

Till 1834, public attention was not strongly drawn to prisons. The murder of Thomas Richardson, the Magistrate of 24 Parganas and the

Superintendent of the jail, at the Presidency of Calcutta, was the moving cause of public attention to the jail problems. About this incident, E.C. Wines wrote, "the murder of the Governor of the most important prison in India was the immediate moving cause of the broad and exhaustive enquiry which was at once set on foot. The evidence collected shows that prison discipline had at that time only reached the stage of development in which considerable attention was given to the physical condition of the inmates of the prisons, but not much to the moral relations and agencies. This report was prepared by Lord McCauley, the then Law Member of the Supreme Council of India. In this report Lord McCauley expressed the idea that the best criminal code can be of very little use to a community unless there be good machinery for the infliction of punishment. This was the ideological corner-stone upon which the prisons in those days were based. The abolition of outdoor labour, general introduction of indoor work, the inauguration of separate system, better classification of convicts, careful separation of untried prisoners, the institution of central or convict prisons, and the regulation of prison system generally by employment of inspectors of prisons were the main recommendations of this report."26

3.5.2 The Prison Discipline Committee, 1836:

Lord William Bentick appointed the second Committee on January 2, 1836 under the Chairmanship of H Shakespeare, a member of Governor General's Council. This Committee is known as the Prison Discipline Committee. They submitted a report in 1838 to Lord Auckland. The major observations were "the rampant corruption in the establishment, laxity of

26 Lord McCauley Commission Report, 1835
discipline, and the system of employing prisoners on extramural labour. The Committee recommended increased rigorous treatment and rejected all notions of reforming criminals through moral and religious teaching, education, or any system of rewards for good conduct". Inter alia it recommended separation of undertrial prisoners from the convict. Another notable recommendation of this committee was the request for establishing the 'office of Inspector General of Prisons'.

In 1844, the First Inspector General of Prisons was appointed in India for the then North West Province (UP) and this post was made permanent in 1850. In those days IG (Prisons) were medical doctors. In 1858, the Royal Proclamation was issued and the responsibility of the administration was assumed by the British Crown. With the enactment of Indian Penal Code, 1860, prisons metamorphosed into the most important instruments of penal administration.

3.5.3 First Jail Reform Committee, 1938:

The conditions of the jails were horrible and their environment was polluted in the beginning of 19th century. Lord McCauley attracted the attention of the Government first time in 1838, due to which First Jail Reform Committee was constituted, which recommended the following suggestions –

(a) A Central Jail should be constituted with the following merits –

(i) Prisoners who were given imprisonment for more than one year should be kept in these jails.
(ii) These jails should be in position to keep 1000 prisoners at a time.

(b) In every State a Prisoner Inspector should be appointed, who can inspect from time to time and examine the administration of the jails in the State. Therefore, Uttar Pradesh (1844), Punjab (1852), Bengal (1854), and Bombay-Madras (1862) appointed the Prisoner Inspector.

(c) There should be perfect conditions to live in all the jails.

Some jails were constructed on these recommendations, i.e., Agra in 1846, Barailley in 1848, Naini in 1864, and Banaras & Fategarh in 1867.

3.5.4 Second Jail Reform Committee, 1862:

In 1862, Second Jail Reform Committee was constituted. This Committee gave the following suggestions after examining many jails -

(1) The conditions of the residence, food and clothes of the prisoners should be improved in every jail.

(2) Medical Officers should be appointed and medical facilities should be provided in each Central and District jail.

(3) Criminals should be classified on the basis of nature and severity of the offence.

(4) There should be provisions for keeping 15% of the prisoners into solitary confinement in each Central Jail.
Besides these, third, fourth and fifth Committees also were constituted on the Reformation of Jail Administration and different recommendations were given by them and some of them were accepted by the Government.

3.5.5 Second Commission on Jail Management and Discipline, 1864:

Second Commission was appointed in 1864, to reconsider the whole question addressed by the first committee. The Lord Dalhousie appointed it under the chairmanship of Sir John Lawrence to examine the condition of the jails in India. The British regime was only interested in the prison from the point of view of administration and discipline. This Commission made specific recommendations regarding the accommodation, improvement in diet, clothing, bedding, medical care of the prisoners and for the appointment of Medical Officers in all jails. This Commission fixed the required minimum space for one prisoner as 54 sq. ft. and 640 cubic ft. The Commission also recommended the separation of male prisoners from females and children from adults.

3.5.6 Third Commission or Conference at Calcutta 1877:

A conference of experts was convened in 1877 at Calcutta to inquire into prison administration. This Commission or “Conference” as it was called in British India, on prisons and convict treatment in India was summoned by the Imperial Government. This Commission was constituted only with officials actually engaged in prison work. The studies and conclusions extended over the whole field of prison discipline and administration. One of the major findings of this Commission was that "the various laws relating to prisons have been passed are incomplete, imperfect
and nowhere lay down great leading principles of prison discipline.” The remedy proposed by the conference was the enactment of a new prison law, which could secure uniformity of system at least on such basic issues as the reckoning of the terms of sentence.

3.5.7 The Fourth Jail Commission, 1888:

In 1888, the Fourth Jail Commission was appointed by Lord Dufferin to inquire into the facts of prison. This commission reviewed the earlier reports (reports of 1836, 1864, and 1877) and made an exhaustive inquiry into all matters connected with jail administration. It was of the opinion that uniformity could not be achieved without enactment of a single Prisons Act. It also recommended the setting up of jail hospitals.

3.5.8 Introduction of the Prisons Act, 1894:

There were four different Acts in force for the regulation of the jails in British India and for the enforcement of discipline therein. The provisions of these Acts differed inter se in various important points, namely, as to the jail offences enumerated in them, as to the punishments which might be inflicted for these offences, and as to the authorities competent to inflict these punishments. In consequence divergent systems of jail management had grown up in the several provinces, whereby the uniform enforcement of sentences of imprisonment could not be effectively executed.

In consequence divergent systems of jail management had grown up in the several provinces; whereby there had been a sacrifice of that uniform enforcement of sentences of imprisonment which effective general administration requires. The Bill was mainly based on Act XXVI of 1870,
(An Act to amend the law relating to prisons), which was in force in the
Northern-Western Provinces and Oudh, the Punjab, the Central Provinces,
Coorg and Burma, with amendments embodying the conclusions arrived at
by the Government of India on the report of the Jail Committee of 1889 and
the report of the Prison Conference of 1892, as stated in the resolutions
recorded in the Home Department of the 9th November, 1892, and in the
circular letter to local Governments and administrations, dated the 25th
March, 1893, to which it appeared necessary to give legislative form. So, the
Prison Bill was introduced in the Legislature to repeal the four local Acts
and prescribe a uniform system of the prison management in India

It was the existing law governing the management and administration
of prisons in India. This Act, as it was based on deterrent principles
concerned more with prison management than with the treatment of
prisoners and gave more consideration to prison offences and punishments
than to their effect. Some salient features of the Act were -

(i) The Act describes about the prison administration and
    organisational structure of the prison staff.

(ii) Duties of the prison officers and their subordination.

(iii) Explains the provisions relating to admission, removal and
discharge of prisoners.

(iv) Classification (segregation) of prisoners in prison.

(v) Food, clothing and bedding of civil and un-convicted criminal
    prisoners.
(vi) Employment of prisoners.

(vii) Protection of the health of prisoners.

(viii) Social visits to prisoners.

(ix) Prison offences and their remedies.

(x) Power of State Government to make rules by notification in the official gazette matter related with prison.

3.5.9 Introduction of the Prisoners Act, 1900:

An Act was enacted to consolidate the law relating to prisoners confined by order of a court and to be construed as referring also to Reformatory Schools. Initially this Act consisted of the following provisions:

(i) Prisoners in the Presidency-Towns and outside the Presidency-Towns;

(ii) Removal of Prisoners;

(iii) Persons under sentence of Transportation;

(iv) Discharge of Prisoners; and

(v) Provisions for requiring the attendance of Prisoners and obtaining their evidence.
3.5.10 Indian Jail Committee, 1919-20:

In 1919, an Indian Jail Committee was constituted headed by Sir Alexander Cardio. This Committee after studying the jails in country and aboard concluded that Indian Jails had improved only in the field of food, health and labour but not in any other field. This Committee writes that "when the prisoners are in jail, they should not be only thought of as stopped from the commission of offence in future but affect them to reform their character, it is our second principle, which we understood that should be accepted." The Committee has accepted that a criminal cannot be reform by hardened. Till you are not treating the criminals humanitarianly reform is impossible. Actual reformation in the criminals is only possible when criminal feels himself that he has done wrong. The important suggestions of this Committee are as follows –

(i) The jails should be looked up by the trained officers only.

(ii) The Jailer should be a person, who is experienced in the jail administration and instead of Police Officer, Doctor of Army should be preferred.

(iii) In every jail, a presiding doctor of jail should be appointed.

(iv) The gate-keeper of the jail should be a literate person only.

(v) The prisoners should be classified as habitual and casual offenders.

---

27 Indian Jail Committee 1919-20, p-26
(vi) Prisoners should be kept together, not isolated.

(vii) In the prison, the selection of a prisoner as a prison officer should be in rare cases only.

(viii) The fundamental aim behind the labour from a criminal should be reformative only.

(ix) The punishment of flogging is inhumane, it should be abolished.

(x) The offenders who are punished for more than six months should be given some privileges.

(xi) The offenders should be at liberty to write and receive letters.

(xii) The offenders should be at liberty to meet with their family members, relatives and friends.

(xiii) In the prison, there should be a library for the development of their mental status.

(xiv) The offender should be provided with two pairs of clothes.

(xv) The food provided should be good and nutritional.

(xvi) The offenders below the age of 25 years should be given freedom of study.

(xvii) The parole system should be implemented.
(xviii) At the time of release, the inmate should be held to rehabilitate in the society and family.

(xix) There should be provisions of juvenile homes for the juvenile offenders.

(xx) Juvenile offenders should be kept separate from the prisoners imprisoned to life.

(xxii) Generally, the offenders should not be sent to Andaman. It should be for the dangerous offenders only.

(xxii) A construction work should be taken from the offenders.

The problems of prison management and administration continued. The Indian Jail Committee 1919-20 made the first comprehensive study of these problems in the twentieth century. The Report of this Committee was treated as a turning point of the prison reforms in the country. Committee departed from the vintage theoretical basis of prison administration—(deterrents) and advocated for a new outlook to the prisons. For the first time in the history of prisons, 'reformation' and 'rehabilitation' of offenders were identified as the objectives of prison administration.

The Committee also recommended that the care of criminals should be entrusted to adequately trained staff, rejected the idea of excessive employment of offenders and recommended the reduction of such excessive employment. The committee condemned the presence of children in jails and recommended the establishment of children's court and the juvenile homes. Under some pretext or other, the recommendations of the Indian Jail
Committee 1919-20 were not implemented. Still they serve as a guiding star for prison reforms in India.

3.5.11 Government of India Act, 1919:

With the Indian Jail Committee 1919-20 in 1919 the Government of India Act was introduced, according to which prison was made the subject of the State. Due to that speed of the reformation of the jail decreased and today the position of the jails is different in every State.

The Government of India Act, 1919 left the subject of prisons to the consideration and judgments of the Provincial Governments without any effective control and supervision of the Central Government. As an obvious result, the Provincial Governments accorded low priority to the prison reforms. However, the period from 1937 to 1947 was important in the history of Indian prisons because it aroused public consciousness and general awareness for prison reforms at least in some progressive States (Mysore, UP, Bombay, etc.). The freedom movement also added momentum to this awareness.

3.5.12 Jail Reform Committee, 1946:

A Committee was constituted in the year 1946 for the reformation of the jails. This Committee has gave the following suggestions –

(i) The child offenders should be treated differently.

(ii) Modern jails should be constructed.
(iii) The classification of the offenders should be scientific as – (a) child offenders, (b) adult offenders, (c) women offenders, (d) casual offenders, (e) habitual offenders, (f) mentally diseased offenders, and (g) handicapped offenders.

Besides above recommendations, the Committee recommended the diversification of institutions based on sex, age, criminal record, security condition, and treatment.

(a) Architecture and building,
(b) Accommodation,
(c) Constitution of Advisory Boards,
(d) Recruitment, selection and training of prison personnel,
(e) Discipline,
(f) Basic facilities,
(g) Daily routine and education for prisoners,
(h) Vocational training,
(i) Aftercare and rehabilitation,
(j) Categorization of prisoners (i.e., undertrial prisoners, women, life convicts, habitual offenders, lunatics, juveniles, etc.), etc.

The great Mahatma Gandhi strongly favoured that offenders can be reformed by sympathetically treatment only. He said that “prisons should be
changed into hospitals to give treatment to offenders to bring them on the correct line. Officer of the jail should be changed into a doctor. The offenders shall feel that officers of the jail are their friends”.

3.6 Independence of India boosted the journey:

After independence of India, the work on the reformation of jails speeded up. It was accepted that prisoners are also human beings and they have all the basic rights of humanity. So, in 1956 the punishment of transportation (Kala-pani) was substituted by the imprisonment for life. Various steps had been taken for the treatment of the offenders. A committee appointed by Government of India had submitted a report after studying of 110 Central Jails and 69 District Jails.

3.6.1 Introduction of psychiatric treatment system:

In 1949, Pakawasha Committee gave the permission to take work from the prisoners in making of roads and for that wages were required to be paid. At the same time, “Good Time Law” was implemented, according to which during the period of imprisonment for good conduct a definite remission was provided. First time in India in 1949 psychiatric treatment system was implemented under which many correctional homes were constituted. A model prison was made in the city of Lucknow (UP), where the prisoners kept busy in the various small industries. For the same time first women prison was constructed in Merwda (Maharashtra).
3.6.2 Introduction of open prison:

Just after independence in 1949, a unique reform was initiated in social and penological reforms by Dr. Sampurnanand, a great social reformer, thinker and philosopher by introducing of open prison in the State of UP during his tenure as Home Minister of the State. Workings of some of the camps gave idea about the open prisons. The open prisons provide the opportunities to the prisoners to mix up freely with the minimum of security arrangements and to develop a sense of confidence among them. They are also paid for the work done by them and thus they earn their livelihood. The part of the wages earned by them is remitted to their families. The offenders’ eligibility for open prisons depends on the rules operative in different States. The Jail Reform Committee pointed out the inadequacy of the number of the open prisons in the country which was 27 in 1980.

Lucknow is the First Model Prison. On the recommendation of UP Jail Reformation Committee, 1946, Central Jail Lucknow was converted into Model Prison. It was a special experiment which was never undertaken before. A model prison was attempted to be converted into a developed colony. Before entrance to model prison, the prisoners were kept at the reception centre for six months.

Prisoners are trained in various forms, where they were taught the importance of moral education and education at the Reception Centre. It had the facility of yoga and various kinds of training by which the original interest of the prisoner can be seen. If prisoner passed in the various kinds of training then he could be kept in the modern jail otherwise not. So, prisoner made full efforts to succeed the entrance to get admission in the model jail.
The object of this model prison was not only to make the criminal a good civilised citizen but to train him in a vocational skill.

The dream of Dr. Sampurnanand became true on 1st October, 1952 when first camp was inaugurated in Chakiya Tahsil of district Chandoli, UP. Before going in this camp, the prisoners had to go for special training in the Banaras District Jail. In this camp the expenditure on food, cloth, education, entertainment, etc. was totally on the prisoner’s head. In this camp 3000 prisoners were kept. The boundary of camp was covered by the barbed wire fence and prisoners had full freedom to move inside the camp. One armless guard was kept for each 30 prisoners.

The (then) Chief Minister of UP, Late Shri GB Pant, declared that inmates of these camps would no longer be called prisoners and that tradition was maintained in all the camps. In this camp the prisoners were paid equal wages to the labourers working outside. After the remarkable experience of training in responsibility and trust, which the prisoners acquired at the Chandraprabha camp, they were sent to neighbouring places. Three groups of two hundred each were sent to work at some distance from the main camp. That experiment also was successful.

Second camp was started on 4th October 1953 for the making of dam on Karamnasha river in Naugarth, which was completed in 1955. In this project 3905 prisoners were working. All kinds of prisoners were employed, with imprisonment term starting from one year imprisonment. But, most of them were prisoners with imprisonment ranging from three to five years.
Third camp also was conducted in the Shahagarh in Pilibhit district. Initially, in this camp 500 prisoners were admitted and by their help a canal for 8 miles was constructed. Thereafter, Nanak Sagar Camp, also was successful.

The next camp was organised to construct a bridge to link Sarnath. This bridge spans the river “Varuna” and shortens the distance to Sarnath by seven kms. Its construction was immensely appreciated by pilgrims from all over the world. The bridge was constructed in record time of 4 months and few days only. The camp inmates worked in shifts of 400 persons each day in and day out for this bridge. This was the first occasion when the prisoners wore no fetters and no distinctive clothes, worked twenty-four hours with free labourers in the midst of a populous city and completed the work much earlier than the stipulated time. They were paid at par with other labourers. The (then) President Dr. Rajendra Prasad visited this camp and was extremely pleased to remark—“In the soul of an Indian even today social values are alive, even if that Indian is a prisoner.”

Sampurnanand Agricultural-cum-Industrial Camp, Sitarganj, Nainital, is an entirely open institution without walls or security-fencing, organised as a single administrative unit on a permanent basis. This camp was established under the Government order No. 5366/XXII/5004/57, dated 28 January, 1960 in the tarai area of Nainital near Kichha comprising of seven villages of Sitarganj Tehsil –Nainital (Now in the State of Uttarakhand). “It is one of the largest open prisons in the world”. According to the data none case of escape has been reported from 1983 to 1990, but

---

earlier from 1974 to 1983 many cases of escape were reported. Initially, the escape rate was high but it declined from 1978.29

Rajasthan has maximum number of open prisons. It has total nine “Open Prison” farms or camps that accommodate 450 prisoners, in most areas with their families, but Sanganer has turned out to be the most unique and progressive camp in the State. “These prisons are a half-way home, a transit point between incarceration and ultimate social integration”.

Presently, in India there are around 40 open prisons are in function, but it is surprising to note that National Crime Records Bureau in its Report of 2004 in Table 2.7 at page No. 23 stated that India has only 26 open prisons.

3.7 Republic of India pick up the momentum:

The constitution of India, which came into force on Jan 26, 1950, in Article 246 empowers the State Legislature to make the laws on any of the matter of List-II (called State List). It means State only authorised to make laws on any subject listed in the list-II of the Seventh Schedule of the Constitution. Entry-4 of the Seventh Schedule’s List-II, states the matter relating “Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.” During the early 1950's a number of jail reform committees were appointed by various State Governments with the aim of achieving the goal of humanisation in prisons and to put the treatment of offenders on a scientific footing.

29 Ibid – pp 838-839
3.7.1 Introduction of the Transfer of Prisoners Act, 1950 :

In 1950, 'The Transfer of Prisoners Act, 1950' was passed. The prison Act, 1900 *inter-aila* was providing for the inter-state transfer of prisoners between the States classified in Part A, C and D of the First Schedule of the Constitution. However, there was no provision, either in Prisoners Act, 1900 or any other law for the transfer of prisoners from Part A, C and D to Part B States and *vice versa* may be considered administratively desirable or necessary. This Act is intended to provide legal sanction to such transfer or removal. Presently, this Act is applicable to transfer of prisoner from States to Union Territories and *vice versa*. The transfer of a prisoner from one State to another is governed by section 29 of the Prisoners Act, 1900.

3.7.2 Reckless Commission Report, 1952 :

*Dr W.C. Reckless*, a UN Expert on correctional work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. While local committees were being appointed by the State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. His report "*Jail Administration in India*" is another landmark in the history of prison reforms. He made a plea for transforming jails into reformation centres and advocated establishment of new jails. He opposed the handling of juvenile delinquents by courts, jails, and police meant for adults. He also advocated the detention of the persons committed to the prison custody and for their reformation and rehabilitation. The revision of outdated jail manuals and introduction of legal substitutes for short sentences were recommended by him.
3.7.3 Introduction of the Prisoners (Attendance in Courts) Act, 1955:

Earlier, some provisions were embodied in the Prisoners Act, 1900 but in 1955, such provisions were remitted and another Act "The Prisoners (Attendance in Courts) Act, 1955" was introduced to provide for the attendance in courts of persons confined in prisons for obtaining their evidence or for answering criminal charge.

3.7.4 The All India Jails Manual Committee 1957-59:

The Government of India appointed the All India Jails Manual Committee to prepare a model prison manual. The Committee was also asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the country. The report of the All India Jails Manual Committee and the Draft of Model Prison Manual was presented by that Committee to the Government of India in the year 1960 is commendable documents on prisons. The Committee not only enunciated principles for an efficient management of prisons but also laid down scientific guidelines for corrective treatment of prisoners. While laying down the guiding principles for prison management, the committee wrote "the institution should be a centre of correctional treatment, where major emphasis will be given on the reduction and reformation of the offenders. The impacts of institutional environment and treatment, shall aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and on his total values of life". The Jail Manual Committee's major recommendations touched the important aspects of how a prison should be managed.
3.7.5 Introduction of the Probation of Offenders Act, 1958:

In the year 1958, the Probation of Offenders Act was passed, where provisions were made that a person of any age, who has committed any offence punishable up to seven years and where the offender is child or woman and committed any offence not punishable with death or imprisonment for life, can be released after admonition or released on the probation of good conduct on the condition that it is his first offence. Some similar provisions were in the Code of Criminal Procedure, 1898 and now they are in sections 360 and 361 of the Code.

3.7.6 All India Committee on Jail Reforms 1980-83:

In 1980, Government of India constituted All India Committee on Jail Reforms under the chairmanship of Justice Anand Narain Mulla. The recommendations of this, universally known as Mulla Commission, constitute a landmark in the reformatory approach to prison reforms. The commission made thorough study of the problems and produced an exhaustive document.

3.7.7 Introduction of the Juvenile Justice Act, 1986:

In the year 1986, the Juvenile Justice Act was enacted, which constitutes provisions about observation homes, special homes, and juvenile homes, where the neglected children and juvenile delinquent can be admitted and lays down that the juvenile delinquent cannot be tried with the non-juvenile offender and cannot be kept within the prison. The important provisions of the Act were explaining of the orders which can be passed and
which cannot be passed against the juvenile. Under this Act juvenile means was a boy below the age of 16 years and a girl below the age of 18 years.

3.7.8 Prisoners allowed to stay with their family:

Sanganer is an outstanding open prison in Rajasthan. Here the inmates live with their families in small huts and single-room barracks which they usually construct themselves. At present there are about 150-160 prisoners including 10 women. They build their own houses, pay for water and electricity and are allowed to go out to work between 6 am and 7 pm, within a 10 km radius. Their children attend nearby schools. A roll call is taken in the morning before six and in the evening around eight everyday. Sanganer’s bold and innovative experiment which preaches self-reliance has two defining features - economics and emotions. It is good economics because the State has to spend little for the upkeep of the prisoners and by understanding a convict’s emotions, the open prison has made it mandatory for prisoners to stay with their families.

In the Sanganer open prison, convicts live with their families, go out to work and pay taxes for water and electricity. This experiment of allowing prisoners to stay with their families and permitting them to work outside the prison was started in the year 1996 by the Government. Since then there have been only three incidents of violation. One prisoner committed suicide and another overstayed while playing cards during a Diwali night. A third escaped. Prisoners engage in a wide variety of jobs; some teach at neighbouring schools, others are daily-wage earners and labourers.

30 Suman Choudhury: An article published in “The Telegraph”, Kolkata Sep 5, 2004
Second unique institution is *Lalgola* open-air prison, which was inaugurated in the district of *Murshidabad, West Bengal in 1987*. In a recent development, ten cottages have been built in the campus where prisoners are staying with their families. These are not merely cottages but two room flats with separate kitchen and attached bathroom having a small garden and equipped with fans and electricity. These cottages will be the envy of any person. These cottages are actually half way homes, where prisoners can interact with their families and learn some trade before release from the jail. This was a unique experiment of reformation theory put into practice by the State Government of West Bengal. This institution is planning to build more cottages to extend such facilities to larger number of inmates and propose to send such female convicts to the open prison who satisfy all conditions and are ready to have their families with them in family cottages. The prisoners are now being given training of motor driving. The prisoners go to District Headquarters, *Berhampore*, a distance of 50 kms. from *Lalgola* by train unescorted, practice motor driving and come back by the stipulated time.\(^3\)

3.7.9 **Separate division of Correction/Prison Administration**:

The Correctional Administration Division in Bureau of Police Research & Development has been established by the Ministry of Home Affairs vide their letter No. VII 11018/14/92-GPA.IV dated November 16, 1995 with a specific charter of functions which includes responsibilities relating to the study of problems affecting prison administration and the promotion of research and training in this field. In pursuance of these functions, the Division has not only been sponsoring research and training

\(^3\) Official Website of West Bengal Prisons, India, www.westbengalprisons.org/ (23rd March, 2006)
programmes but also undertaking on its own projects on issues deserving priority attention from the viewpoint of public policy. The priorities in this regard are determined on the basis of a national consensus emerging at various forums, such as, Advisory Committee on Prison Reforms, Regional Meetings of the Heads of Prison Department of State and Vertical Interaction Courses for Prison Officers and All India Conference of DG/IG Prisons and Secretaries (Prisons) of all States and Union Territories, etc.32

The Bureau of Police Research and Development has been seriously concerned about the modernization of the prison system in the country in the light of the directives issued by the Supreme Court in a number of judgments pronounced from time to time.

3.7.10 Introduction of Juvenile Justice (Care and Protection of Children) Act, 2000:

In the year 2000, a new Act in the form of Juvenile Justice (Care and Protection of Children) Act, 2000 was passed, which also repealed the Juvenile Justice Act, 1986. In the new Act, the juvenile or child means any person below the age of 18 years. It means the boy of 16-18 years age is also included in the definition of juvenile. The Act also declared that the date of reckoning the age of juvenile is date of offence, not the date of his/her being produced before the Board. The juvenile delinquent is not called juvenile delinquent but “juvenile in conflict with law”. The record of the offence committed by juvenile will not be recorded in the record of that juvenile, which safeguards the interests of juvenile, who may later have even the opportunity of job in Government services.

3.7.11 Introduction of the Repatriation of Prisoners Act, 2003:

Earlier there was no legal provision either in the Code or any other law under which foreign prisoners could be transferred to the country of their origin to serve the remaining part of their sentence nor was there any provision for the transfer of prisoners of Indian origin convicted by a foreign court, to serve their sentence in India. From the humanitarian angle it was felt that if foreign convicted nationals were transferred to their home countries and prisoners of Indian origin brought to India to serve the remaining part of their sentence, it would enable them to be near their families which would help them in the process of their social rehabilitation.

3.7.12 Model Prison Manual, 2003:

The Apex Court in Ramamurthy v. 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. BPRD has formulated a Model Prison Manual for the Superintendence and management of Prisons in India.

3.7.13 Modernization of prisons policies:

'Prisons' being a State subject, administration of prisons, is the responsibility of the State Government. The provisions of the Prisons Act, 1894 and the Jail Manuals framed by State Government provide a framework for the prison administration. The State Governments have
powers to undertake legislation and make rules and regulations on the subject.

With a view to provide substantial and major help to the State Governments in their endeavour to improve the condition of prisons, prisoners and the prison staff, the Central Government launched a scheme in 2002-03 providing for construction of additional prisons to reduce overcrowding, repair and renovation of existing prisons, improvement in sanitation and water supply and living accommodation for prisons staff. The scheme known as 'Modernisation of Prisons' is being implemented over a period of five year (2002-07) in 27 States with an outlay of Rs.1800 crore. The cost is being shared in the ratio of 75:25 between the Central and State Governments respectively.\footnote{Sources - Ministry of Home Affairs, http://mha.nic.in, as October, 2006}

In addition to taking up the aforesaid works under the scheme, the State Governments have now been allowed to utilize 10\% of their entitlement for 2006-07 on providing modern equipment, such as computers, video conferencing facilities, etc. and building/improving infrastructure for undertaking correctional programmes.\footnote{Official website of BPRD, http://www.bprd.gov.in/}

\subsection*{3.7.14 Welfare fund for crime victims:}

State of Gujarat has created a fund in all the jails called “Prisoner Welfare Fund” with effect from 1\textsuperscript{st} October, 2003. This fund is used for welfare activities conducted in prison.\footnote{Official website of Gujarat prison} The Himachal Pradesh Cabinet on 6\textsuperscript{th} Feb, 2007, approved the setting up of a welfare fund for victims of crime\footnote{official website of Gujarat prison}
that would be funded in part from earnings of prisoners who have been convicted of serious crimes such as rape and murder. The Cabinet approved its start with a corpus fund of Rs. 5 lakh from the Government. It will be funded by 35% of the wages earned by convicts in a month. The amount shall be deposited in the fund in a separate bank account. In case of crimes where the victim dies, the compensation will be immediately paid to the kith and kin. 35% of the wages earned by prisoners shall go into the prisoners' welfare fund and be utilised under welfare activities for jail inmates. The remaining 30% will be given to the prisoner and he will be free to spend it on his personal requirements.36

* * * * *

36 The Hindu, Feb 07, 2007, Ed. Himachal Pradesh