CHAPTER – V

SEGMENTS OF CORRECTION AND THEIR SOCIAL IMPACT
The process of criminal correction can be divided into four segments. Initial segment of correctional process is correction through sentencing procedure, which includes an alternative punishment to imprisonment, i.e. release after admonition or release on probation of good conduct, imposition of fine, award of compensation to victim, etc. Second segment of correctional process is the correction programmes within the walls of prison, those include character building programmes, education building, vocational training, assignment of valuable work, meditation, counseling, open prisons, etc. Third segment of correction process may be said governmental correction, where the Government is empowered to grant pardon, suspension, reprieve, commutation of punishment, remission of sentence, etc. The last but not the least segment of correction is advances towards rehabilitation, which includes releasing of prisoners on parole, furlough, and providing aftercare services, etc.

**Jawahar Thakkar**, a convict turns saviour for cops. He has set an example of reformation, when he was escorted by the police by bus, the bus carrying them met with an accident and many of the people were injured with policemen. In such circumstances instead of escaping, he helped them and asked a by-passer to help him in carrying the injured to hospital.
According to the police, Thakkar was taken to the court in Bhuj for hearing of another case pending against him on 18th June, 2007.¹

While adopting correctional approach the Hon’ble Supreme Court observed that “the appellant is a youth barely 22 with no criminal antecedents save this offence. He has a young wife and a farm to look after. Given correctional courses through meditational therapy and other measures, his erotic aberration may wither away. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or of reformatory self-expression. A hyper-sexed homo sapien cannot be rehabilitated by humiliating or harsh treatment. In prison the treatment must, therefore, be geared to psychic healing, release of stresses, and restoration of self-respect and cultural normalization, apart from training to adapt oneself to the life outside. The functional failure of our pachydermic prison projects, exacerbated by its tension and trauma on the one hand and the reverse ethos inside on the other deserves judicial cognizance. For these reasons, in this case, it is desirable to superadd to the sentence of imprisonment a few directives to ensure that the crucial period reforms the convict. A set of positive prescriptions will ensure appellant turning a new leaf. One major method in securing this goal is to keep alive the family ties of the person in prison, so that the appellant may not deteriorate into a non-person. Within the limits of the Prison Act and Rules thereunder, the State Government or the Inspector General of Prisons will ensure that on parole, furlough or orders, the young appellant turns a new leaf of normal life. Therefore, taking an overall view of the familial and the criminal factors

¹ Times of India, Ahmedabad ed. June 20, 2007

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involved, the Supreme Court reduced the imprisonment from 4 years to 2 years rigorous imprisonment.  

Inspired by such approach of the court, a correctional approach may be adopted from very beginning of the criminal procedure. In this chapter researcher is going to discuss the four segments of correctional process; namely (1) correction through sentence procedure; (2) Institutional correction; (3) the Governmental correction; and (4) correction through social reintegration. The correctional theory favours the offenders, which is very hard to digest by the society. So, it gives some social effects too.

5.1 Correction through sentence process:

Correctional theory starts from the sentence process. After holding the conviction, it is the duty of the court to see all the alternative sentences to imprisonment, which are permissible by law. The court must award only the lesser punishment provided by the law for the offences (except socio-economic offence or white collar crimes). But, when the court feels that the offender deserves more sentence than the minimum for the offence, the court is free to award up to maxim provided by law for the time being in force, in case of awarding minimum sentence, the court is duty bound to record the reasons to justify. It should be noted that court is not empowered to award more sentence than provided by law. While awarding sentence the court should look at all the alternative punishments available according to law. The priority of the alternative punishments may be described in the following order.

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2  Phul Singh v. State of Haryana, AIR 1980 SC 249
5.1.1 Release of convict after admonition:

First of all, while considering alternative punishment, the court must think about the release of offender after admonition where permitted by law. The law relating to release after admonition is provided under section 3 of the Probation of Offenders Act, 1958 and section 360 (3) of the Code of Criminal Procedure, 1973. The court is empowered to release the first time offender after admonition with or without the conditions, on his own bond or with sureties in certain offences.

Both the enactments empower the court to release an offender on admonition whom the court found guilty of having committed an offence, punishable under IPC, - (i) any offence punishable up to two years of imprisonment under IPC or any of the law time being in force and expressly not prohibited, or (ii) whoever commits theft under section 379, punishable with the imprisonment up to three years or with fine or with both; or (iii) whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling or used for the custody of property, under section 380 punishable with imprisonment up to seven years, and fine; or (iv) whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, under section 381, punishable with imprisonment up to seven years and fine; or (v) whoever dishonestly misappropriate the property of deceased person at the time of death, under section 404, punishable with imprisonment up to three years and fine; or (vi) cheating and dishonestly inducing delivery of property to any person or to make, alter, or destroy the whole or any part of a valuable security under section 420, punishable up to seven years imprisonment and fine.
Before making the order of release after admonition, it should be proved in court that no previous conviction has been proved against the offender. Previous conviction against a person shall include any previous order made for release after admonition or probation on good conduct.

The court by which the person is found guilty must be of the opinion that having regard to the circumstances of the case including the nature of the offence and character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct, release him after due admonition.

5.1.2 Release after admonition with compensation:

If, the offence is admonishable but judge feels that the offender shall suffer the loss of the victim, the court may award the admonition with compensation, with or without the conditions, on his own bond or with sureties. The law relating to release on admonition with compensation is provided under section 3 read with section 5 of the Probation of Offenders Act, 1958.

When the court directing to release an offender after admonition may, if it thinks fit, make at the same time a further order directing him to pay – (a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and (b) such costs of the proceedings as the court thinks, reasonable. The amount ordered to be
paid, may be recovered as fine or in a civil suit may be recovered as compensation.3

5.1.3 Release convict on probation of good conduct:

If, after considering the question of release of the offender after admonition, the court feels that offender does not deserve to be released after admonition, the court must consider the question of release of the offender on probation of good conduct. The law relating to release the offender on probation of good conduct is provided under section 4 of the Probation of Offenders Act, 1958 and sections 360 & 361 of the Code with or without the conditions, on his own bond or with sureties.

When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that is expedient that the offender should be released on probation of good conduct, court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three

3 Section 5 of the Probation of Offenders Act, 1958
years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour.  

Similar, but more explanatory provisions are provided under section 4 of the Probation of Offenders Act, 1958, which empower the court to release certain offenders on probation of good conduct. If any person is found guilty of having committed an offence not punishable with death or imprisonment for life – (i) The court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force. (ii) The court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Before directing such release, of an offender the court shall be satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. But, before making any order to release certain offenders on probation of good conduct, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

When an order to release certain offenders on probation of good conduct is made, the court may, if it is of opinion that in the interests of the

4  Section 360 (1) of the Code of Criminal Procedure, 1973
offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary, for the due supervision of the offender.

The court making a supervision order on probation of good conduct, shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

The court making a supervision order on probation of good conduct, shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the order to each of the offenders, the sureties, if any, and the probation officer concerned. The provisions relating to release of the offender on probation, is not similar under the Code of Criminal Procedure, 1973 as are under the Probation of Offenders Act, 1958. The collective study of both enactments states that the Probation of Offenders Act, 1958 should supersede the Code of Criminal Procedure, 1973.

Section 19 of the Probation of Offenders Act, made it clear that provisions relating to probation under section 562 of the Code of Criminal Procedure, 1898 (now section 360 of Code of Criminal Procedure, 1973)
shall cease to apply to the States or parts thereof in which the Probation of Offenders Act is brought into force, subject to the provisions relating to Juvenile offenders [Now Juvenile Justice (Care and Protection of Children) Act, 2000 is in force], or Borstal school, or Section 5 (2) of the Prevention of Corruption Act, 1947, or Section 31 of the Reformatory School Act, 1897.

Collective reading of the sections 360 and 361 of the Code and the Probation of Offenders Act, 1958 says that the court is empowered to release an offender on probation of good conduct, who has committed any offence, not punishable with death sentence or imprisonment for life, except expressly provided by law for the time being in force. It is the grace to offender and at discretionary power of the court according to nature and circumstances of offence. Only Judicial Magistrate of First Class (JMFC) can release an offender on probation. If the case comes to Judicial Magistrate of Second Class, he shall refer it to JMFC.

Where court feels that offender does not deserve the benefit of probation according to section 360 of the Code, it is the duty of the court to explain reasons for not giving benefit of such probation. Special reasons are to be recorded where benefit of the probation cannot be given to offender entitled for it.\(^5\)

Where a juvenile who had committed rape, on conviction was sentenced to ten years rigorous imprisonment, the Andhra Pradesh High Court held that such sentence was not proper. The court must comply with

\(^5\) Section 361 of the Code and section 6 of the Probation of Offenders Act, 1958
the provisions of sections 360 and 361 *suo motu*, and said that provision of section 361 was mandatory.\(^6\)

To release on probation under the Probation of Offenders Act is grace to the offender, because the Probation of Offenders Act, 1958 is primary Act relating to release of the offender on probation and sections 360 and 361 of the Code are rights of the offender and supplement to the Act. Similar views were held by the Himachal Pradesh High Court, when it held that section 361 of the Code is supplement to the provisions of the Probation of Offenders Act and there is no conflict between the Code and the Probation of Offenders Act.\(^7\)

While the court granting probation, it should be satisfied that offender has not been previously convicted. Previous conviction against a person shall include any previous order made for release after admonition or probation of good conduct. The court by which the person found guilty is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment, release him on probation of good conduct.

The benefit shall not be apply to the offences, namely, (i) Conviction under Prevention of Food Adulteration Act, 1954; or (ii) Conviction under Rule 126 (P) (2) (ii) of Defence of India Rules 1962; or (iii) Conviction under Customs Act; or (iv) Gold Control Rules contained in Part–XIIA of

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\(^6\) *Reepik Ravindra v State of AP*, 1991 Cr. LJ 595 (AP)  
\(^7\) *State of Himachal Pradesh v Lat Singh*, 1990 Cr. LJ 723 (HP)
DIR; or (v) Conviction for sale of obscene pictures; or (vi) Conviction for abduction, seduction and sale of girls; or (vii) Where accused is a habitual offender. The Hon'ble Supreme Court added serial No. (v) to (vii) and held that provisions relating to probation shall not apply to these categories.

The Rajasthan High Court held that where a minor girl was forcibly taken away from the custody of the parents by the accused for marrying him, such an accused cannot be given benefit under the Probation of Offenders Act or under section 360 of the Code as giving of such benefits will bring disrepute to law itself. But, when an accused was 70 years old at the time of incident and becomes 80 years during appeal and had caused death by pushing the deceased without knowing that deceased had enlarged spleen, the accused is entitled to get the benefit of probation under section 360 of the Code and also under section 4 of the Probation of Offenders Act.

5.1.4 Release on probation of good conduct with compensation:

Where the court is considering the question of releasing an offender on probation but opines that, it will not be justice to the victim, if he was not awarded compensation. Section 4 read with section 5 of the Probation of Offenders Act, 1958 empowers the court to release the offender on probation with compensation to the victim, with or without the conditions, on his own bond or with sureties.

When the Court directing to release certain offenders on probation of good conduct may, if it thinks fit, make at the same time a further order directing him to pay - (a) such compensation as the court thinks reasonable.

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for loss or injury caused to any person by the commission of the offence; and (b) such costs of the proceedings as the court thinks, reasonable. The amount ordered to be paid, may be recovered as fine or in civil suit may be recovered as compensation.\textsuperscript{10}

5.1.5 Imposition of fine:

The imposition of fine is common mode of punishment for offences which are not of a serious nature and specially those involving breach of traffic rules or revenue laws. This mode of punishment is being extensively used in almost all the sentencing systems across the world even today. Fine by way of penalty may be used in case of crimes against property and minor offences.

If, the convicted offence is punishable with fine, before awarding the fine, the judge shall consider the financial condition and family position of the convicted person. If, there is provision for the minimum quantum of fine then "minimum is the rule and maximum is the exception". Generally, the imposition of fine as a punishment is provided in case of almost all the offences whether under the IPC or special laws. It is either sole form of punishment or addition to and/or imprisonment. Sometimes limitation is described as to both minimum and maximum, but not in all cases. Where limitation is not prescribed, in such circumstances it is at the discretion of the court. The court must use such discretionary power as judicial discretion.

\textsuperscript{10} Section 5 of the Probation of Offenders Act, 1958
5.1.6 Award Compensation to Victim:

The court is empowered under section 357 of the Code, to order the convicted person to pay reasonable amount of compensation to victim for loss of or damage to property caused by the commission or omission of the accused or for the return of the property to its owner (restitution), with the cost of the case.

The principal object of section 357 of the Code is to provide compensation payable to the persons 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 held 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.\footnote{\textit{Palamappa Gounder v. State of Tamil Nadu}, AIR 1977 SC 1323, and followed in the case of \textit{Saran Singh v. State of Punjab}, AIR 1978 SC 1525}
The Supreme Court held that in awarding compensation, no sum in excess of the loss actually suffered by the complainant should be ordered to be paid. The order under section 357 for payment of compensation must be reasonable. What is reasonable must depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there are more than one accused, they must be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period of payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default. The Supreme Court reduced the jail terms and enhanced the amount of fine to be awarded as compensation.

The Hon’ble Supreme Court has planted a seed in the case of Rudul Shah, while evolving a principle that “if any fundamental right of any person is violated, and no remedy is provided by the law, then victim can be compensated in pecuniary form”. In this case the court has awarded Rs. 35,000 as an interim relief with the direction to file a regular suit for compensation and directed that court to hear the case on merit basis and evaluate 14 years loss of his life behind the bars, which cannot be returned.

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The Supreme Court reiterated this principle and awarded Rs. 50,000 for two days of illegal detention.\textsuperscript{15} It was heard from many eminent persons that court was somewhere mistaken, while awarding compensation in both above said cases. To clarify their doubt, the nature of application is sufficient, as the application filed in the case of Rudul Shah was "habeas corpus", where the remedy is only to release the person, who is under illegal detention, and not to punish the accused. But, in the case of Bhim Singh the writ was not a habeas corpus.

Here it is to be remembered, that the seed, which was planted in the decision of Rudul Shah, now has taken the shape of a fruitful tree. Where State fails to protect any fundamental right of any citizen, immediately after the violation, the State declares compensation to the victims. It is good for the rights of victims. There was a news at 1845 hours that bomb blast had taken place in Varanasi, and at 1930 hours the State declared compensation of Rs. 2,00,000 to next of kin of each victim deceased and Rs. 50,000 to every injured person.

The Gujarat High Court held that compensation is required to be awarded to victim from accused persons, while upholding conviction as well as sentence imposed by trial court. For fixing amount of compensation, nature of crime, trauma suffered by victim and stigma attached to and suffered by victim are also to be considered. Compensation of Rs. 20,000 was awarded in a gang rape case.\textsuperscript{16} In another case, the Supreme Court

\textsuperscript{15} Bhim Singh v State of J & K, 1985 4 SCC 677
\textsuperscript{16} Ajitbhai Ganpatbhai Chauhan v. State of Gujarat, 2002 Cr.LR. (Guj) 2
directed the Railway department to pay compensation to a Bangladeshi woman, who was raped at Kolkatta Railway station.\textsuperscript{17}

The Gujarat High Court awarded compensation to the injured persons to meet ends of justice, where appellants inflicted injuries by a sharp weapon. The court further observed that the power of the courts under section 357 was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. While making such observations, the Apex Court recommended to all the courts to exercise the power liberally so as to meet the ends of justice in a better way.\textsuperscript{18}

\textbf{5.2 Institutional correction :}

As we know a person is given imprisonment as a punishment, not for punishment. Keeping in view, a person was sent to peno-correctional institution because he had not abided the norms setup by the law of land to continue as member of society. The object of sending such a person into peno-correctional institution is to withdraw him from society for the purpose of reformation and reform him into a law abiding citizen.

Imprisonment is the incarceration of convicted person and conviction held by the competent court for any period. Imprisonment is a means of social control. It is given to the offenders with the aim to check them from committing crimes again. It deters not only the actual offenders but also

\textsuperscript{17} Chandirama Das v Chairman Railway Board,  
\textsuperscript{18} Koli Jeram Bhumji v. State of Gujarat, 1998 (1) GLR 754
others, who plan to do the same kind of acts in future. It serves a social purpose to prevent the people from indulging in criminal acts. So, the imprisonment may be a reasonable means to check the crime.19

There may, however, be cases where awarding of imprisonment becomes inevitable and the last recourse becomes the only available option. In such cases imprisonment follows the conviction and the other methods of reformation and rehabilitation lose their significance. In such a situation, we have to concentrate and rely upon the only available technique of reformation and rehabilitation, i.e., imprisonment. In this regard, it must be noted that the imprisonment itself has the shades, contours and potential of both deterrence on the one hand and reformation and rehabilitation on the other. Thus, imprisonment satisfies the dual requirements of the modern criminal justice system, i.e., punishment and reformation.

The right to 'life and personal liberty' guaranteed under Article 21 of the Constitution, is the most precious and sacrosanct right available to a person. This right is curtailed to a great extent when the guilty person sends to jail by due process. This, however, does not mean that he forfeits or surrenders his residual rights. Those rights, which ensure him a life with human dignity, are still available to him. It is no more open to debate that convicts are not wholly denuded of their Fundamental Rights. However, a prisoner is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more

19 Max Greenhut – "Penal Reform, A Comparative Study", p-3
substantial. Conviction for a crime does not reduce the person into a non-person whose rights are subject to the whims of the prison administration.\textsuperscript{20}

These rights, coupled with the increasing reformative and rehabilitative concerns of the modern criminal jurisprudence, provide him an opportunity to reform and rehabilitate himself. Thus, even if an offender is sent to correctional institution, his chances of reformation and rehabilitation are not comprised so long as he is not a possessor of basic Human Rights and the Fundamental Rights.

The focus of institutional measures is on the utilization of the period of imprisonment qualitatively and in a humane manner within the boundaries of institution itself. The endeavour of such measures is to make the prison conditions as rehabilitative and reformative as possible. In this regard reference of U.N. Standard Minimal Rules would be appropriate, as the rules were adopted after making study by the United Nations on Prison Standard Minimal Rules for the treatment of the prisoners. These Rules provide for the prisoners: (i) proper accommodation, (ii) medical facilities, (iii) clothing and bedding, (iv) books, etc.

The purpose and justification of a sentence of imprisonment or a similar measure derivative 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.\textsuperscript{21}

"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. The treatment shall be such as to encourage their self-respect and develop their sense of responsibility."\textsuperscript{22} Institutional correction can be divided into the following heads -

5.2.1 Character building programmes:

5.2.1.1 Recreational facilities:

An imaginatively planned recreation programme must be one of the institutional treatment programmes. Its highly recreative, therapeutic, morale-boosting value has been widely acknowledged by social behaviour scientists in the treatment of psychological disorders and ailments. Its value in shaping the prisoner’s good habit-patterns, moulding his character, and developing his personality is too immeasurable to be believed. The recreation programme must not be just time-filling; it must meet prisoner’s intrinsic leisure-time needs of entertainment, education and enlightenment. It must avoid including therein those items which may even remotely arouse, or provide scope for expression of, human passions and basic instinctual desires. Contrary to it, every item or activity, which is likely to promote and strengthen healthy habits, attitudes, and respect for others and themselves, must find a place in the recreation programme.

\textsuperscript{21} Rules 58 and 59 of U.N. Standard Minimal Rules
\textsuperscript{22} Rule 65 of U.N. Standard Minimal Rules
5.2.1.2 Celebration of National Days and festivals:

Observance of National Days provides a splendid opportunity to the institution to instil into the prisoners' minds high ideals and values of patriotism, national discipline and character, self-reliance, and love for liberty, equality and fraternity. These are ideals of a high order. The cynic might say that it would be quixotic for the institution even so much as attempting to bring the ideals very near the prisoner's mental horizons. Observance of socio-religious functions during festival like Diwali, Dussehra, Id, and Christmas has a special significance which goes far beyond meeting the prisoner's short-time hedonism and enjoying fun and frolic. The institution admits prisoners who belong to different faiths and religious denominations. They represent miniature of variegated, multi coloured, many splendoured socio-religious, socio-cultural fabric, that is the Indian society. Thus selective compact group of inmates, if exposed to the socio-cultural-religious ethos in the form of observance of socio-religious-cultural functions, prisoners would stand to gain by becoming more tolerant of one another, more receptive to new ideas, more understanding of their peers' or co-inmates' feelings and sentiments — a no mean achievement.

5.2.1.3 Outdoor recreation programmes:

All work and no play or recreation makes the prisoner dull and inert. This is true in all cases. Dramatics, gymnasium activity, scouting, physical drill and sports have been the traditional, conventional outdoor recreation programme of prison institutions. These provide an excellent avenue for inculcating, competitiveness and a spirit of challenge in the prisoner's mind. Inter institutions sports may also be arranged, where it is possible.
5.2.1.4 Tension free and prescribed diet scale:

Prisoners respond well to institutional treatment, if the intramural atmosphere is tension free and relations with inmates are consistently cordial, cooperative and friendly. Good physical care is a prerequisite of good health. Balanced, nutritious food prepared in hygienic conditions and served fresh to prisoners at regular intervals is an insurance against deficiency diseases, malnutrition and minor ailments. Daily diet scale should be essential for their physical growth. The food must consist of vegetables, including greens, pulses (sported) and cereals with oil, onions, potatoes and condiments mixed in right proportion to make it nutritive, balanced and palatable. Most of the inmates' dissatisfaction springs from the management's neglect of this area. It is unfair to expect prisoners to concentrate their minds which are good in many cases, uneasy and emotionally disturbed, on their given assignments, on empty or half-starved stomachs.

5.2.1.5 Conducting of Vipassana (Meditation) camp:

Vipassana is a technique to solve not only individual problems but also of the society, and could bring reform in Government as well. The first course of Vipassana in prison was conducted by Goenkaji in 1975 at the Central Jail Jaipur Rajasthan. Many legal difficulties were faced while conducting first course, namely staying of teachers inside the jail, open hand cuffing of the hard ore criminals, etc. The red-hot eyes of the criminals, who were the cause of so much turmoil changed and their faces beamed; tears streamed down their cheeks, it was a rare moment filled with joy after such high tension. The efficacy of Vipassana was established. Second course in
central Jail Jaipur was held in 1977. In 1976, between these two courses, a course was held in the Police Academy at Jaipur for the police officials, where personnel right from the Deputy IG to the constables sat together. Unfortunately, after transfer of IG (prison) Ram Singh, it could not continue.²³

But, the seed of Vipassana sprouted later, and sprouted well. In 1990, another course was arranged in the Jaipur Central Jail. It went very smoothly and a big transformation took place. Then first course was conducted in Sabarmati Central Jail, Ahmedabad, Gujarat in 1991. Then the courses started in Central Jail, Vadodra and first course was led by Dr. B.G. Savla. The Superintendent of Vadodra Jail, Mr. R. Vora, has written a book in Gujarati about these courses, entitled "Diwalon Mein Diwyata" (Divinity within Walls). It is an inspiring story. Vadodra Jail is now a house of reforms.

Then the courses came to Tihar Jail, New Delhi, which is one of the largest jails complexes in the world. Bringing Vipassana to Tihar was also a difficult journey, which was begun in July 1993 and first course was conducted in November 1993. The first Vipassana course was held in Ward 10 of Jail 2. The ward housed convicts of serious crimes and a few high security persons awaiting trials and court hearings. 96 inmates were selected; most of them convicts, and also 23 jail officials of different ranks.

A big change came in the whole environment. There were very inspiring expressions from people who had undergone a deep

transformation. On the morning of the eleventh day (last day), while Kiran Bedi IG Prisons, asked the prisoners, if they had any request. They asked her not to leave the Vipasna team, as they wanted more courses for their colleagues. On the departure of teachers from Jail No. 2 and its grateful inmates were tearful and deeply moved.

The next four courses were conducted from January 1 to 12, 1994, held in Jails No. 1, No. 3 and No 4, for a total of about three hundred inmates, and the courses went on smoothly. However, Kiran Bedi would not rest; with 9,000 people in the jail, she wanted all in Tihar to learn Vipassana. She wanted a course for at least 1,000 people. The historic course for 1,004 male prisoners was held at Tihar Jail No. 4 from April 4 to 15, 1994. Goenkaji and Mataji conducted the course, assisted by 15 male assistant teachers. Two female assistants conducted a simultaneous separate course for 49 women in Jail No. 1.

On eleventh day, a permanent Vipassana centre was inaugurated in Jail No. 4 by Goenkaji. Two courses will be held at the new centre every month. A one-day course for old inmates would be held on the eleventh day of each course. Goenkaji named the new centre "Dhamma Tihar". Following the success of courses at Tihar in January, the Ministry of Home Affairs, Government of India, called a meeting of the Inspectors General of Prisons from all over India, and a proposal was adopted to introduce Vipassana as a reform measure in all the prisons in India.

This is a very significant development. The initiative Mr. M.L. Mehta took in getting Vipassana to Tihar Jail and the success of the experiment heralded a new era of reform and rehabilitation for those who fall to crime.
The Vipassana provides an effective way to liberate them, not only from the life of crime but also from all suffering and misery.

5.2.1.6 Creative Art Therapy:

Creative Art Therapy, which is psycho-therapeutic in nature, is used in several settings. In respect to prison setting, the therapy serves as a reformatory process in several ways. Firstly and most importantly, it helps to express, channelise and ventilate himself. One has to keep in mind that anyone convicted or otherwise exiled from the rest of the world is initially bound to have tremendous anger, aggression, sense of helplessness, hopelessness and emotional problems. Therefore, by encouraging and promoting Creative Art, an individual can be inspired to release his pent up emotions and realize his worth as 'self', having a positive desire of improving himself both consciously and unconsciously.

5.2.1.7 Involve In self management and cooperative living:

Most of the prisoners come from very poor homes. Because of abject poverty and insufficient and ill-balanced food intake, their physical development is stunted and structural deficiencies abound. Because of the worst circumstances of their birth, and callous neglect by society of their parents' and families' basic necessities of life, their formative years have been a wasteful period of their lives, and the damage done to their physical, mental and emotional development has been almost irreparable. They never know or have a balanced meal. Left by their poor, helpless, unemployed parents to fend for themselves, their daily diet mostly consisted to tea decoction and crumbs of bread, or a morsel or two of slate rice. To make the
food wholesome and enjoyable, some institutions which recognise the vital bearing that food has on inmates' overall response to treatment-training programme introduce variety and sometimes, spring an element of surprise, in preparation of dishes. This is best achieved by involving inmates in planning weekly menu with due regards to the prescribed ration of articles, and caloric content and nutritive value of food preparations. This will be the first lesson for them in self management and cooperative living.

5.2.2 Building up with higher education:

Prison education goes a long way in the rehabilitation and reformation of the offenders. The Jail Reform Committee of 1980-83 observed that diversified education is an important tool for correctional treatment. The prison education to be effective must be holistic and diverse in nature, which must touch the various facets of the personality of the offenders.

5.2.2.1 Religious and moral education:

The religious and moral education has the greatest impact on the reformation and rehabilitation of the offenders. In India, rules in jail manuals recognize the significance of religion and religious instructions for the reformation of the offenders. It must be appreciated that no rehabilitation would be possible if the legal system cannot reform the criminal aberrations of the offenders. The best and surest method of the reformation of an offender is to appeal to his nobler side, which is not possible without making him spiritual through religious teachings. Many religious, spiritual and social scientists are also paying interest to this issue.
Authorities at the Bhopal Central Jail have started a programme to train Brahmin Hindu inmates in religious rituals. The administration has decided to distribute religious books among inmates and make changes in jails according to Vaastu Shastra, the ancient Indian canon of architecture. The task to make priests out of prisoners has been entrusted to Gaayatri Shakti Peeth, a Hindu organisation whose members hold classes every morning for some 60 prisoners. The prisoners are taught how to perform religious rites. They have also been given copies of religious hymns in Sanskrit. A member of Gaayatri Shakti Peeth said that "when the inmates are free they will be eligible to get a job in a temple or perform puja in homes. As at the end of the course we will also teach inmates rites that are performed when a person is cremated". The teacher is hopeful that the prisoners will become good priests and will never take to crime again. A teacher cites the example of Valmiki, the author of Hindu epic Ramayana. He asked that "When Valmiki, a bandit, can give up crime and become a sage, why cannot these inmates become good citizens? It is an effort to reform the criminals, so that they do not take to crime once they are free." Jail authorities feel religion will not only clean the hearts of the inmates but will change their psychology for good.\[24\]

When Dinesh Tiwari (50-year-old) steps out of the Bhopal Central Jail after completing his sentence for murder, he hopes to become a priest for which he is being trained at the prison. In any case, becoming a priest does not require any major investment. But the inmates are aware that making a place for themselves as a priest once they are free will not be an easy task. Tiwari, who is to be released after four years, said that "why would people

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24 News items, Indo-Asian News Service (IANS) -14 Aug, 2005
or temples want to hire us, when we have served a term in prison? But our
job is to make an attempt and we will try."25

The attainment of academic education gives a sense of achievement to
the prisoner, which goes a long way in correction and rehabilitation of the
offenders. This can successfully be accomplished if the prison authorities
have adequate and qualified teachers for this purpose. In Indian prisons, a
big handicap is the lack of adequate number of teachers. Thus, the prison
authorities should engage talented and educated teachers for this purpose, if
not on whole time basis due to financial constraints then on part-time basis.
Further, teaching can be imparted voluntarily and free of charge by eminent
members of the society on selective occasions. The Indira Gandhi National
Open University (IGNOU), Dr. Baba Shahib Bhimrao Ambedker University
and National Open Schools (NOS) are running their centres for examination
in many prisons in India.

The most important aspect of the education system in Jail is that
educated prisoners voluntarily teach less educated prisoners. An illiterate
person landed in Jail can look forward to being literate, if, his stay is more
than a month. Library with the support of Non-Governmental Organisations
has to be maintained.

5.2.2.2 Physical educational activities:

Education sports, popular science, instructive films on TV or a
projector, excursions of factories, museums, botanical gardens, aquariums,
planetariums, sports stadiums, parks, beaches and nearby centres of

25 News items, Indo-Asian News Service (IANS) -14 Aug, 2005
historical or archaeological importance are essential ingredients of a character building programme. Such excursions and picnics have educational and recreational content and must be planned methodically and with utmost care. The safety and security of prisoners being taken out on excursions or picnics must be taken into account in their planning and execution.

5.2.2.3 Opportunity of library:

Every correctional institution shall have and maintain a good library. The combination of the books should be religious, academic, patriotic, law book pertaining to jail administration, criminal justice system, autobiographies of ideal leaders and respectable characters of society, etc. The person pursuing higher study shall be permitted to purchase books according to his/her requirement on his/her own expenditure. He may be helped by some NGO or the outside persons. After completion of his study, he may donate those books to library, which may be used by other inmates. It is not sufficient to provide a library with books but routine of prisoner shall be made in the pattern when they can easily access to the library.

5.2.3 Building up with vocational education:

5.2.3.1 Training for vocation rehabilitation:

The great handicap of institutionalised offender is the unfortunate stigma which he carries in the eyes of the community, and which debars him from getting into employment and otherwise resettling himself. With a view to bringing about destigmatisation of such offender, institution should include, in its pre-release plan for offender to be discharged, an outline for
interpretation of, and education of public attitudes towards, the corrective measures taken by the institution to modify his behaviour, and of the rehabilitation plan which may lead to destigmatization process being accelerated. The first thing to try in that direction should be to interest as many expert people as possible visit and spread their expertise for their rehabilitation. Education, trade or vocational training and employment would be among the three main avenues of rehabilitation. The pre-release plan must indicate the possibilities of reaching the avenues in terms of the order of priority decided upon in the plan.

The most important aspect, which has to be kept in mind while imparting the vocational education, is the utility of the vocational training and education to the offender after his release from the prison. Thus, the vocational training and education, though present in time, must be well calculated to take care of future eventualities and problems faced by the offender. The vocational training must be so designed that it satisfies the present demand of the society and for that purpose appropriate modifications needs to be made in it from time to time. The vocational training would not bring the desired results if the interest and background of the offender are not considered before selecting a particular course for him. For instance, agricultural oriented training would be most suitable and fruitful for a majority of the prison population in India, where half of the prisoners come from an agricultural background. Thus, the ultimate success of the vocational training depends on multiple factors, which have to be kept in mind while imparting the same to the offenders.

Employment opportunity is a very important avenue of aftercare. From the point of view of the prisoner’s rehabilitation, it is necessary to
ensure that the prisoners attain some degree of proficiency in useful trade while still in the institution.

5.2.3.2 Productivity and production efficiency through vocational centres:

Imparting trade or vocational skills to the prisoner through proper guidance and training, to an appreciable extent, mitigates the consequences of the stigma which he carries in the eyes of the prospective employer. The only possible way to remove the stigma lies in making the prisoner proficient and skilled in his work than his counterpart outside. This necessarily implies that the prisoner, in the process of learning, be enabled to acquire skills, and to produce more and better things while still in the institution. In other words, his productivity and production efficiency are closely linked to his capacity for vocational rehabilitation. This viewpoint sets an objective goal for the prisoner by his instructors and the institution. In terms of this goal, it may be possible to measure the effectiveness of the vocational and trade training being given to him. In order to be able to achieve the goal, institutions will have to proceed methodically and purposefully.

5.2.3.3 Increase rehabilitative potential after assessing aptitudes:

The vocational aptitudes of each inmate will have to be assessed. He must be subjected to periodical progress reports. He must be given the opportunity to work on better and up-to-date machines, and with more refined tools. To make his social and economic asset in the institution and to increase his rehabilitative potential, his vocational training will have to be
related to the work standards prevailing in the employment market, and to the job opportunities available in the community in respect of the trade learnt by him in the institution.

5.2.3.4 Higher technical training to desire prisoners:

Prisoner who may show aptitude, ability, and desire to improve their skills and competence in the trade learnt, and who may show interest in need for higher technical training, should be given necessary encouragement and facility for such training.

In Tihar Jail, Delhi, Capsule computer courses of six months duration are provided to the willing and eligible inmates with the help of NGO Srilite Foundation. Many new courses like Bachelor of Arts / Commerce / Preparatory Programme Diploma in Creative Writing in Hindi/English, Certificate in Human Rights, Masters in Tourism / Management / Computers, Post-Graduate Diploma in Distance Education are the main courses studied in Tihar Jail. Vocational classes in English/Hindi typing and Commercial Arts are conducted by Directorate of Training and Technical Education, on completion of training a certificate is also issued to successful students. 26

5.2.4 Positive and just prison work:

The study of the problems faced by the prisoners after release and the reasons for committing crime guided Jail Administration to initiate steps, which can go a long way in rehabilitating the prisoners after their release. The work culture of a prison depends upon the adoption of a particular

26 Sources – Official website of Tihar Jail Department, as on 1st Feb, 2006
approach towards the offenders. The punitive approach used labour as a form of punishment which no concern whatsoever with the reformation and rehabilitation of the offenders. The emphasis was on rigorous and unproductive labour with extreme punitive elements attached to it. In the reformative and rehabilitative approach, the offender uses it not as an end in itself but as a means to help development of certain skills. This process, apart from disciplining him and helping him earning wages while serving in prison, helps the offender in finding some vocation to sustain himself after his release. Many prisoners are providing training of furniture making, bakery, cloth making, etc.

The Supreme Court held that when prisoners are made to work, a small amount by way of wages could be paid and should be paid so that the healing effect on their mind is fully felt. Moreover, proper utilisation of service of prisoners in some meaningful employment, whether as cultivators or as craftsmen or even in creative labour will be good from society’s angle, as it would decrease the burden on the public exchequer and the tension within.\(^{27}\)

In Tihar Jail, various trades are taught to convicts in the Jail Factory itself in Jail No. 2. In addition a programme for teaching various trades was started in other jails also both for convicts as well as undertrials. This programme includes pen manufacturing, book binding, manure making, screen printing, envelope making, tailoring and cutting, shoe-making, etc. which has not only resulted in learning a trade but also provided monetary gains to the prisoners. For the post-release rehabilitation of the prisoners, the

\(^{27}\) Dharambir v. State of UP, AIR 1979 SC 1595
Social Welfare Department of Delhi Government provides loans for setting up self-employed units.\textsuperscript{28}

\textbf{5.2.5 Bringing of the prisoners in contact with society:}

The prisoners from the captive society are found to be at their best when they are brought out in contact with prisoners in the open/free society, the community in a competitive environment – a hockey match, a cricket match, or a drama or dance competition.

In Tihar jail, as a part of community participation in the reformation and social integration of prisoners after release, a large number of respectable members of NGOs, Retired Major General, Professor I.I.T. Delhi, Eminent Psychiatrists, Psychologists, Principals and Teachers of various educational institutions have been conducting various activities in the prisons. These NGOs have had very sobering and positive impact on the psyche of the prisoners, who have been shown the positive and constructive approach to life after interaction with them. NGOs participation is mainly concentrated in the field of education, vocation and counselling. Apart from the formal education with the NGO’s support, the classes in various languages like Urdu, Punjabi, German, French, etc. are also held. Some of the NGOs have trained selected prisoners on various trades and have been bringing jobs for them against payment of remuneration. These prisoners are also rehabilitated by them after their release.\textsuperscript{29}

\textsuperscript{28} Sources – Official website of Tihar Jail Department, as on 1st Feb, 2006
\textsuperscript{29} Sources – Official website of Tihar Jail Department, as on 1st Feb, 2006
5.2.5.1 Extent the meeting with spouse:

If, any person talks of allowing the prisoner to cohabit with his/her legal spouse, he is not only criticized, but faces many problems. At this juncture, while we are adopting reformation of the prisoner, why do we hate his or her spouse's right? Spouse is having legal right to have sex with her/his partner and according to Hindu Marriage Act there is no ground even for divorce on the conviction of spouse for a long term. Being a faithful wife or husband, a spouse needs sexual intercourse with his/her spouse. Sex is the biological requirement of every human being. If, we think from the correctional angle, sex gives maximum satisfaction to the spouse. Any kind of communication between the spouses is also protected by the Indian Evidence Act. A TADA court has also admitted that number of meetings and their duration should be increased.

India, had experimented in the case of Sangner Open Prison and various Open Camps have been conducted in UP, in the very beginning of independence, where meetings with spouse were permitted. Very few of the prisoners from the open prisons were reported to have escape. Spouse is the person, who can lead her spouse towards correction more than any other person of the world. Frequency of meeting may be less. Once in two months or according to number of prisoners languishing in correctional institution.

5.2.5.2 Helping the family of prisoners:

Family of the accused or prisoner is the most suffers the most from the act of wrongdoer. First of all he leaves the company of that family and in most of the cases it has been found that he is the only bread earner for the
family. So, economically they become poor. Even while free legal aid was available, in many cases the prisoners did not avail of it and hired private counsels, paying high fee to them. The family of an accused suffers from social stigma; such a family is hated and discarded by all the members of society. On the other hand society will try to get unfair advantage from such a family and would try to exploit it. Children of such family face discrimination in the schools and colleges. In such circumstances the accused might prefer to turn to recidivism.

5.2.5.3 Sending them to open prisons/camps:

A unique feature of the new prison philosophy is the emergence of “open prison” system in many parts of the world including India. This system allows the prisoner to work on his or her own or in local factories and wages are paid to him. This system provides the prisoners more extensive terrain and free movements, which make them more relaxed and tension free, a condition more conducive to the administration and reception of rehabilitative techniques.

Open prison has emerged as a major innovation in the progressive treatment and rehabilitation of incarcerated offenders. The present concept of the open prison is different from the earlier one. Earlier, the prisoners were brought outside the jail, for the labour purpose only but new concept of the open prison are totally different and we give the real chances to the prisoners to rehabilitate in the society on the completion of their period of imprisonment. There is no lock and wall and search light but only one person to take the roll-call in the morning before the prisoners go to work place and their return in evening before sunset. During the whole time they
are free to work at any place but in the limited area only. They have to maintain themselves; there is no administrative staff. Such conditions are totally favourable to such prisoners to rehabilitate in the society and prove themselves as good law abiding citizens.

The Supreme Court gave the rational for the use of open prison system for reformation and rehabilitation of the offenders and observed that "one of the principal purposes of punitive deprivation of liberty, constitutionally sanctioned, is decriminalisation of the criminal and restoration of his dignity, self-esteem and good citizenship; so that when the man emerges from the forbidden gates he becomes a socially useful individual."\(^{30}\) The court further clarified, the long prison terms do not humanise or habilitate but debase and promote recidivism. Life imprisonment means languishing in prison for years and years. Such a long duration inflicts agony on soul of the offender and he may harden instead of getting softened. Therefore, the Court issued the following directions designed to make the life of the sentence inside jail restorative of his crippled psyche:

(i) dispatching the two prisoners to one of the open prisons in U.P., if they substantially fulfill the required conditions;

(ii) being agriculturists by profession they be put to use as or them small wages;

(iii) by keeping the prisoners in contact with their family – (a) by allowing members of the family to visit them and (b) by

\(^{30}\) Dharambir v State of UP, AIR 1979 SC 1595
permitting the prisoners under guarded conditions at least once a year, to visit their families; and

(iv) the prisoners to be released on parole for two weeks, once a year, which will be repeated throughout their period of incarceration provided their conduct, while not in confinement, is found to be satisfactory.

5.2.5.4 Evaluation of Sarnath Open Camp, UP:

The evaluation of Sarnath Open Camp in UP during 1953, states that not a single complaint of unseemly behaviour was registered during their stay in camp. Women moved about unmolested and the even tenor of the village life was not disturbed at all. There was one special feature of this camp that the prisoners worked under the technical guidance of PWD with outsider free civil labourers including young ladies. Fear was often entertained that their close contact with the fair sex might prove too strong for their power of inhibition but any working prisoner did neither commit nor even attempt to commit any undesirable activity at all. 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."

This camp was established in a magnificent building on the bank of the river Varuna in the heart of the inhabited area. No warden or prison officer wears any uniform. In spite of such an extraordinarily open environment with an average population of 400 prisoners, only one prisoner
escaped which came to only 0.25%. This was really a good achievement being in the inhabited area with all facilities of means of transport. This was a camp in the real sense of term. Here the prisoners earned Rs. 28978 and defrayed Rs. 16196 to the State for their maintenance and subsidiary charges. The balance was portioned among them as their share. Though this camp was organised for a short period but proved to be a novel experiment of its kind not only in the State but in whole the world.  

5.2.5.5 Open prison is the way of social contacts outside the jail:

The Himachal Pradesh High Court was happy to note that in-charge of the Open Air Jail at Bilaspur makes all efforts to secure work for the engagement of the prisoners with various organisations near and around the jail premises thereby not only keeping the prisoners busy but also enabling them to have social contacts outside the jail and earn wages for themselves and their dependants. These efforts should not only increase in the Open Air Jail at Bilaspur but also in other jails in the State so that the prisoners are engaged in various kinds of work, obviously, subject to security, jail discipline, their physical capacities and other weighty reasons to be duly recorded relating to certain cases. All these will create sense of discipline and responsibility amongst them. It would educate the prisoners in various vocations and help them to rehabilitate themselves suitably as soon as they are out of the jails.

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32 Gurdev Singh v State Of Himachal Pradesh, 1992 Cr LJ 2542 (HP)


5.2.5.6 Sangner Open Prison, Jaipur:

Jagdish Prasad Sharma begins his day with a prayer. After breakfast he sets about cleaning his truck till it gleams and drives off to work at a stone quarry. When he returns, at 7 pm, he watches his favourite TV show and spends time with his wife. His life is no different from that of an ordinary man, in that he lives in a prison and serving the last part of sentence for murder. He is also elected head of the Sanganer prison community. He said that “jail has taught him responsibility. I killed someone in the heat of the moment over a land dispute in my village. But here, I started to live a normal life, to take responsibility for my family, I pays taxes and have (earned) a lot of respect in the community and no one calls me a prisoner”.

In another case Dr. A K Sharma, a homoeopath, was convicted for murder and was put behind bars for nearly seven years. Today he runs a modest practice in Sanganer town, earning Rs. 10,000 per month and paying income tax. On asking of why they are not breaching the rule on getting chance, Mr. Navin Sharma, another prisoner said, the prisoners cherish their limited freedom. “I know my responsibilities and remember that everyone here is living in a glass house and one mistake can destroy it.”

Chhetar Mal, (34) sentenced to life imprisonment for killing a rival following a land dispute, explains why everybody comes back. He said, “You escape from jail to be with your family. When I have an opportunity to stay with my family and make a living, why should I try to escape”. Another fellow, Gopal Singh Gujjar, who drives an auto and earns about Rs. 150 everyday, tells interviewer how the open prison changed him. “I spent six years behind bars. There, I was consumed by a rage all the time. Here I
think about my parents, wife and my 14-year-old son. I know what freedom means.”

Like Gujjar and Sharma, the jail has offered others with options, opportunities and a stake in staying on the right side of the law. It keeps the convicts on their best behaviour when working for others within the permitted municipal limits. Additional Director-General of Police (Prison) Rajasthan, said that, “these men prove to be better workers since they follow the rules. Also they cannot form unions. We often get requests from businessmen asking for these men”. Many convicts who belong to different parts of Rajasthan don’t want to go back to their hometowns once released. Many of the ex-convicts have settled in Sanganer pursuing professions they started in jail. One of them is now a lawyer at the Rajasthan High Court.

5.3 Governmental Correction:

The governmental correction is a non-institutional measures but it plays an important role in the ultimate success of the institutional measures. The task of reformation and rehabilitation cannot be fulfilled unless institutional and non-institutional measures are worked together in a coherent and holistic manner. The rehabilitation and reformation of the offender is not the sole responsibility of the judiciary. The Legislature and Executive have also to play their respective roles. The Legislature can contribute in the rehabilitation and reformation of the offender by enacting suitable legislations dealing with the subject. For that purpose, it can rely upon and take clue from various landmark judgments delivered by judiciary. It can also utilize its own specialized knowledge, as acquired from various organisations and committees, for the purpose of legislating on the much
desired and needed subject. It must be noted that for the ultimate success of the rehabilitative and reformatory need, suitable legislation is the ultimate recourse.

Similarly, the Executives also have to play an active role in this regard. The Executive can do the needful by a judicious exercise of the powers to grant remission, commutation, pardon of sentence, etc., in deserving cases. There may be instances, where the existing legal system may prove to be inadequate for meeting the needs of rehabilitation and reformation of the offenders. In such circumstances, the executive can fill in the gap by exercising their sovereign and constituent powers.

These options can be exercised by the executives from time to time and depending upon the facts and circumstances of each case. Thus, the sentence of imprisonment can be remitted, commuted or pardoned, if the conduct and behaviour of the prisoner warrants so. This should be guided by the reformatory and rehabilitative needs of the concerned offender.

5.3.1 Grant of pardon by the President and the Governor of the State:

Article 72 of the Constitution confers the power upon the President to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. On the other hand, Article 161 confers similar powers upon the Governor of State in respect of any offence against any law relating to a matter to which the executive power of the State extends.
The Hon'ble Supreme Court observed that the power under Articles 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provision such as, sections 432, 433 or 433A of the Code or by any Prison Rules. But, the President or the Governor, as the case may be, while exercising the pardoning power, the object and the spirit of the section 433A of the Code, must be kept in view. So, the power to pardon is exercised by the President on the advice of the Council of the Ministers.\textsuperscript{33} Again, observed that the President and the Governors, in India had the same powers of pardon both in its nature and effect, as is enjoyed by the King in Great Britain and the President of United States. Therefore in India also the pardoning power can be exercised before, during or after trial.\textsuperscript{34}

\textbf{5.3.1.1 Pardon is an act of grace, not a right:}

The Supreme Court made it clear that a pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment, inflicted by the law for a crime he had committed. It affects both the punishment prescribed for the offence and the guilt of the offender; in other words, a full pardon may blot out the guilt itself. It does not amount to an acquittal unless the Court otherwise directs. Pardon is to be distinguished from “amnesty” which is defined as “general pardon of political prisoners; an act of oblivion.” As understood in common parlance, the word “amnesty” is appropriate only where political prisoners are released and not in cases where those who have committed felonies and murders are pardoned. Pardon is one of the many prerogatives which have been recognised since time

\textsuperscript{33} \textit{Maru Ram v. Union of India}, (1981) 1 SCC 107
\textsuperscript{34} \textit{KM Nanavati v. State of Bombay}, AIR 1961 SC 112
immemorial as being vested in the sovereign, wherever the sovereignty might lie.  

A three Judges Constitutional Bench of the Supreme Court has examined in detail the scope of the President's power of pardoning under Article 72. When Kehar Singh prayed that his representatives may be allowed to see the President personally in order to explain his case. The President rejected his petition on the advice of the Union Government without going into the merits of the decision of the Supreme Court confirming the death sentence. The court held that while exercising his pardoning power it was open to the President to scrutinise the evidence on the record and come to a different conclusion both on the guilt of Kehar Singh and the sentence imposed upon him. In doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact. Kehar Singh had no right to be heard by the President. The manner of the consideration of the petition lies entirely within the discretion of the President. The President cannot be asked to give reasons for this order.  

5.3.1.2 Pardon of convict is subject to judicial review:

First time in 1961, the question was raised when the Supreme Court had held that power to suspend a sentence by the Governor under Article 161 was subject to the rules made by the Hon’ble Supreme Court with respect to cases which were pending before it in appeal. The power of Governor to suspend the sentence of convict was bad in so much as it came

35 State (Govt of NCT of Delhi) v. Prem Raj, (2003) 9 ILD 359 (SC)
36 Kehar Singh v. Union of India, AIR 1989 SC 653
in conflict with the rules of the Supreme Court which required the petitioner to surrender himself to his sentence. It is open to the Governor, to grant a full pardon at any time even during the pendency of the case in the Supreme Court in exercise of what is ordinary called mercy jurisdiction. But, the Governor cannot exercise his power of suspension of the sentence for the period when the Supreme Court is seized of the case. The order of the Governor could only operate until the matters become subjudice in the Supreme Court and it did not become so on the filing of the petition for special leave to appeal. After the filing of such a petition and till the judicial process is over, the power of the Governor cannot be exercised.\footnote{37}{KM Nanavati v. State of Bombay, AIR 1961 SC 112}

The Hon’ble Supreme Court declared that, the exercise of the President’s power to commute the death sentence would have to be examined case to case and the court held that even the most liberal use of this power could not have persuaded the President to impose anything less than a sentence of death. By ruling that the exercise of the President’s power under Article 72 will be examined on the facts and circumstances of each case, the court has retained the power of judicial review even on a matter which has been vested by the Constitution solely in the Executive. This would make the exercise of the pardoning power a matter for further litigation as it has been demonstrated in the present case.\footnote{38}{Kuljit Singh v. Lt. Governor of Delhi, AIR 1982 SC 774}

But, contrary to this, a five Judges Constitutional Bench of the Supreme Court had different views and held that that the power of pardon is part of the constitutional scheme. The order of the President cannot be subjected to judicial review on its merits. Accordingly it was held that the
President must consider the matter afresh in accordance with the law laid down in present case.\textsuperscript{39} In the same tone, where the petition for pardon was rejected by the Governor, a mercy petition addressed to the President was received by the Ministry of Home Affairs and the same was rejected. It was argued that the mercy petition rejected by the President requires reconsideration. The Hon’ble Supreme Court after examining the application carefully does not found any ground for interference.\textsuperscript{40}

But, again more recently, the Supreme Court has held that the powers of President and Governor to grant pardon to a convict or to reduce the sentence imposed on him were subject to judicial review, if there was an extraneous consideration in exercise of that power. In the instance case, the Supreme Court quashed a decision of the then Andhra Pradesh Governor Sushil Kumar Shinde to remit the sentence of a convict, who is Congress activist. The court said that the President and Governor have to keep in mind the effect of such pardon on the family of the victim. Undue considerations of caste, religion and political loyalty are prohibited from being grounds for grant of clemency. Clemency is not only for the benefit of the court. President or Governor has to keep its effect on the family of victim and the society as a whole.\textsuperscript{41}

\textbf{5.3.2 Commutation of sentence :}

Commutation is a change of a sentence to a lighter sentence of a different kind. Section 428 of the Code, contemplates a condition by the court and it operates at the time of the pronouncement of the sentence by the

\begin{thebibliography}{41}
\bibitem{39} Kehar Singh \textit{v.} Union of India, AIR 1989 SC 653
\bibitem{40} Jumman Khan \textit{v.} State UP, (1991) 1 SCC 752
\bibitem{41} News items, DD news, 11 October, 2006
\end{thebibliography}
Court, whereas section 433 deals with commutation by the State authority. Consequences that follow from the provisions of section 433 do not affect section 428. Sections 432 and 433 appear under the heading “Suspension, Remission and Commutation of Sentences.” Under section 432 (1) there is power in the appropriate Government in the case of any person, who has been sentenced to punishment for an offence, to suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced without conditions or upon any condition which the person sentenced accepts. Under sub-section (2) it provides that whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was made or confirmed to state his opinion as to whether the application should be granted or refused together with his reasons for such opinion and also to forward with the statement of such opinion, a certified copy of the record of the trial or of such record thereof as exists. Section 433 of the Code provides for a power of the State Government to commute the sentence and Clause (b) thereof provides that the appropriate Government may without the consent of the person sentenced commute a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or for fine. It may be pointed out that this provision is similar to the provision in section 55 of the IPC. The power to commute a sentence of death is independent of section 433A. The restriction under section 433A comes into operation only after the power under section 433 is exercised. Clause (c) of section 433 deals with commutation of a sentence of rigorous imprisonment to simple
imprisonment for any term to which the person might have been sentenced, or to fine.\footnote{State (Govt of NCT of Delhi) v Prem Raj, (2003) 9 ILD 359 (SC)}

\subsection*{5.3.2.1 Commutation of sentence is executive function, not judicial :}

An identical question regarding exercise of power in terms of section 433 of the Code was considered by Supreme Court and observed that exercise of power under section 433 was an executive discretion. The High Court in exercise of its revisional jurisdiction had no power to commute the sentence imposed where a minimum sentence was provided for offence.\footnote{Delhi Administration (Now NCT of Delhi) v Madan Lal, (2002) 6 Supreme 77} In the context of section 433 (b), the Supreme Court observed that “...the mandate of section 433 of the Code enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the courts. That apart, even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under section 433 of the Code vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside.”\footnote{State of Punjab v Kesar Singh, (1996) 5 SCC 495}

Again, held that powers to execution of suspension, remission and commutation of sentences, granted by section 433 of the Code, read with
Articles 72 and 161 of the Constitution of India, is exclusively vested with appropriate Government and High Court cannot exercise such power.45

5.3.2.2 Restriction on power to commute the sentence:

Some restriction on the commutation of sentence to life imprisonment was inserted by Amendment Act, 1978. Where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.46

The Hon’ble Supreme Court held, while disposing of writ petition for the commutation of death sentence into life imprisonment on the ground of inordinate delay, the court took an opportunity to impress upon the Central and State Governments that the mercy petition filed under Articles 72 and 161 of the Constitution or under sections 432 or 433 of the Code, must be disposed of expeditiously. Chanderchud CJ said “A self imposed rule should be followed by the executive authorities vigorously, that every such petition shall be disposed of within a period of three months from the date when it is received. Long delays in the disposal of such petitions are serious hurdle in the disposition of justice and indeed, such delay tends to shake the confidence of the people in every system of justice”. The court cited several

45 State (Govt. of NCT of Delhi) v. Prem Raj, (2003) 9 ILD 359 (SC)
46 Section 433A of Cr. P.C, 1973
instances and one such case was a mercy petition under Article 161 pending before the Governor of Jammu and Kashmir for the last eight years.\textsuperscript{47}

5.3.3 Reprieve or suspension of sentence:

Reprieve means a stay of execution of sentence or a postponement of capital sentence. Respite means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. Section 432 confines the power of the Government to the suspension of the execution of the sentence of the remission of the whole or any part of the punishment. The conviction under which the sentence is imposed remains unaffected. The section gives no power to the Government to revise judgment of the Court. It only provides with the power to remitting the sentence. On the other hand, the remission of punishment assumes the correctness of the conviction and only reduces the punishment in part or in whole.\textsuperscript{48}

Governor's power to suspend sentence under Article 161 is subject to the rule made by the Supreme Court under Article 145 for disposal of the pending appeals before it. Once the appeal is filed in the court, the Governor cannot exercise the power of suspension of sentence under Article 161, and if he does so his order would be invalid being in conflict with the Supreme Court Rules under Article 143.\textsuperscript{49} Such powers to suspend or remit sentence

\textsuperscript{47} Sher Singh \textit{v.} State of Punjab, AIR 1983 SC 361
\textsuperscript{48} State (Govt. of NCT of Delhi) \textit{v} Prem Raj, (2003) 9 ILD 359 (SC)
\textsuperscript{49} KM Nanavati \textit{v.} State of Bombay, AIR 1961 SC 112
under section 432 of the Code, is exclusively vested with appropriate Government and not in any court. High Court cannot exercise such powers.\textsuperscript{50}

\textbf{5.3.4 Remission of punishment:}

Remission means a lessening or a reduction in the severity of something or a release from penalty. In other words, it is reduction of the amount of sentence without changing its character, e.g., a sentence of five years may be remitted to three years. The Supreme Court defined the term remission as "an order of remission does not interfere either with the conviction or the sentence recorded by the court which remains intact. It merely affects the execution of the sentence and frees the convicted person from his liability to undergo the full term of imprisonment and an accused, as such has every right to press his appeal against the conviction and sentences imposed upon him notwithstanding full remission."\textsuperscript{51}

In the case of a remission, neither guilt of the offender is affected nor the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. By reducing the sentence, the authority concerned does not thereby modify the judicial sentence. The fact that the sentence was remitted by the appropriate Government or that on account of certain remissions which he earned under the Jail Rules or under some order of general amnesty, the person was released earlier, does not affect disqualifications incurred, if any. A remission of sentence does not mean

\begin{itemize}
\item \textsuperscript{50} K Pandurangan v. SSR Velusamy, (2003) 11 ILD 306 (SC)
\item \textsuperscript{51} Kartar Singh v. State of Haryana, AIR 1982 SC 1439 • 1982 Cr LJ 1772
\end{itemize}
acquittal and an aggrieved party has every right to vindicate himself or herself.\footnote{State (Govt of NCT of Delhi) v Prem Raj, (2003) 9 ILD 359 (SC)}

It may be a final release of prisoners without conditions and supervision. This power is given to the appropriate Government to release the certain prisoners before the date of their final sentence on the grounds of their characters, circumstances and assessment of the supervision during the undergoing of sentence. This is an administrative function only. Section 432 of the Code empowers the appropriate Government to remit the sentence in certain cases.

The Guahati High Court clarifies the difference between pardon and remission, while it has observed that the pardon and remission stand on different footings and give rise to different consequences. The vital difference between the pardon and mere remission of the sentence lies in the fact that in the former case it affects both the punishment prescribed for the offence and the guilt of the offender; in other words, a full pardon may blot out the guilt itself; in the latter case, neither guilt of the offender is affected nor the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it.\footnote{Khagendranath, AIR 1958 Assam 188}

There is difference between the power under section 432 and under Article 161 of the Constitution. The Hon’ble Gujarat High Court held that, the State Government has a discretionary power under section 432 of the Code to remit the remaining part of the sentence and order release of the
convicted prisoner, subject to the embargo on its right imposed under section 433A of the Code. Such an embargo does not exist when Governor exercises power under Article 161 of the Constitution, and the limits of remission that the Governor sets in his order would not be subject to any judicial review and it would not be open for us to give an elastic meaning to the expression "imprisonment" occurring therein more particularly when the meaning is made specific by describing it as "actual" imprisonment.54

5.3.4.1 Authorities to grant remission:

The object of conferring the judicial power on the President is to correct possible judicial errors, for no human system of judicial administration can be free from imperfections. Article 72 of the Constitution, empowers the President and Article 161 empowers the Governor of the State to grant remissions of punishment or sentence of any person convicted of any offence according to their jurisdiction. Under section 432 of the Code, the appropriate Government is empowered to remit the whole or any part of the punishment to which an offender has been sentenced on the conditions. Section 433 describes the procedure of grating remission by appropriate Government, which is subject to cancellation.

The Hon’ble Supreme Court has observed that the appropriate Government empowered to remit or commute the sentences is the Government of the State in which the prisoner has been convicted and sentenced and not the State where the prisoner has been transferred.55 Recently, the court held that “to grant or not to grant remission is the power

55 *Ajit Singh v. State*, AIR 1976 SC 1855
vested in the appropriate Government under section 432 of the Code, which said that the Government can exercise either by granting remission to all convicts except those mention in section 433A or by restricting the remission to a class of convicts provided such classification is valid. By introduction of section 433A, the parliament has not excused or denuded the power of appropriate Government to restrict the grant of remission to a class of prisoners only or exclude a class of prisoners from such benefit of remission.\(^{56}\)

The High Court of Gujarat is of the opinion that, the opinion of the legal department is not binding to the rest of the departments and the concerned department may or may not accept such opinion.\(^{57}\) In case of a person convicted of an offence under a statute which is exclusively within the domain of the Central Government, the State Government has no authority to grant remission or pardon to him.\(^{58}\)

The Hon’ble Supreme Court held that, Government under Article 161 read with section 432 of the Code has full freedom to exclude any particular category of persons which it thinks expedient to exclude and there is no scope for judicial modification to extend benefit of scheme of remission to that category of prisoners who are specifically excluded from the scheme.\(^{59}\)


\(^{57}\) Sagambhai Nagibhai Bharwad v. State of Gujarat, 1998 Cr. LR (Guj) 8

\(^{58}\) Allana Abdulla v. State of Gujarat, 1999 (2) GLR 1514 • 1999 (1) GLH 852

5.3.4.2 Restriction on remission in case of offence against the society:

Where Government in its remission order specifically stated that prisoners convicted for ‘Crimes against women such as sections 376 and 354 while being sentenced to imprisonment for life’ will fall outside the scheme for remission granted under the said order. The court held that the classification made to keep away convicts for crimes against women from the benefits of remission could not be said to violate any reasonable principle or concept of law so as to call for its condemnation in exercise of powers of judicial review and could not by any stretch of imagination be branded to be invidious to attract voice of Article 14 of the Constitution.60

5.3.4.3 Remission is not absolute right, but it’s a grace:

The High Court of Gujarat held that, no prisoner has a fundamental right to remission. Section 432 of the Code, however, empowers the appropriate Government to suspend the execution of sentence or remit whole or any part of punishment.61 Again, same court held that remission of sentence under section 432 of the Code cannot be claimed as a matter of right.62 In another sense, the Supreme Court held that prisoners have no absolute right to remission for their sentence unless except what is prescribed by law and the circular issued thereunder. The special remission shall not apply to a prisoner convicted of a particular offence can certainly be relevant consideration for the State Government not to exercise power of

61 Sagrambhai Nagibhai Bharwad v State of Gujarat, 1998 Cr.LR (Guj) 8
62 Allana Abdulla v State of Gujarat, 1999 (2) GLR 1514 • 1999 (1) GLH 852
remission, however, cannot be exercised arbitrarily. The decision to grant remission has to be well informed, reasonable and fair to all the concerned.63

5.3.4.4 Extra remission for SC/ST convicts is unconstitutional:

The Hon’ble Supreme Court has held that, the remission only to the convicts of Scheduled Castes and Scheduled Tribes (SC/ST) is ultra vires. The court held that “the invocation of Article 15 (4) was wholly unjustified; and this act can hardly be said to be a measure for ‘advancement’ of the SC/ST”. The court also held that such granting of special remission was unlawful and should have been struck down. It was beyond the High Court’s power to expand the reach of the remission so as to give the benefit of it to persons not belonging to SC/ST.64

5.3.4.5 Computation of period of imprisonment for remission:

The Gujarat High Court held that for the purpose of remission of a prisoner, under section 432 of the Code, the period of remission is to be computed on the basis of actual period to be spent in jail and not the basis of the total period of different sentences awarded to convicts.65 Again, held that, the petitioners were admittedly never imprisoned before their surrender, therefore, they cannot be said to be prisoners on the date of the order. Further, they were not confined in the jail on the said date. In court view, therefore, the petitioners are not entitled to remission under the said order.66

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65 *Shabuddin*, 1986 Cr LJ 149 (Guj)
66 *Sagrambhai Nagibhai Bharwad v State of Gujarat*, 1998 Cr. LR (Guj) 8

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The High Court of Gujarat held that, only when a person is taken into custody and confinement for undergoing a sentence, is called imprisoned. The court relied on the contention that the word "imprisonment" is of such a wide amplitude so as to include even a person who though not in actual confinement or custody has been released subject to some conditions impairing his absolutely free movement. The court further held that to treat a person released as undergoing actual imprisonment would be doing violence to the very concept of imprisonment. Further held that a petitioner cannot claim benefit on the ground that including parole and furlough he has completed 10 years of imprisonment and is thus entitled to release under Government Order of remission on the ground of eve of 50th Anniversary of Independence. It appears that precisely to prevent the concept of imprisonment from being enlarged beyond physical confinement, that the word "actual" has been used, leaving no scope for any doubt or argument for attributing any enlarged meaning to the concept of imprisonment. The same court held that, remission granted under Article 161, is not necessary to be included in total period of sentence undergone while considering bail application. But, it depends on facts and circumstances of each case.

5.3.4.6 Remission earned by prisoner may be cancelled:

The Hon’ble Supreme Court held that, a prisoner was admittedly convicted and sentenced by Additional Session Judge for committing various offences under IPC, while he was undergoing sentence for previous conviction. An order of cancellation of remission under Para 633A of the Manual could, therefore, be made only after that. It could not precede his

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67 Dipakkumar BP Upadhyay v. State of Gujarat, 1998 Cr.LR. (Guj) 124 • 1998 (1) GLR 1
68 Bhavani Shankar Kripaldas v. State of Gujarat, 2000 (2) GLR 1117 : 2000 (2) GLH 120
conviction. The punishment of forfeiture of remission was imposed by the Superintendent of jail on the prisoner much before his conviction had been recorded by the trial court. The order of punishment passed by Jail Superintendent is thus, not sustainable on the plain language of Para 633A of the Manual. The prisoner has been punished by the Superintendent of Jail under Para 613 of Manual for commission of the prison offence and not Para 633A. The prisoner has been, therefore, punished for the same offence twice, once by the Superintendent of the jail and the second time by the trial court on his conviction for the same offence. It could not be done in view of the bar contained in section 52 read with Para 627 of the Manual. Therefore the orders of the Superintendent of the jail would be liable to be quashed.69

The Hon’ble Supreme Court held that “on breach of any condition of suspension or remission, the sentence is not automatically revived. It is only when the Government chooses to pass an order of cancellation of the suspension or remission that the convict is arrested and is required to serve the unexpired portion of the sentence.70

5.3.4.7 Remission may be recommended by court:

Where it was found that the accused was convicted for robbery with the help of a deadly weapon and the minimum sentence of seven years of imprisonment was imposed on him and the convict was a primary school teacher without antecedent and the amount robbed was trivial and the

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69 State of Haryana v. Ghaseeta Ram, AIR 1997 SC 1868
accused also did not resist arrest, the supreme Court recommended remission on reduction of sentence under section 432.\textsuperscript{71}

The Hon'ble Supreme Court held that where the report of the jail authorities was in favour of the convict, but the Review Committee constituted by the Government recommended for rejection of the claim of pre-mature release of the convict for the reasons which are irrelevant and devoid of merit, the Supreme Court quashed the order made by the Government and remitted the same to the Government to examine the case of the convict in the light of the observation made by the Supreme Court.\textsuperscript{72}

\subsection*{5.3.4.8 Remission granted by some of the States :}

In the State of Haryana, the remission is granted - (i) one year for those who have been sentenced for a period \textit{exceeding 10 years}; (ii) Six months for those who have been sentenced for a period \textit{from 2 to 10 years}; \textit{and} (iii) 3 Months for those who have been sentenced for a period \textit{up to 2 years}. However, remission will not be granted to persons convicted for rape or dowry deaths. The remission will not exceed one-fourth of the period of sentence. The minimum effective imprisonment will be three months (or less where the actual sentence is less than 3 months). Remission shall not be granted to specific offender under various Acts.

The Governor of the State of Andhra Pradesh has passed GOMs. No. 18 Home (Prisoners-C) Department dated 25-1-2000 in exercise of the powers conferred under Article 161 of the Constitution of India remitting the unexpired residue of sentence as on 26-1-2000, of the various categories of

\begin{itemize}
  \item \textsuperscript{72} \textit{Laxman Naskar v. State of WB}, AIR 2000 SC 2762 : 2000 (7) SCC 626
\end{itemize}
prisoners in the State who have been convicted by civil courts of criminal
Jurisdiction for offences against laws relating to a matter to which the
executive power of the State extends. The said order came to be passed on
the occasion of the 50th Anniversary of India becoming a Republic. The
relevant part of the Government order which needs reference for
appreciating the grievance of the appellant is as — “All convicted prisoners
sentenced to imprisonment for life who have undergone an actual sentence
of seven years and a total sentence of ten years (including remission) as on
26-1-2000 but the remission of sentence shall not apply to the some
prohibited categories of prisoners.”

In exercise of the powers conferred by section 432 (1) of the Code,
almost all the States are granting remissions to some categories of prisoners
keeping in view of the age and length of sentence, on any special occasion
for State.

5.4 Correction through social reintegration:

5.4.1 Release prisoners on furlough (leave):

In America, the furloughs are variously known as temporary leaves,
home visits, or temporary community release. For decades, prisons have
occasionally granted short furloughs to inmates who were suddenly faced
with a severe family crisis such as a death or grave illness in the immediate
family.73 Furloughs of that type are granted on special circumstances, and
often the inmate must be accompanied by an officer as part of the terms of
the ‘temporary release’. But, Carson W. Markley has mentioned that the

73 Vergil L. Williams : Dictionary of American Penology

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term 'furlough' is frequently confused with special leave, which most adult institutions have long been willing to grant under extenuating circumstances, such as family crisis. A prisoner on special leave customarily travels under escort, while on furlough he is on his own.\textsuperscript{74}

Thus, grant of furlough to the offender in extreme circumstances gives the family of the offender some solace and support. This is granted keeping in mind the humanitarian considerations, which mandate that in situations of crisis the prison authorities should adopt a more liberal and humane approach. The position regarding grant of these “concessions” in India, however is not clear and is far from satisfactory. In this regard, a reference to the Report of Jail Committee, 1980-1983 may be made. Para 20.8 in Chapter XX dealing with “System of Remissions, Leave and Premature Release” of the report of the All India Committee on Jail Reforms, 1980-83 (Volume I) refers to leave which can be granted to the petitioner. The relevant portion states that “different concepts such as parole, furlough, ticket of leave, home leave, etc., are used in different States to denote grant of leave or emergency release to a prisoner from the prison. The terminology used is not uniform and is thus confusing. There is also no uniformity with regard to either the grounds on which leave is sanctioned or the level of authority empowered to sanction it. There is also a lot of diversity in the procedure for the granting of leave. The scales of leaves are also different from State to State; for example, in some States parole is granted for a period extending up to 15 days while in other States it is restricted to 10 days only.”

\textsuperscript{74} Carson W. Markley in his article 'Furlough Programmes and Conjugal Visiting in Adult Correctional Institutions' in Volume "Federal Probation"
5.4.1.1 Furlough is the right, but not absolute:

The Gujarat High Court held that, "we are quite conscious of the fact that furlough is an important conditional right of the prisoner and that, as far as possible, it should be granted. Yet at the same time, our sympathetic humanistic approach to the prisoner cannot be allowed to take the driver's seat to control our judicial discretion, overlooking altogether equally important, if not more, the public interest involved."\(^7\) Again, the same court held that, where the petitioner (Life convicted and temporary suspension of sentence admitted) filed an application for furlough leave and was rejected on the adverse police report. As this report was not containing any reasons for rejection. It was held that convict was having good conduct inside jail and outside during first parole. So, rejection of such application on merely police report without any reason is non-application of mind. In such circumstances, petitioner is entitled for furlough.\(^6\)

But, in another case it was held that, furlough is not an absolute right of the prisoner but nonetheless it is a right or privilege admissible and regulated under the provisions of section 48A of the Prisons Act and the Prisons (Bombay Furlough and Parole) Rules, 1959. From a conjoint reading of these two provisions, one of the punishments which could have been given to the prisoner for late surrender is forfeiture of furlough.\(^7\) The court while deciding, whether accused can be granted bail, parole or furlough, held that ordinarily, in cases under TADA sentence is not suspended but in

\(^{75}\) Maganbhai Prasangbhai v. State of Gujarat, 1994 (2) GLR 977 : 1994 (2) GCD 201


rarest cases, when there is violation of constitutional rights, High Court may grant parole or furlough.

5.4.1.2 Ground for rejection of furlough:

The Hon’ble Gujarat High Court held that, an application for furlough leave under Rule 4 (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 was rejected on ground of delay in surrender earlier by 462 days. Affidavit shows that petitioner was enlarged on bail for a period of 21 days and after expiry of this period of 21 days he did not surrender rather absconded and police could catch hold of accused after a period of 462 days and brought him back to jail. No furlough was claimed by or granted to petitioner earlier. Consequently, authority did not commit any illegality in rejecting the petitioner's furlough leave application.78 Again, the same High court held that, where application for furlough was rejected on the ground that he was held for prison offence of “misconduct of prisoner” under Rules 4 (5) & (6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and was punished by the jail authority “forfeiture of two future furloughs”. The court held that the order of jail authority was valid and justified.79

Again, the same High Court extended such provisions and said that on the rejection of application, the copy of order passed against him shall be furnished to applicant with the grounds for rejection of application for parole or furlough. Thus, not to give a copy of impugned order in very nature of things is not only illegal but the same is as well against the principles of the natural justice and fair play. Under the circumstances, it is hoped that

78 Koyabhai Bhaichandbhai v. State of Gujarat, 2001 Cr.LR (Guj) 664
henceforth whenever parole or furlough application is rejected the copy of such order disclosing grounds on which it came to be rejected must be communicated to the prisoner, so that he is not kept any more in dark for assailing the same before the higher forum.  

5.4.1.3 Court couldn’t interfere in a just and lawful order of prison authority:

The Hon’ble Gujarat High Court held that, the petitioner squarely falls within the ambit of Rule 4 (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959. In this view of the matter, by no stretch of imagination it can be said that Inspector General of Prisons had exercised his discretion arbitrarily, calling for any interference at the hands of this Court. The discretion of the High Court by virtue of extraordinary powers under Article 226 of the Constitution cannot be lightly exercised matters where the authorities have quite justly and properly exercised its discretion. Ordinarily, if the prisoner wants to claim any sympathy on humanitarian grounds, before he so desires, he will have to qualify himself to deserve it by his conduct and behaviour in and outside the jail, which is entirely in his hands only and not with the jail authorities.

In another case, the same court held that, we have no alternative left but to dismiss this petition solely on the ground that petitioner has not posted us with full and true material having direct bearing on the decision, whether he should be released on first furlough leave. We may clarify that, if, the petitioner once again makes a fresh application for furlough to the

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81 Motisinh Kesrisinh v. State of Gujarat, 1994 (1) GCD 822 • 1994 (2) GLR 1444

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authorities, the authorities bearing in mind the attending circumstances which stand in favour of the prisoner to entitle his first furlough, may decide the same according to law after obtaining genuine police opinion.\(^{82}\)

5.4.1.4 Breach of conditions on parole or furlough:

The breach of conditions for suspension of sentence or parole or furlough are declared as prison offence under section 48A of the Prison Act and in case of any such breach, the Superintendent of the Prison is empowered to punish such offence imposing various punishments mentioned in the said section. One of the punishments is the loss of the privilege admissible under the remission of furlough or parole system. The State Government has framed the Rules under section 11 (1) by a notification dated 2\(^{nd}\) July, 1961. Rule-2 (a) of the said Rules provides a maximum cut out of 5 days' remission for each day of overstay.

The discretion conferred upon the Superintendent is not arbitrary and unguided. The Superintendent is required to follow principles of natural justice before imposing the punishment. He is also obliged to state reasons for the imposing of the punishment. If the punishment is forfeiture of ordinary or special remission for more than 60 days or for removing the prisoner from the remission system for a period of exceeding one year, previous approval of the Inspector General is necessary. There is no arbitrariness in the scheme laid down by the provisions of the Act and the rule framed by the State Government. It is, therefore, not possible to accept the submission that the punishment imposed upon the petitioner for overstay

\(^{82}\) Latif Chhotumiya Shaikh v. State of Gujarat, 2000 (3) GLR 2362 : 2000 (3) GLH 601
of 448 days after the parole period, was illegal or violative of Article 14 of
the Constitution.83

5.4.2 Release prisoners on ‘Parole’ (Special Leave):

The Hon'ble Supreme Court observed that in India there are no
statutory provisions dealing with the question of grant of parole. The Code
of Criminal Procedure does not contain any provision for grant of parole,
however, by administrative instructions, rules have been framed in various
States, regulating the grant of parole. Thus, the action of grant of parole is
generally speaking, an administrative action. Parole is a form of temporary
release from custody, which does not suspend the sentence or the period of
detention, but provides conditional release from custody and changes the
mode of undergoing sentence.84

The Hon’ble Supreme Court defines parole as “Parole is the release
of a very long term prisoner from a penal or correctional institution after he
has served a part of his sentence under the continuous custody of the State
and under conditions that permit his incarceration in the event of
misbehaviour.”85 Again, it modified the definition while holding that
“parole means the release of a prisoner temporarily for a special purpose
before the expiry of a sentence, on the promise of good behaviour and return
to jail. It is a release from jail, prison or other internment after actually
been in jail serving part of sentence.” The court further said that, parole is
not suspension, remission or commutation of sentence; convict continues to

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83 Bhagwan Anna Arbune v. State of Maharashtra, 1994 Cr LJ 1477
84 Sunil Fulchand Shah v. Union of India, (2000) 3 SCC 409
85 Poonam Lata v. Wadhawan, AIR 1987 SC 1383 • 1987 (3) SCC 347
be serving the sentence despite granting parole. A convict serving imprisonment of sentence is only entitled to parole.86

5.4.2.1 Effect of parole on period of detention:

Dealing with the concept of parole and its effect on period of detention in a preventive detention matter, the Hon’ble Supreme Court held that “there is no denying of the fact that preventive detention is not punishment and the concept of serving out a sentence would not legitimately be within the purview of preventive detention. As a consequence of the introduction of parole into the penal system, all fixed-term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after one third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty of lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise; the convict released on parole is directed to surrender to custody”.87

86 Dadu Tulsidas v. State of Maharashtra, 2000 SOL Case No. 573 (SC)
87 Poonam Lata v Wadhawan, AIR 1987 SC 1383 : 1987 (3) SCC 347
The period of detention keeps ticking during the period of temporary release of a detenue also because a parolee remains in legal custody of the State and under the control of its agents, subject at any time, for breach of conditions, to be returned to custody. If the interruption of detention is by means not authorised by law, then the period during which the detenue has been at liberty, cannot be counted towards period of detention while computing the total period of detention and that period has to be excluded while computing the period of detention”.

The Hon’ble Supreme Court issued direction to the State Government to see that the accused of the cases are not given any degrading work and are given the benefit of liberal parole every year if their behaviour shows responsibility and trustworthiness. The Session Judge was directed to make jail visits to ensure compliance with these directions. 

The Hon’ble Supreme Court held that "Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also".

5.4.2.2 Grant of parole is an executive function:

The grant of parole is essentially an executive function and instances of release of detenues on parole were literally unknown until Supreme Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically, parole is a concept known to military law and denotes release of prisoners of war on promise to

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88 Inder Sigh v State, 1978 Cr.LJ 766 (SC)  
89 State of Haryana v. Nauratta Singh, 2000 (3) SCC 514
return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. In those countries parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise.

The prisoner is undergoing imprisonment for 5 years for the offence punishable under section 304 (Part II) of IPC. He had already undergone the imprisonment for a period of more than 1 and ½ years when he applied for parole, on the ground that his mother had expired and he had to perform religious rites. An application for parole leave was made before the District Magistrate, Vadodara. The application was decided after a long period and Learned Magistrate rejected the application while holding that by now the rites must have been performed. The reason for rejecting the parole leave was based on only summaries, not explaining why such an important application could not be dispatched off within a reasonable time. The District Magistrate, Vadodara is hereby directed to grant parole leave of clear 8 days from the date of his release on furnishing surety to the satisfaction of the Jail Authority reflected in Schedule-B. However, it is clarified that the prisoner shall be released for this period on parole only if his wife takes the prisoner from the jail as undertaken by the prisoner in the application.90

The Hon’ble Gujarat High Court observed that where petitioner overstayed while on parole leave and was punished by penalty of forfeiture of furlough leave and cash deposit, he submitted his explanation for this

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90 Pragj Anandji v. State of Gujarat, 2000 Cr.LR (Guj) 290
delay. The Inspector General of Prisons directed the State authority to punish the defaulter and the above punishment was awarded. Looking to the previous conduct of petitioner, while on parole leave, his delay was condoned but the forfeiture of deposit was upheld. The Hon’ble Gujarat High Court held that, Rule though permits for late surrendering by the prisoner, a forfeiture of his furlough leave, but each case has to decide on its own facts and merits and where reasonable explanation has been furnished, it is not always rule to forfeit furlough leave.91

5.4.2.3 Parole is act of grace, not matter of right:

The Supreme Court held that as a result of the introduction of parole into penal system all fixed term sentences of imprisonment above 18 months are subject to release on licence. Parole is taken as an act of grace and not as a matter of right and the convict may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a part of the reformative process and is expected to provide opportunities for the prisoner to transform himself into useful citizen. Parole is thus grant of partial liberty or lessening of restrictions to prisoner, but release on parole does not in any way, change the status of prisoner.92 The Punjab and Haryana High Court held that, person convicted by the Court Martial is also entitled to seek parole for specific purposes, such as death or serious illness of a close relation and for treatment of important disease.93

91 Hasmukh D Prajapati v. State of Gujarat, 1995 Cr.LR. (Guj) 273 • 1995 (1) GLR 726
92 Poonam Lata v. Wadhawan, AIR 1987 SC 1383 • 1987 (3) SCC 347
93 Ex-Sepoy Manjit Singh v Union of India, Cri Misc Petition No. 17437 of 1994
5.4.2.4 Minister is not empowered to grant parole:

The Hon'ble Gujarat High Court held that, where petitioner convict was engaged in bank robbery, the application for bail and parole was rejected three times by High Court. Minister of States granted parole on humanitarian basis held lower to grant. The High Court ordered that the Minister was in no way empowered to grant the parole and petitioner was directed to surrender to jail authorities, who shall after examining all records, consider his case of parole in accordance with law.

5.4.3 Aftercare services:

A person after completion of his sentence, released from correctional institution, has to be settled in society, and at this crucial time, he needs help of the society. In this competitive time, when a well educated and non-convict person is facing difficulties for appropriate job, it is very difficult to compete by these ex-prisoners without the help of someone. In such circumstances, it is necessary to help them in rehabilitation by providing aftercare services. To render aftercare service is a significant segment of the total strategy of the integrated corrections.

Literally “aftercare” means ‘to take care of the ex-prisoners, after the release from correctional institutions, so that he does not repeat the crime’. This care is most important and necessary for both ex-prisoner and society. The object of aftercare programme should be social and professional rehabilitation of the ex-prisoners. They should be made self-reliant, honest and fit to live a free life of freedom.
According to UP Jail Reform Committee, 1946, ‘aftercare’ is a continuation of the reformative and rehabilitative endeavours for the help, service, guidance, counselling, support and protection of persons released from the correctional institutions meant for socially and physically ‘handicapped’ individuals. The main aim of aftercare services therefore is to reconstruct and restore institutionalised persons to social positions of self-respect and also to enable them in setting down as law abiding citizens in community.94

The Model Prison Manual, 1970, describes aftercare as a bridge, which can carry the offender or any other socially or physically handicapped individual from the artificial and restricted environments of the institutional custody, from doubts and difficulties and from hesitations and handicaps to satisfactory citizenship, resettlement and to ultimate rehabilitation in the free community.95

According to Professor R. Deb, the term aftercare refers to the programme and services organised for the rehabilitation of inmates released from correctional institutions.96 The Advisory Committee opined the term ‘aftercare’ in a broader sense and gained that it need not be limited to the specific programmes and services organised for the rehabilitation of the individuals discharged from correctional institutions. In fact, the term ‘aftercare’ can be used to refer to the programmes and services organised to complete the process of rehabilitation of socially or physically

96 Aftercare Organisation, a syndicate study conducted under Prof. R Deb, National Police Academy, Abu, 1974
'handicapped' individuals or groups which have been begun and carried upon a particular stage in an institution.⁹⁷

In 2003, a new Model Prison Manual was drafted, according to which the process of aftercare and rehabilitation of offenders is an integral part of institutional care and treatment. These two should never be de-linked. The aftercare of a prisoner is an extension of the institutional treatment programme; hence the administrative machinery for carrying out these programmes should be effectively integrated with the department of prisons.⁹⁸

Aftercare services are broad but not unlimited. They are limited to service rendered by any of the authority appointed by Government or Non-Government Organisation contributing any services in the rehabilitation of the person released from correctional institution. In short, an aftercare service refers to any service rendered or supported (post-release assistance) to the newly released persons, from the penal or correctional institutions on the completion of long term sentence, in rehabilitating them into the society.

The term "aftercare service", shall be understood as the service rendered to newly released prisoners from correctional institution, for their rehabilitation. This service may be in the form of helping them to be engaged in jobs, help them in installing any self-employed work, guiding them according to requirement, observe them not to return again in criminality, counselling himself and his family, etc. This service may be rendered by the Government, NGOs, or social groups.

⁹⁸ Model Jail Manual, 2003 Para -20.01
5.4.3.1 Historical development of aftercare service in India:

The concept of aftercare in India had very little relevance and application until 20th century. The Indian Jail Conference, 1877, held in Calcutta, had for the first time discussed the question of the helping of ex-convicts, but any positive steps were not taken. The North-West Province Oudh (now Uttar Pradesh), was the first Province in India, which had taken up the question of aftercare in 1891. Sir Johan Taylor, then Inspector-General of Prisons, laboured hard to establish a Central Society for the purpose "of affording aid to indigent deserving prisoners, on discharge by providing them with implements, to follow the trade they had learnt in the jail, and also subsistence allowance to maintain themselves for a month and of securing them suitable employment, so that they may not on release find themselves subject to difficulties and temptations that arise from want and idealness."^99

His efforts bore fruit in the formation of such a society in 1894. A Discharged Prisoners Aid Society was organised as a non-official agency in Uttar Pradesh, and similar societies were organised in Bengal (1907) and Bombay (1914), but these societies could not continue to function for want of government support and public sympathy. In few States, some committees were established in order to help the prisoners on their release.^100 Simultaneously, steps were taken by the Provincial Governments to help the discharged prisoners, and the Discharged Prisoners' Aid Societies were formed in many Provinces in the country. The object of such societies was mainly to help the released prisoners in their social and economic

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^99 Report of the UP Jail Reform Committee, 1946, p.55
^100 Uttar Pradesh Jail Reforms Committee, 1946
rehabilitation in the community. During the period from 1872-1910, a wave of reformation swept the western countries. In India also the importance of reformation and social rehabilitation of offenders was emphasised.

A Discharged Prisoners Aid Society also was organised in Bengal 1907 and the West Bengal Aftercare Association of Juveniles and Adolescents was established in 1928. The West Bengal Jail Code Revision Committee was set up by the State Government on August 10, 1977. The interim report was published in 1977. Final report of this Committee considered and addressed the issues of parole and temporary release, transfer of prisoners, condemned prisoners, prison panchayat, criminal and non-criminal lunatics, probation officers, correctional services, right of prisoners, aftercare and prepared a syllabus for officers' training college.

Similarly, in Bombay, the first Prisoners Aid Society was organised in 1914. Bombay Presidency Discharged Prisoners Aid Society was functioning as a Central Institution. In this institution probation officers, were appointed to help ex-offenders in getting the employment and till then they were provided with free food, shelter, etc. In April, 1946, it was merged with Bombay Probation and Aftercare Association.

The Indian Jail Committee, 1919, brought into focus the need for shifting the emphasis from punishment of offenders to their reformation. Various changes were made into the prison administration. Simultaneously, with these changes inside the jails, steps were taken by the Provincial Governments to help the discharged prisoners. The Madras Prisoners Aid Society was established in 1926, to provide the ex-inmates assistance in employment, provision of board and lodging facilities, provisions of
financial and legal assistance, etc. Besides this, North Arcot Discharged Prisoners Aid Society is doing appreciable works in rehabilitation of ex-offenders. *Bailari, Chittance, Coembtiture, Godavri, Koraput, Malabar, Salem, Tinnevelli, Tirchanapalli,* etc. are the District Societies working smoothly for this purpose and appointing probation Officers.

Similar process was found, in Punjab in 1929, Andhra 1930, and Kerala 1936. Though the necessity of aftercare gained momentum during the first half of this century in India, very little was achieved due to the political instability and turmoils in the country.

As a landmark development in this field, an Advisory Committee on Aftercare Programmes was appointed by the Central Social Welfare Board in 1954 under the Chairmanship of Professor M.S. Gore to study, among other things, the nature and size of the problem of those adults and juveniles who have been discharged from correctional institutions, to determine the scope of aftercare programmes for these individuals, to assess the extent to which the existing aftercare services meet the needs of the situation and specify the manner in which they need to be developed and modified. The Committee recommended for a very solid and a practical base for the aftercare infrastructure and programmes in this country.\(^{101}\)

In pursuance of the Gore Committee's report, a comprehensive aftercare programme was started during the Second and Third Five Year Plans at the instance of the Central Social Welfare Board and a few aftercare homes and shelters were set up in some States. The Government of India also constituted a Working Group (1972-1973), which defined correctional

\(^{101}\) *Children Aid's Society's Report, 1955*
aftercare as a very essential step in the criminal justice system. The Action Plan was brought up by the All India Committee on Jail Reforms (1980-83) which also emphasized on establishment of Aftercare Homes to meet the immediate needs of released prisoners for their proper readjustment in the society.

A well-rounded scheme for the welfare of prisoners in terms of their aftercare and rehabilitation, as formulated under the Seventh Five Year Plan, was circulated among all the States and Union Territories for consideration. The Government of India continued to extend financial assistance to voluntary welfare organisations for providing community-based care, welfare and rehabilitative services for released offenders. Many States and Union Territories also made remarkable achievement in areas of rehabilitation of released inmates from Juvenile Correctional Institutions, drug addicts, and a few categories of released adult offenders.

According to Dr. B.N. Chattoraj, despite all these efforts, rehabilitation prospects of released offenders unfortunately have not improved at the desired level because of many factors, some of prominent ones being paucity of funds, lack of interest on the part of State Governments and mismanagement by local staff. Many of these aftercare and rehabilitational institutions were closed down or were converted into other kinds of institution under the Social Welfare Departments. Only a few
States are left with some very weak institutions which are not able to cope up with the real dimensions of the aftercare and follow up works.\textsuperscript{102}

Now, 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 assigned to the Bureau of Police Research and Development by the Ministry of Home Affairs. This Department 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. In 1996, the Apex Court brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and directed the Central and State Governments to formulate a new Model Prison Manual.\textsuperscript{103} Earlier, All India Committee on Jail Reforms (1980-83) had also emphasized the need for a consolidated law on prisons. Accordingly, a committee was constituted at the national level for the formulation of a Model Prison Manual, and the Committee formulated Model Prison Manual, 2003.

5.4.3.2 Aftercare service as International obligation:

At international level, first instrument was adopted in the form of Standard Minimum Rules for the Treatment of Prisoners by the First United Nations Congress on the Prevention of Crime and the Treatment of

\textsuperscript{102} Paper presented by Dr B.N Chattoraj, "Ways and Means for enhancing the aftercare and rehabilitative Programmes for released offenders An Indian perspective" Agenda item number – 5 (1980-83) www.acpf.org/WC8th/AgendaItem5/PositionpapersI5.html

\textsuperscript{103} Ramamurthy v State of Karnataka, 1996
Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolution 663 C (XXIV) of 31 July, 1957 and 2076 (LXII) of 13 May, 1977. The provisions relating, social relations and aftercare are followed by Rule 79 to Rule 81. 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.\(^\text{104}\)

Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall 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.\(^\text{105}\)

The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence. It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.\(^\text{106}\)

\(^{104}\) Rule 80 of the “Standard Minimum Rules for the Treatment of Prisoners”
\(^{105}\) Rule 81 (1) of the “Standard Minimum Rules for the Treatment of Prisoners”
\(^{106}\) Rule 81 (2) & (3) of the “Standard Minimum Rules for the Treatment of Prisoners”
To accept the reformative revolutions now a days in the whole world, many countries have adopted the aftercare programmes. Countries, like America, and various countries of Europe, are having organised institutions for aftercare in a shape. To make such programmes more effective, they have appointed the paid officers, to direct such programmes. Most of them are releasing the offenders on probation, parole and released under supervision or on bail. In France and Belgium they are released under the supervision of paid appointed officers.

5.4.3.3 Necessities of aftercare services:

A person released from the correctional institutions has been cut-off from the society. Now he has to re-establish himself in the society, for which he is not having any affection. It is the highly crucial point, where all the reformation may go waste, if, no care has been taken to rehabilitate him. This is the time, when a released person is standing at more flexible place, from where he may return to either side; a law abiding citizen or a hardened criminal. He is just like a sick person, who, after release from the hospital, also needs care at home, which is called observance aftercare. It is the period of real replacement in the daily routine. Similarly, if an offender after release from the correctional institution on the completion of his imprisonment, is in the need of highly good atmosphere under which his reformation may be continue.

The underlying premise is that training and treatment of the offenders are likely to go waste, if, during their transition from institution to outside world, they are not helped and guided by the humane and efficient aftercare
programmes.\textsuperscript{107} \textit{Ananya Das Gupta} has also rightly remarked that now it is generally recognised that the entire gamut of correction activity taken up within the institutional confines are bound to fail as said by a French writer if at the moment of his liberation the institutionalised individual is cast froth abruptly and without support, to face all the difficulties and seduction of life and society.\textsuperscript{108}

The emergent trend of new direction in corrections is that crime and delinquency are symptoms of failure and disorganisation of the community. The task of corrections, therefore, includes building or rebuilding solid ties between the offender and the community, integrating and reintegrating the offender into community life, restoring family ties, obtaining employment and education, and securing in the large sense a place for the offender in the routine functioning of society.\textsuperscript{109}

When it is accepted, that crime is committed due to environmental circumstances, it means that the society is also responsible for the offence committed by the offender. It is possible that one person commits the crime, but it is always not necessary that another may also commit a crime in the same circumstances. So, it cannot be denied that individual is also liable for the crime. Here more liability is of the society, which creates such circumstances, that it leaves the individual alone. "As a disease is an important element to destroy the body of the person, similarly the crime is

\begin{footnotesize}
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  \item \textsuperscript{107} S.P Srivastva : Post-institutional Treatment of offenders · An overview of aftercare service in India, Social Defence, Vol XXII, Jan 1987, p.15
  \item \textsuperscript{108} Ananya Das Gupta : Administration of Criminal Justice, Institutional Correctional Services Vol 2 p.15
  \item \textsuperscript{109} US President's Crime Commission, Task Force Report : Corrections, Washington, DC 1967 p 7
\end{itemize}
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also an element to destroy the society, so it is necessary that offender should be treated as a patient”.

New Model Prison Manual, 2003, express a view that aftercare and follow-up service is not required by each and every inmate leaving the prison. A large number of prisoners coming from the rural areas and agrarian and business communities are generally accepted back into their family. They are re-assimilated in the social milieu without much difficulty. They require only some continued contact with their kin and some pre-release counselling to bridge the gap between their life in the prison and that in the free society.110

5.4.3.4 Objectives of Aftercare:

The main objective of aftercare service is to stop the ex-prisoners from returning to criminality and socialize them into society after their release. The Model Prison Manual111 has outlined the objectives of the aftercare services as follows:

(i) Extending help, guidance, counselling, support and protection to all released prisoners, whenever necessary.

(ii) Helping a released person to overcome his/her mental, social and economic difficulties.

(iii) Helping in the removal of any social stigma that may have been attached to the inmate or his/her family because of his incarceration.

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110 Model Jail Manual, 2003 Para-20.02
(iv) Impressing upon the individual the need to adjust his/her habits, attitudes, approaches and values to a rational appreciation of social responsibilities and obligations and the requirements of community living.

(v) Helping the individual in making satisfactory readjustment with his/her family, neighbourhood, work group, and the community.

(vi) Assisting in the process of the individual’s physical, mental, vocational, economic, social and attitudinal post-release readjustment and ultimate rehabilitation.

5.4.3.5 The Process and planning of aftercare and rehabilitation:

According to Model Jail Manual, 2003, aftercare services should be extended to all needy persons released from prisons, conditionally or unconditionally on license. A minimum of five years of imprisonment should be necessary to enable a prisoner to avail aftercare services. Aftercare problems of an individual should be treated in their totality and not in isolation. Not only the individual but his/her whole social situation must be tackled at the same time. Aftercare work should broadly be phased as follows:

(i) While the individual is under institutional care and treatment,

(ii) Immediately after release from the institution, and

(iii) Post-release period.
There should be full coordination between the correctional services and the aftercare services. While extending help, the aftercare services should devote special attention to the protection and post-release care and help of children, adolescents, women, sick, old, infirm and handicapped persons. Special emphasis should be laid on the aftercare of habitual offenders, if they so request.

Planning for aftercare should be initiated immediately after an inmate’s admission in the institution. Aftercare should be in the interest of the individual, and based on his/her needs. The Classification Committee should plan aftercare programmes. While planning post-release assistance, factors like the inmate’s personality, his weaknesses and strengths, limitations and capabilities, and his/her rehabilitation need should be taken into consideration. The inmate’s desires for post-release help should be considered on a practical and realistic basis.

The inmate should be told what type of assistance would best suit his needs. He should be encouraged to plan his post-release life, as this would be helpful in his/her willing acceptance of the aftercare plan. He should be prepared for his post-release life. From the time of a prisoner’s admission into prison, consideration should be given to his post-release needs and he should 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/her family and his/her own social rehabilitation. Special attention should be paid to the maintenance and improvement of such relations between a prisoner and his/her family, as are desirable in the best interest of both.
5.4.3.6 Scope of aftercare assistance:

According to Model Jail Manual, the following matters should be kept in view while planning aftercare assistance or help to released prisoners:

(i) Subsistence money to cover initial expenditure after release, till such time as the released person reaches his/her family or obtains employment.

(ii) Provision of food.

(iii) Temporary accommodations till housing arrangements are made.

(iv) Stay in a District Shelter/Aftercare Hostel/State Home, wherever available.

(v) Assistance in securing housing in urban areas.

(vi) Assistance in securing apprenticeship in a workshop/technical institute/ industry/ trade.

(vii) Supply of artisan’s tools or trade equipment.

(viii) Assistance in starting a cottage industry, any small business trade, or a small stall.

(ix) Assistance in getting employment.

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(x) Assistance in getting land, agricultural equipment, draught or milk cattle, and seeds for those opting to take up agriculture.

(xi) Assistance in starting a small dairy, poultry, duck, or sheep farm/piggery/vegetable gardening/sericulture/bee-keeping.

(xii) Liaison with and assistance to prisoner’s family during the period he/she is serving a prison sentence.

(xiii) Help in maintaining continuity in relationship with family, neighbours, employers and community.

(xiv) Preparing the family, employer and neighbours for receiving the individual after release.

(xv) Guidance in getting married and setting up a home and resettling in life.

(xvi) Liaison with local police so that she/he is not harassed unnecessarily.

5.5 Social Impact of Correction:

Our aim is to eliminate all the causes of crime. To stop the recidivism in offender, system has been made to release offender on Probation, Parole, Furlough, etc. and instead of inflicting harassment or punishment, he is treated therapeutically and trained for skill, but, then also crimes are increasing. Even though, there are many causes, but, one is the backward ideology of society, which thinks that offender is unsocial, condemned and should be discarded. So, still our society, especially rural, treat them as
offender only, who came to the society after completion of their due towards their criminal act, actual repentance has been done, reformed himself and wants to start a new life. But, society is searching the tact in his normal acts too, and holds him still a prisoner. This behaviour of society creates a doubtful and unfaith relation between society and ex-prisoner. This behaviour creates the jealous, cruel and retributive elements in the offender and pulls him, again into the criminality.

When a person after released, returns to the society, he is faces two kinds of persons. He finds persons happy on his release, who are normally nearly connected with him, but, on the other hand, a group of persons, who are not happy on his release and hate him, normally belong to victim parties. Generally, the vocational training, which he received in the prison slowly becomes less affective, and after some time the behaviour of the latter pulls him to criminality. If, at this juncture he is engaged somewhere for job according to his requirement or busy with some skilled job, then the view of the latter also will be changed and he can be escaped from becoming recidivist. So, there is no use of the training given for rehabilitation, if aftercare service is not provided. Whole the hard work is wasted, if not used. Aftercare is the programme, which gives the true respect and full care by which ex-prisoner can be prevented from committing crime again.

We must remember that person released from institution after completion of his sentence, is not to be called offender, but a simple person who has paid the debt to the society. At this juncture, he needs sympathy of society by welcoming him with open heart. It is to be noted that the behaviour of society towards such person should be similar, as before the commission of offence. It is witnessed that such persons are not having
sympathy as he deserve, but instead of sympathy he hated by society, which may pull him again into criminality. If, after coming from the correctional institution he came to know that his family has suffered due to some persons during his stay in correctional institution, in such circumstances, there are many chances to go back into criminality. Many of them need money to rehabilitate, if not provided freely then, also chance to return into criminality.

There are other prisoners who resist follow-up action as they consider it a kind of surveillance on them. But majority of the inmates would welcome such programmes which help them settle in the society after their release, and get themselves rehabilitated beyond the possibility of reverting to crime. 113

For many people, the concept of 'offender reintegration' conjures up images of social workers counselling prisoners and former prisoners in an attempt to change their unsatisfactory situation. Other persons may see offender reintegration as being 'soft on crime', or as 'being nice to criminals'. Many initiatives have been called offender reintegration, but few can truly claim success in reintegrating offenders. Whatever the perception, it remains a fact that the majority of released prisoners soon find themselves back in prison at great cost to the community and the taxpayer.

Any understanding of offender reintegration starts with prisons, probably the most popular sentencing option of the past two centuries. Prisons remove 'unwanted' or offending people from mainstream society and place them in institutions where they are seemingly unable to offend

113 Model Jail Manual, 2003 Para -20.03
society any further. Prisons, as they are known today, came into being approximately 200 years ago in Europe with great enthusiasm as a sentencing option for criminals. Their failure as a crime reduction technique, however, was soon evident.

Prison often indirectly produces delinquents by causing destitution among the inmate’s family. The same authority that sends the head of the family to prison reduces the mother to destitution, the children to abandonment, the whole family to homelessness and begging. It is in this way that crime takes root (1836). Detention causes recidivism; those leaving prison have an increased chance of returning (1837). Prison enables, even encourages, the organisation of a milieu of delinquents, loyal to one another, with a particular hierarchy, ready to aid and abet any future criminal act (1839). Prisons do not diminish the crime rate; whether they are extended, their numbers multiplied or institutionally transformed, the quantity of crime and criminals remains stable or, even worse, increases (1842).114

Even though the above excerpts are from reports dating back more than 150 years ago, when prisons were still relatively new, these conclusions have remained largely true until today. The non-achievement of prisons as institutions is well-known, but they nonetheless remain in use and are in fact expanding. This is one of the great paradoxes of modern society.

Facilitating the reintegration of offenders into society as constructive citizens is crucial if a substantial reduction in crime is to be achieved in the foreseeable future. Offender reintegration, if conducted properly, is not a

way of being ‘soft on crime’ as public opinion often holds. It is a challenging process that holds offenders accountable for their actions in a constructive and restorative manner. The successful reintegration of offenders is ultimately in the interests of the community, because those who are not accepted back into the community will in all likelihood turn to crime again. It is estimated that, in South Africa, between 85% and 94% of released offenders will reoffend. If this is indeed the case, imprisonment appears to be a rather futile exercise, especially if little is done to facilitate the reintegration of offenders back into society where they can fulfil a constructive rather than a destructive role.

At least 95% of all prisoners will be released back into the community to continue with their lives. Through some miracle, they are expected to fit in as if nothing has happened and to continue with their lives as constructive citizens contributing to the common good. They are expected not to commit a crime again, to find employment, to be good mothers, fathers, brothers, sisters and children again. They are expected to have ‘learned their lessons’ through punishment and pain. Their liberty was taken away and they were isolated from valued qualities of life — their individuality, the opportunity to take control and to make decisions. It is often asserted that people are imprisoned for their wrongdoings because they deserve it and that this will make them better people. The question that has to be raised, however, is whether people are imprisoned merely to get them off the streets, to incapacitate them, or to hide them away from society.

The effects of imprisonment are numerous and research increasingly indicates that imprisonment causes psychological damage. Some argue that prisoners receive what they deserve, that the suffering and pain are
proportionate to what they have caused. While this is a popular argument among those bent on retribution, the fact is that prisoners, once released, return to society where they find it extremely difficult to be accepted and to cope with the demands of leading an ordinary and balanced life. Offenders mostly return from prison as a bigger problem for society. Offenders are excluded from society at enormous cost to the taxpayer, but there is a great reluctance to invest in their development to enable them to become part of society once more.

Therefore, the goal of ensuring that most offenders will not reoffend and will become constructive citizens, is arguably undermined at the start of the process. Human rights abuses against prisoners are rife across the world. Some feel that prisoners should have no rights and that imprisonment should be as harsh as possible, for as long as possible. Once such prisoners are released, they are repeatedly punished through social and economic exclusion.

In South Africa, as well as throughout the world, there are interesting, successful and creative programmes to assist offenders in becoming part of society again. It is ultimately in society's interest to invest in them, even when this is morally a difficult choice to make. There is an increasing body of research which shows that there is not one ultimate solution, but different people require different approaches in different situations. The question remains whether reintegration programmes attempt to change individuals or whether they actually try to undo the effects of imprisonment.

The willingness to invest in prisoners and former prisoners is often seen as a 'welfare approach' that is out of touch with the hard reality of
crime and victimisation. The position advocated here is that an investment in offender reintegration is not a soft approach or option, but provides an investment in the interest of society. Successful offender reintegration programmes make financial sense if they are compared with the cost of imprisonment.

This monograph therefore provides a brief background on the socio-political context within which imprisonment occurs in South Africa, as well as in the rest of the world. The scope and extent of imprisonment are illustrated and the need for offender reintegration services is identified. This is followed by a review of changes in recent South African policy and legislation, as well as local and international viewpoints on offender reintegration. Descriptions of a number of international and local offender reintegration initiatives are provided. The purpose is not only to identify the strengths of these initiatives, but also to point towards the shortcomings in an attempt to develop a framework for appropriate and effective programmes. For the purposes of this monograph, the emphasis is placed on reintegration services rendered by non-governmental organisations (NGOs). Services offered by NGOs provide interesting case studies as they are developed organically and often initiated by former prisoners. The list of programmes discussed here is not in any way exhaustive and the choice does not reflect any form of value judgement about other programmes. The choice of programmes is based on their illustrative value for particular issues under discussion.

Social defence is much larger, broader and more comprehensive a discipline than correction. Nevertheless, it does incorporate in its operational strategy all measures necessary to take to strengthen law enforcement
agencies and, more especially, the agencies involved in institutional and social treatment programme for rehabilitation or re-socialisation of the offender, and those for prevention of recidivism. In that limited sense, social defence is considered to be coextensive with administration of correctional institutions and social treatment measures like release on licence, parole, conditional release, probation and aftercare.

Correction is only one facet of social defence, having a defensive social purpose to serve it operates in a limited manner in the life of a deviant. A deviant is a fugitive from the moral and ethical code of his family and society. To bring this moral fugitive back into the fold of his family and society by process of persuasion, education or re-education and conversion and to win him over the cause of personality reconstruction is the chief aim of the correction. Rescue, recovery and rehabilitation of young persons who are found to be exploited, or exposed to moral physical hazards constitute its yet another equally important domain.

5.5.1 Social benefits of imprisonment:

To begin, we need to recognise that imprisonment offers at least four types of social benefits. The first is retribution; imprisoning offender, punishes him and expresses society's desire to do justice. Second is deterrence; imprisoning offender, may deter him or person having intention to commit crime or both from committing crimes in the future. Third is rehabilitation; while behind bars, offender may participate in drug treatment or other programmes that reduce the chances that he will return to crime when free. Fourth is incapacitation; from his cell, an offender can't commit crimes against anyone save other prisoners, staff, or visitors.
At present, it is harder to measure the retribution, deterrence, or rehabilitation value of imprisonment to society than it is to measure its incapacitation value. The types of opinion surveys and data sets that would enable one to arrive at meaningful estimates of the first three social benefits of imprisonment simply do not yet exist. But, it is possible to estimate how much serious crime is averted each year by keeping those convicted criminals who are sentenced to prison behind bars, as opposed to letting them out on the streets.

Prison needs a boundary but it need not be a wall. Discipline does not require torture but it does require strictness. Food does not have to be monotonous or distasteful. Freedom of expressions needs not to be curtailed but controlled and restricted in such manner that it does not disrupt the functioning of the prison. Health care standards need to be high and loss of the liberty incidental to the sentence awarded by the judicial process should be the only punishment. Elements of reformation and rehabilitation of offenders must be incorporated in law and there should be great efforts to ensure that family ties are maintained, for which the civil society must pay a vital role.

5.5.2 Dilemmas of the administration of correctional institutions:

Administration of correctional institutions has in the last two decades, come in for unfavourable comments in the press and sharp criticism in several State legislatures for the sub-human conditions and lack of minimum essential amenities for the inmates in the institutions. Prisons in Uttar Pradesh, Bihar and Delhi, which had seldom had the reputation of being well managed, have been the special targets of criticism for the vindictive,
inhuman treatment, which prison officials mete out to the convicts and the undertrials. Correctional administration in India confronts itself with as many dilemmas as it evokes expectations, sometimes diametrically opposed to one another, form the social scientist, the humanist, the well meaning social reformer, the common citizen, the victim and above all, the society as a whole.

The academic social scientist would like to liken the correctional institution to a hospital and its inmates to patients, without caring to find out whether it is practicable for the administration to provide necessary clinical and technical tools so as to be able to individualise every inmate for the diagnosis and prognosis of the problem and systematic preparation for his rehabilitation. The humanist would hold the view that even an incarcerated habitual offender needs to be provided with a few amenities as a compensation for deprivation of his freedom of movement and action, without his being mindful of the reality that deprivation of freedom has, in a good in many cases, come about more by his own misdeeds than by social injustice and than he has no moral right to expert the law-abiding citizen to sweat, toil, and pay for his ‘comforts’ in the institution.

5.5.3 A physician prisoner give lives to inmates:

Central Jail, Parapana Agrahara (Bangalore), had a prison hospital, having capacity of 100 beds, which had been without a surgeon for many years. Dr. M Bhasavraj came to serve a sentence of seven years in this jail. He is just like other inmates but every morning or when there is a medical emergency his cell door is thrown open and he rushes to the hospital. In the past two years he has performed 200 surgeries. He is also ‘un-appointed’
prison surgeon and doubles as the ‘night doctor on call’ as four physicians employed in the hospital leave at dusk. He said “after 6 pm, the doors of my barracks open whenever there is medical emergency I do my best to help people around with the little facilities here.” He has kept the minor operation theater busy with the removal of tumours, sutures and infectious swellings as well. Many time he refers the prisoners to another hospital in the case of heart or brain attack. He asked authorities to give some extra facilities in the theater but authorities refused. He wants to help with the latest update surgery through medical journals and books. The rules do not permit him to borrow the internet. Jail psychiatrist Dr. P Rajani said, “two years ago Dr. Bhasavaraj was shattered. He thought his career was ruined and future was bleak, but today he seems more confident.” Dr. Bhasavaraj agrees “when I walkout I will get back to the hospital that I worked for. But, even then I would continue my service to this place. For me this place is something special.115

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115 Times of India, Bangalore (Correspondence) Ahmedabad ed 1st June, 2007