CHAPTER – VII

FINDINGS AND SUGGESTIONS
7.1 Conclusion:

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

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

The Constitution of India guaranteed right to equality before the law and equal protection of the law. But, in practice the law relating to treatment
of prisoners varies from State to State. Where the offences are definite and providing same punishment and procedure in whole country, but, due to flexibility of State laws, some States are releasing the convicts for the same offence, before the completion of actual sentence, as compared to some other State. If, a person in a State gets extra privileges than another, in the absence of Central Act, it seems to be violation of right to equality.

The Constitution of India is not empowering the Central Government to make the laws on the matter of “Prisons, Reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.” This is the only matter listed in entry 4 of the List –II where only the State Government can make the law. The examination of all the entries finds that the Central Government can make the law relating to “Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.”

After emergency era, the Hon’ble Supreme Court especially Justice Krishna Iyer and Justice D. A. Desai, and later on Justice Bhagawti with other Judges have given new dimensions in recognition of the various rights of the prisoners through their judicial decisions. But, still there is wide scope for the improvement in this field.

In fact, there is a lot of difference between the recognition of rights, and implementation of rights. Today, even after having recognition of many
rights by the higher judiciary, but maximum number of them is limited to the publication and usable for the researcher or some where used by the advocates as a defence but not in all the cases. It is not the issue of a State, but of the nation. The researcher visited the four prisons and asked the authorities on duty about the direction issued by the Supreme Court in the case of R.D. Upadyay decided in 2006, relating to women prisoner and their children lodged taking shelter in jail with their mother. There response indicates that such important direction of Supreme Court is not circulated to the Superintendent of prisons in State or they do not take it seriously, which is surprising in a progressive State like Gujarat.

The sentence of life imprisonment is uncertain, even the Supreme Court observed that life imprisonment ordinarily means whole remaining life and section 57 of the IPC states that no one can be imprisoned for more than 20 years of imprisonment, and section 55 of the IPC states that “in every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.” The together reading such provisions, intention of the legislature finds that life imprisonment must be calculated maximum of 20 years, but appropriate Government may commute up to 14 years. During interview of the prisoners awarded with life imprisonment they said that they are not having any hope in their life, specially those who are unable to avail the benefit under section 432A of the Code. It affects the correction theory as lifer being uncertain not having any hope to be outside the prison, will change their mind.
According to clause (vii) and (viii) of Para 2.05 of Model Prison Manual, 2003, closed prisons are classified into three categories that is Central Prisons, District Prisons and Sub-Prisons. Authorised population for these prisons will not exceed 1000, 500 and 300 prisoners, respectively. There will be enough open space inside the perimeter wall to allow proper ventilation and sunlight. The area enclosed within the four walls of a prison will not be less than 83.61 sq. mtrs per prisoner of total capacity. Where land is scarce the minimum area will be 62.70 sq. mtrs per prisoner.

But in practice, Central Jail Ahmedabad is against the capacity of 1896 housed 3816 inmates as on 1st Jan 2008, which is approximately four times more than allowed by Model Prison Manual in capacity and nearly two time overcrowded to capacity; similarly, the Central Jail Baroda is also against the capacity of 795 housed the 2300 inmates as on 1st Jan 2008, which is also 2.3 times more than allowed by new Prison Manual and nearly three times overcrowded to the allowed capacity.

In the category of District jails, all eight District Jails having less capacity than authorised by new Prison Manual, but overcrowded than the authorised capacity. On the other hand, in the category of sub-jails, these jails are generally not overcrowded, except Navsari and Godhra Sub-Jails, but all the Sub-jails have less capacity than 300 prisoners. Even though these Talukas are now converted into Districts but having sub-jails only.

Jails are not correctly classified in the State. It is found that classification of prisons still followed as it was before independence and since then many districts have been framed or reconstituted. Some of the prisons are working as a special prison but classified as sub-jails. The
analysis of classification of jails in the State does not find any correlation between the district and sub-jails. District jails Rajkot and Surat not limited to district and they house prisoners from regions of the State and having the number of prisoners in the categories of Central Prison between 500-1000 prisoners. District jails, Jamnagar, Junagarh and Bhavnagar are housing some special classes of prisoners from the State. On the other hand, Porbander jail is classified as special jail but not housing any kind of special class of prisoners.

According to direction issued by Hon’ble Supreme Court, female prisoners shall be allowed to keep their children up to the age of six years, but researcher found that in Gujarat children with mother are allowed only up to three years.

Facilities in the correctional institutions are less than stipulated by the Hon’ble Judiciary and it had been often pointed out. Now, both the central prisons in the State are playing reformative roles and often conduct Vipasna and meditation camps, which is a good sign for the reformation and rehabilitation of the prisoners. In three prisons has IGNOU distance learning study centers, where the prisoners can pursue their study by correspondence. Gujarat had 22 prisons, exclusive of open prisons, but they not have study centres and academic books in library to read. Food facilities are good, after increase of diet scale. Drinking water is available as and when prisoners desire. Sanitary facilities are available and one toilet soap is also issued to every prisoner per month. Entertainment facilities are also available but restricted to time.
The study also finds that prisoners are given four pairs of clothes white *kadhi* uniform, which is sufficient in number but are the same in summer and winter seasons. The pattern of uniform is not sufficient for the winter season.

Researcher found that philosophy and institution of open prisons are less utilize in the State. Many of the jails in State are overcrowded, but, both the open prisons are always found to have less persons than capacity. It states that, either authorities do not have intention to give more benefit to eligible inmates or eligible inmates do not want to go to open prisons as they are staying near to their family. All India Jail Reforms Committee has also suggested increase in the number open prisons in the country, but unfortunately Gujarat has not increased the capacity of its open prisons. Whereas, the recidivist rate in State is very low and methods of open prison, open camp and open prisons permitting prisoners to live in with their families may be more fruitful than in any other State. It is proved that open prisons are the best method for reformation and reintegration together. During interview it was found that inmates are not interested in open prisons but more interested to be in jail near to their native place. A reason for that was stated by them is that such prisoners do not prefer to be away from their homes. They are happy to be in local jail instead of open prison.

Official sources inform that a proposal to set up Open Air campus on the line of Sanganer system of Rajasthan is in pipeline. Prisoners kept in such Open Air Campus will be allowed to keep their families with them. They may earn their livelihood and undergo the imprisonment with their
families. This is an advanced step towards rehabilitative process, but, still a proposal only.\(^1\)

The aftercare service provided is very essential to decline in the rate of recidivist. The aftercare and rehabilitation services for the inmates released after completion of a long term sentence from correctional institutions are the basic element of the reformative theory. Unfortunately, in Gujarat there is no kind of aftercare or rehabilitative services for such inmates; even none of the NGO is working for them.

Convict are less violative than undertrial. The researcher observed during visit of prisons that prisoners are more law abiding than undertrial persons. The prisoners were asked about their experiences and differences between their intention as undertrial and after conviction, they replied that after fixing of date of release they have been feeling comfortable, which changed their mind and they want to go to their homes after completion of sentence or early release.

Almost all the jails have only around half of authorised staff for jail administration, including jailers. Due to less staff, the present staff has to do more duties, than they are supposed to do. Moreover, jail staff is doing work in morning as well as in evening every day, due to which they are deprived of maintaining social obligations. Second point found during interview of staff is that, they are transferred to another jail in middle of academic year, which hampers the study of their children and disturb their mental peace as they have to stay at distance from their family at least for remaining academic year. The Quarters (living accommodation) allotted to jail staff is

\(^1\) Office of IG Prison, Ahmedabad
also very poor and very congested, which is generally one room and small a kitchen, where it is very difficult to stay with grown-up children while maintaining privacy.

As far as the gratification, bias, undue influence, or *favouritism* is concern, it cannot be denied in practice, as during interview affirmed by inmates but not always and everywhere. Even many times published in newspapers the rate of *favourism* but every jail has three different redressal boxes and various authorities are also visiting, they must be informed. When it was asked why they are not intimating authorities? They replied that they do not have writing materials inside the jail and fears the consequences; even it was admitted by *Dr. Kiran Bedi* (IPS) former Inspector General of Prisons, Delhi. She also introduces some of the methods to control over it.\(^2\)
But yet there is no evidence or complaints to prove. The media is giving the news after making it attractive, many times founds that it pays duel role and gave second thought to authority for maintaining law and order in prisons. Whenever surprise checks are carried out in jails and authorities found some small articles, which are made their news headline of the day.

7.2 Evaluation of hypothesis with research work:

The correctional institutions (prisons) are highly secured places and the prison administration has to maintain law and order therein, so sometimes it is very difficult and risky for them to maintain it. In such circumstances, researcher was permitted to visit four jails, namely, Central Jail Ahmedabad, District Jails *Surat* and *Bhavnagar*, and Sub Jail *Mehsana,*

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\(^2\) Ramesh Dangwal "I Dare! Kiran Bedi A Biography", UBSPD Publishers’ Distributors Pvt Ltd, New Delhi, Ed 2006
and was allowed to interview five convicted inmates in each jail. Out of these 20 inmates interviewed four were female and sixteen male. Besides, some questions were also asked to prison staff available on duty and Superintendents of all the permitted jails. The researcher here evaluates hypothesis with research work –

7.2.1 Are prisoners entitled to all fundamental and human rights?  
Whether there is any restriction in their applicability?

The conviction for an offence does not reduce a person into a non-person. It cannot be denied that prisoners are not entitled to any absolute right, which is available to a non-prisoner citizen but subject to some legal restrictions. The Supreme Court of United States as well as the Indian Supreme Court held that prisoner is human being, natural person and also a legal person. By becoming a prisoner she/he does not cease to be a human being, a natural person or a legal person. Conviction for a crime does not reduce the person into a non person, whose rights are subject to the whim of the prison administration and therefore, the imposition of any major punishment within the prison system is conditional upon the absence of procedural safeguards.3 The courts which send offenders into prison, have an onerous duty to ensure that during detention, detenues have freedom from torture and follow the words of William Blake that “Prisons are built with stones of Law”. So, when human rights are harshed behind the bars, constitutional justice comes forward to uphold the law.

The Hon'ble Supreme Court held that imprisonment does not spell farewell to fundamental rights. The courts will refuse to recognize the full panoply of Part–III enjoyed by the free citizens. Article 21 read with Article 19 (1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of the matured society. Fair procedure is the soul of Article 21 reasonableness of the restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. Right to live is not restricted to mere animal existence. It means something more than just physical survival.

7.2.2 Judiciary has recognised many of rights of prisoners; are they implemented in correctional institutions?

Right to life and personal liberty are the most important rights to any human beings and while interpreting this right Field J. said that “life means more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction, of any other organ of the body through which the soul communicates with the other world.”

The judiciary has recognised bunch of rights while interpreting fundamental rights, namely, right to live with human dignity falls in the

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4 Charles Sobaray v. Supdt Central Jail Tihar, AIR 1978 SC 1514
5 Kharak Singh v. State of UP, AIR 1963 SC 1295
6 Ibid
ambit of right to life; right to health and medical treatment is also part of the right to life in a similar path right to speedy trial is also held part of right to life; right to free legal aid is also a part of Article 21, while on going one step forward Justice Krishna Iyer declared that "right to free legal aid is the State's duty and not Government's charity". The Supreme Court also held that when a prisoner is put in instruments of restraint, custodial torture and mal-treatment in prisons are violation of Article 21. Delay in release from jail amounts to 'illegal detention' and not to pay reasonable wages for work done by inmates also fall from the canopy of right to life. The court

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also assents the validity of compensation in case of miscarriage of justice and upholds the right of inmates to receive copy of judgement free of cost. The Superintendent could not fall back on any implied power to disallow the books. The court also recognised right of women female prisoners to have women guard and special rights of pregnant women and their children up to the age of 5 years. Besides these many rights of inmates are discussed in chapter 4 of the study, which may be referred for detailed understanding.

7.2.3 Whether judiciary is really following provisions of probations?

In fact, it is presumption that, to release a person after admonition or release on probation of good conduct is discretionary power of the court. The power is given by sections 360 and 361 of the Code and the special enactment Probation of Offenders Act, 1958, to release on probation of good conduct any offender, who has committed any offence first time which is not punishable with death sentence or imprisonment of life. One can say that, the Act and interpretation of the court have placed some offences against the society outside the grace of probation by not providing the benefits of The Probation of Offenders Act, 1958 to eligible persons.

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 right of the offender and supplement to the Act. Similar views

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19 Sheela Basre v State of Maharashtra, AIR 1983 SC 378
were held by Hon’ble Himachal Pradesh High Court, when it holds 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.21 Putting one step forward Hon’ble Andhra Pradesh High Court held that court must comply with the provisions of sections 360 and 361 *suo motu*, and said that provision of section 361 was mandatory.22

While the court granting probation, it should be satisfied that offender has not been previously convicted. 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 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 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 available under the Probation of Offenders Act or under section 360 of the Code as giving of such benefits will bring disrepute to law itself.23 But, when an accused was 70 years old at the time of incident and became 80 years during appeal and had caused death by pushing the deceased without knowing that deceased had enlarged spleen, the accused was entitled to get the benefit of probation under section

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21 *State of Himachal Pradesh v. Lat Singh*, 1990 Cr. LJ 723 (HP)
360 of the Code and also under section 4 of the Probation of Offenders Act.24

Non-availability secondary data made the researcher ask the questions during the interview of some 20 prisoners, during which there was no sign of considering the probation. Unfortunately, maximum of them were outside the ambit of benefit of probation.

7.2.4 Whether institutional programmes are reformative and rehabilitative in their true sense?

In correctional institutions of Gujarat, various programmes are running throughout the year, namely, through stress management, education, canteen, healthy diet, medical treatment, providing free legal aid, looking into prisoners’ welfare, assisting their family and specially children, special care of women and persons with disability, sensitisation of prison staff, introducing of video conferencing, and creation of a Board to monitor the cases of undertrial prisoners.

Undoubtedly, all the reformatory programmes are very useful for reformation and rehabilitation of these persons. During the interview of 20 prisoners, researcher finds that 19 inmates said that courses on Vipasna and meditations are really reforming their minds and also keeping them cool and motivating them to be spiritual. Education is another important programme to change their minds, though some centers of Indira Gandhi National Open University, Dr. Baba Shahib Bhimrao Ambedkar University and National Open School, but they are limited to some of the prisons and some of the

inmates only. Free legal aid is another weak point, which is not helping them at all and the researcher found that none of the inmate during interview preferred the free legal aid, due to various reasons. Assisting the family of prisoners is the highly needed by the society and State both, as it is the family that suffers sometimes more than culprit without fault of own and their children. However, a lot of problems are there in machinery, with the system giving assistance speedy to influential person. But the family, which is really in the need of assistance, is not receiving help within time. During interviews, researcher received strong voice about gratification, knowing delay, some time the value of item received is less than money spend by the family.

Introduction of video conferencing is the beneficial system for departments and Governments but according to replied of inmates during interview it was found that the system would reduce the inmate’s chance of meeting with family members outside the prison. Even it will be more harmful to those inmates who are not getting chance of bail and not eligible for parole and furlough, because they are not having any chance to meet with their spouses and family members for a long time.

Creation of a Board to monitor the cases of undertrial prisoners and visitor panel really helps the inmates languishing in prisons for a long time and whose case is not heard due to delay in trial. Visitors' panel really helps the prisoners to leak any illegal activities of prison staff. So that action might be initiated to prevent ill-treatment of prisoners.

Such programmes are really reforming the inmates but still there is much more steps and methods require for improvement.
7.2.5 Whether the capacity in prisons, rate of overcrowding, classification of prisons are problems in the State?

Capacity in prison and overcrowding are the problems of many states and Gujarat is one of them. Central Jail Vadodra, and district jails Rajkot and Surat are those jails, which lodged generally thrice inmates than their capacity. Undoubtedly, there is correlation between the overcrowding and problems in prisons. In recent past Hon’ble Delhi High Court released some of the undertrial prisoners from Tihar, while admitting that overcrowding is one of the causes of creating problems in that jail. Both the central jails and all the district jails in State are overcrowded and it should be noted that these are the figures after extension of the capacity of many of the jails.

The classification of jails in the state is very old, often new districts were notified but district jails for those districts were not notified. Central Jail Ahmedabad is unique, having capacity of 1896, and lodging just double of that. This big central jail keeps the convicts away from their relatives, as the expenditure to meet their near and dear ones is very high, which is not possible for a normal man to incur to visit prison frequently.

7.2.6 Whether prisoner worker is paid with rational wages for their work?

As the Supreme Court held some wages must be paid as remuneration to the prisoner; and their rate should be reasonable and not trivial at any cost.\textsuperscript{25} 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

\textsuperscript{25} Mohammad Giasuddin v. State of A P, AIR 1977 SC 1926
fully felt. The Kerala High Court suggested that wages given to the prisoners must be at par with the wages fixed under the Minimum Wages Act and the request to deduct the cost for providing food and clothes to the prisoners from such wages was spurned down. It is not only the legal right of a workman to have wages for the work but it is a social imperative and an ethical compulsion. The Supreme Court also directed the State Government to form a Committee to decided rationale wages. In the same case Thomas (J) said that equitable wages payable to the prisoners can be worked out after deducting the expenses incurred by the Government on food, clothing and other amenities provided to the prisoners from the minimum wages fixed under Minimum Wages Act, 1948. According to Wadwa J in the same case, held that the prisoner is not entitled to minimum wages fixed under Minimum Wages Act, 1948, but there has to be some, rational basis on which wages are to be paid to the prisoners. MP High Court held that, if the twin objectives of rehabilitation of prisoners and compensation to victims are to be achieved, out of the earnings of the prisoners in the jail, then the income of the prisoner has to be equitable and reasonable and cannot be so meager that it can neither take care of rehabilitation of prisoner nor provide for compensation to the victim.

Before 2003, wages for inmates was Rs.14, but after the direction from Supreme Court they were raised by the State Government to Rs. 20 for skilled, Rs. 18 for semi skilled and Rs. 16 for non-skilled; whereas in the State, present minimum wage including special allowances is Rs. 130 for

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26 Dharambir v. State of UP, AIR 1979 SC 1595
27 "In Re Prison Reforms Enhancement of Wages of Prisoners", AIR 1983 Kerala 261
28 State of Gujarat v Hon’ble High Court of Gujarat, AIR 1998 SC 3164 (Clause (3) of Para 51)
29 SP Anand v State of MP, AIR 2007 MP 167 (Para 22)

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any of the non skill work of any class, except agriculture labour. In agriculture, it is only Rs. 50 with effect from 2003. The wages paid to prisoners for a day does not seem to be just, fair and reasonable, but industry in jail is not having similar nature and condition of work as an industry outside the jail. It must be noted that jail is not industry or factory, so Factories Act, 1948 is not applicable. They should not be paid minimum wages, but more than token amount and less than minimum wages.

All the convicts are not getting work every day. The women workers housed in district jails or sub jails are not having any work to do, when even they are suppose to do some work according to philosophy of rigorous imprisonment.

7.2.7 What is the recidivism rate in the State?

Average rate of imprisonment of the nation is 32 persons per lac, whereas this rate in Gujarat is 20 persons per lakh, which is fifth from the lowest, namely, Jammu and Kashmir (16) and Manipur, Himachal Pradesh and Andhra Pradesh (18 each). The habit of repetition of crimes by a person is known as recidivism. Recidivist is a person, who replaces himself as a criminal by repeating the crimes, and is generally referred as a habitual offender. Rate of the recidivist (repeat the crimes more than once) in Gujarat is only 4%, which is less than half of the national rate (8.9%) and habitual offenders (convicted more than twice or more) are only 0.4% only, which is more than 6 times less than the nation rate (2.5%). The rate of recidivism in the State is very less compared to the one in other States. Gujarat is progressive State where recidivist rate is less and reason may be
implementation of reformative theory or various schemes of self employment or get employment.

7.2.8 Whether provisions for furlough, parole, and remissions in the State are correct as mentioned by various authors?

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 [member]. 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 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. In the State of Gujarat the Prisoners (Bombay Furlough and Parole) Rules is applicable, which states that furlough is kind of leave granted to the prisoners on some conditions and on the bond of his relatives to return back after completion of the granted period and during furlough he may be directed to report daily at the nearby police station. Furlough is granted for normal work even in some case for harvesting the crops also.

In the State of Gujarat, furlough is granted to a prisoner, who is sentenced to imprisonment for a period exceeding one year but not

\[30\] Vergil L. Williams: Dictionary of American Penology
\[31\] Carson W. Markley in his article 'Furlough Programmes and Conjugal Visiting in Adult Correctional Institutions' in Volume "Federal Probation"
exceeding five years, and he may be released on furlough for a period of two weeks at a time for every year of actual imprisonment undergone, where as in case of imprisonment exceeding five years, he may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone but in last five years, in every year. A prisoner, sentenced to life imprisonment may be released on furlough every year instead of every two years after one completes seven years of actual imprisonment. Furlough is the right, but not absolute and some categories of prisoners mentioned in para 6.12.1 of chapter 6, shall not be considered for release on furlough. In Gujarat during 2003-06, total 5351 prisoners were granted furlough, and out of them 107 prisoners have not reported after availing their furlough and they are declared as absconders. The average of absconder prisoners is around 2%, which is just nominal. It states that grant of furlough is not harmful in the state but beneficiary and 98% prisoners are reported back from furlough within the time framework.

As far as the parole is concern, the Hon’ble Supreme Court has said that “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.” Again, modifying the definition it has held 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.”

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32 Poonam Lata v Wadhawan, AIR 1987 SC 1383 • 1987 (3) SCC 347
Parole is act of grace, not matter of right\textsuperscript{33} and it is not a suspension, remission or commutation of sentence; convict continues to be serving the sentence despite granting parole. A convict serving imprisonment of sentence is only entitled to parole.\textsuperscript{34}

In Gujarat, during 2002-06, total 3445 persons were released on parole, and out of them only 118 (3.48\%) persons have not reported and declared as absconders. If compare with national data of 2004, during the year total 16,613 persons were released on parole, and out of them 1134 (7.38\%) prisoners have not reported and declared as absconders. Haryana is the State which released highest number of persons on parole in 2004 which was 3855 (23\% of the nation), followed by Tamil Nadu (3316) and Punjab (2814).\textsuperscript{35}

In Gujarat, different kind of remissions are allowed, namely, ordinary remission (42 days in six months), annual good conduct remission (30 days in a year), special remission (75 days in a year) and the State remission according to section 432 of the Code. In fact, law relating to furlough, parole and remission being a State subject, their terms and conditions are different from State to State, to be taken into consideration, while comparing data.

7.2.9 Whether present enactments are sufficient for present scenario?

The All India Jails Manual Committee 1957-59, the All India Committee on Jail Reforms 1980-83, and National Human Rights Commission, have also drawn the attention of the Government towards poor

\textsuperscript{33} Ex-Sepoy Manjit Singh v. Union of India, Cri Misc Petition No. 17437 of 1994
\textsuperscript{34} Dadu Tulsidas v. State of Maharashtra, 2000 SOL Case No. 573 (SC)
\textsuperscript{35} Source - Table No. M-7, Prison Statistics 2004, NCRB, p 155
conditions prevailing in jails and asked the Government to ensure the enactment of uniform and consolidated law on prisons for the entire country. The study is in agreement with the findings of the committees and NHRC that the provisions of more than century old Prisons Act, 1894 and the Prisoners Act, 1900 are totally outdated to cater to the modern requirement of purposeful custody, reformation and treatment of prisoners. Since the approach of the correction institution has been changed to reformative and rehabilitative, laws pertaining to prison and prisoners are not only insufficient but obstacle in therapeutical approach.

Now the Juvenile Justice (Care and Protection of Children) Act, 2000 extends the definition of child up to 18 years. Whereas, in the Bombay Jail Manual ‘Adolescent prisoner’ means any prisoner who is between the age of 16 to 23 years.

It researcher found that present enactments are not only insufficient in present scenario, but sometimes obstacles to implementing just and fair procedure.

7.2.10 Is there any need for the constitution of Prison Commission?

Presently, the prisoners are the area of National Human Right Commission in general and rights of women prisoners are also covered by National Women Commission in particular, but are not so effective to look into the protection of rights and welfare of Prisoners. This class of persons is not having any institutional machinery to look after their welfare and assist their family, which is suffering without their fault from all the angles and facing discrimination in the society. During the interviews of the prisoners it
is observed that many of them are suffering the conviction due to family problems.

It will be better if a National Prison Commission is constituted to look after the welfare of the group to provide aftercare services, assist the family of the inmates, provide the legal aid, look into speedy trial, visit correctional institutions by State Prison Commission, conduct research for better handling of the correctional institutions in the locality, establish precautionary measure in States as per their locality, etc.

A good step has been taken by the Home Ministry to make a separate department of National Crime Records Bureau to conduct yearly report of the prisons in country, but it is yet not sufficient and there is need to constitute a National Commission for Prisoners, the chair person of which must be retired or acting judge of higher judiciary, eminent person or sound academician works in the field.

7.3 Suggestions:

After coordinating earlier chapters and visiting of many institutions and experts of various fields comparing of data in various forms, the researcher finds some of the suggestions as remedial measures for betterment of prisoners.

7.3.1 Suggestions to Legislature:

7.3.1.1 Enactment of Central Legislation:

A central legislation must be enacted to govern the correctional institutions and matters relating thereto, which will require further
amendment of the Constitution. By introduction of amendment, Entry 4 of List II of Seventh Schedule should be transferred to List - III as Entry 4A of the same Schedule. The Prisons Act, 1894 and the Prisoners Act, 1900, have not only become outdated but also some of the provisions in them are obstacles in implementation of correctional theory. Whereas, the punishment theory has been fully changed to reformation and rehabilitation of the inmates but, none of them have been changed even after independence, except the extending of provisions relating ‘transfer of prisoners’ and ‘prisoners attendance in courts’, whereas, aim of the State had been changed from Police State to a Welfare State, which looks only a slogan without changing laws.

7.3.1.2 Amendment to the Prison Act, 1894:

In the Act wherever the word “the Code of Criminal Procedure, 1882 (10 of 1882)” is occurred, shall be replaced with relevant provision existed in “Code of Criminal Procedure, 1973 (2 of 1974)”. The clause (7), (8), (11) and (12) of section 46, which is providing punishment of prison offences in Chapter –XI of the Act, should be remitted, as inhuman nature of punishment are held by Judiciary as unconstitutional. Those punishments under above said clauses are – “imposition of fetters of such pattern and weight, imposition of handcuffing of such pattern and weight, penal diet combined with cellular confinement, and whipping.”

Section 53 of the Prisons Act, 1894 should be repealed as explaining the punishment of whipping, which is unconstitutional and remitted from IPC. The section reads as -
“53. **Whipping.** - (1) No punishment of whipping shall be inflicted in installments or except in the presence of the Superintendent and Medical Officer or Medical Subordinate. (2) Whipping shall be inflicted with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter rattan.”

Section 57 of the Act, should be repealed as it lays down confinement of the prisoners sentenced to transportation in iron, which h is unconstitutional and remitted from IPC. The section 57 reads as follows –

“57. **Confinement of prisoners under sentence of transportation in iron.** – (1) Prisoners under sentence of transportation may, subject to any rule made under section 59, be confined in fetters for the first three months after admission to prison. (2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoners for more than three months, he shall apply to the Inspector general for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.”

The clause (16) of the section 59 of the Act shall be remitted as the clause empowering the State Government to make the rules regulating the confinement in fetters of the prisoners sentenced to transportation. The clause of the section reads as –
59. **Power to make rules.** – The State Government may by notification in the official gazette make the rule consistent with this Act – (16) for regulating the confinement in fetters of prisoners sentenced to transportation.

7.3.1.3 Amendment to the Prisoners Act, 1900:

The Act is very complicated and outdated in its application to territories. The Part-III of the Act entitled "Prisoners the Presidency-Towns" and Part-IV "Prisoners outside the Presidency-Towns" is not valid classification in present time. Both the parts are more focused on the authority of High Court, as it was before independence, whereas after independence and specially introducing of the Code of Criminal Procedure, 1973, such powers are focused on Session Court and Metropolitan Court. If, the Government of India is unable to amend the Constitution, in that case both the parts of the Act may be substituted with the relevant provisions and in descriptive form. The Part VII of the Act having provisions relating to "persons under sentence of transportation" shall be remitted. The Part VIII of the Act empowering the High Court to recommend the free pardon of the any prisoner to the Government, whereas power is grant pardon is solely provided to the President of India and in some of the cases extends to Governor of the State under the Constitution.
7.3.1.4 Amend the definition of "Adolescent prisoner" under Rules:

The definition of 'Adolescent prisoner' must be amended in the Jail Manual or under any Rule wherever it occurs by 'Adolescent prisoner' to mean any prisoner who is between the age of 18 to 23 years.

7.3.1.5 Judicial direction should be incorporated in the Prison Rule:

As soon as any landmark judgement has been pronounced by Hon’ble judiciary, and directions has been issued to the Government, it becomes the law till not overruled by larger bench of Supreme Court. When any such direction is received by government, it becomes their duty to circulate, without any lapse of time to all the concerned dealing with such directions, because from the date of order it becomes the law. Similar direction also has been given by the Supreme Court to all the State Governments in the country to convert the ruling of the Supreme Court bearing on Prison Administration into rules and instructions forthwith so that the violation of the prison freedoms can be avoided.\(^{36}\)

7.3.2 Suggestions to Executive:

7.3.2.1 Reconstruction and reclassification of prisons:

Both the Central Jails of the State should be divided into parts, according to their capacity of 1000 prisoners. Ahmedabad central jail should be divided into four central jails and Baroda into two jails, just like Tihar

\(^{36}\) Kishor Singh v. State of Rajasthan, AIR 1981 SC 625
Jail Complex, or convert relevant Sub Jails in District Jails, where some short term prisoners may be transferred.

Looking to the present number of prisoners and growth of population, the capacity of all the District Jails should be increased up to authorised New Model Jail Manual to 500 prisoners and District Jails Surat and Rajkot should be converted into Central Jails with the capacity of 1000 prisoners. Those can share the burden of central prisons Ahmedabad and Vadodra by housing prisoners sentenced to imprisonment up to five years.

As the study finds that Navsari and Surrendernagar sub-jails are housing more than 300 inmates, they must be converted into District jails with capacity of 500 persons, and their jurisdiction must be extended to house all the convicts including those punished up to five years imprisonment.

Jamnagar, Junagarh and Bhavnagar district jails are housing some special classes of inmates from the State. They should be converted into special jails and their capacity also may be increased 500 prisoners, and simultaneously these jails also can work as district jails.

All sub-jails should be increased their capacity at least to 300 and at district level it should be named as a district jail and prisoners also should be housed those are punished at least up to two years, this system will reduce some burden from Central and district jails.

It is observed that number of incidents of escapes from custody, suicide, murder, fighting, etc., has been increased in both the Central Jails in State. It is found that the main problem behind it is overcrowding. It is
suggested that as early as possible the Baroda Jail must be increased in its capacity, and till the time such capacity is increased, the burden should be shifted to alternative prisons, or the concerned court shall use some of the liberal policy to grant bail on the admission of appeal, if there are justifiable grounds. It should follow the same philosophy as followed by Delhi High Court in its recent judgment, when they released more than 600 inmate on bail on the ground of overcrowded, though this is not the permanent solution.

7.3.2.2 Fulfill the vacancies of staff and improve the condition of their living in accommodation:

As study finds that around half of the posts in the State jails are vacant, the State must fulfill the authorised vacancies as soon as possible and try to transfer the staff as per the academic year to avoid the unnecessary disturbance of mental peace of the their staff. As study finds living accommodation and amenities of the prison administration staff member, including jailer and superintendent of prison, are not sufficient according to present requirement. So, it is suggested to provide them all necessary amenities according to present need, to avoid their annulment from any kind of unfair practice.

7.3.2.3 Classification of Undertrial prisoners:

Our prison environments are unnatural and inhuman. Alongwith other aspects of prison life, this leads to serious psychological disorders and even insanity. The conditions, in fact, "mature" petty thieves into hardened criminals. The persons were refused bail on the ground their being
dangerous to society. On the other hand, some undertrial prisoners charged for felony and bail was refused to them on the ground that they were unable to fulfil the conditions of bond due to poverty. But if they are not harmful to society, such undertrial should be released by using power of section 482 of the Code, or should be kept separate in the prisons if not granted bail.

7.3.2.4 Vocational and entrepreneur courses should be introduced:

It is found that many technical courses are run in the jails but, there is no need of quantity but such programmes should of qualitative, which should be not only reformative but rehabilitative to such persons. It is a good sign that Vipasna, and meditation courses are running throughout the jails but showing its effects too. Educational programmes are also running in association with IGNOU and Dr. Baba Sahib Bhimrao Ambedkar University. Here it is suggested that these are the universities and giving education to the person has completed his intermediate (10+2 Std.). It is found that some of the prisoner in the state are released on parole for any examinations and if he is undertrial and wants to appear at such examination than the court is also adopting the same principle and releasing them on bail. For such prisoners or undertrial prisoner it may be useful if the Government, NGO or Gujarat Education Board itself takes some participation of the future of these students and opens centres for 10th and 12th at least in every district jail to enable them to study further for their best.
7.3.2.5 Introduce aftercare services with immediate effect:

Since the first six months, after the release from correctional institutions are extremely crucial for reintegration, the lack of any 'aftercare' would lead a released prisoner to recidivism. To check this trend, the study suggests that the Government shall introduce effective programmes like Industrial Training Institutes (ITIs) for suitable release persons. A statutory 'aftercare' system should also be in place to facilitate rehabilitation. Maintaining continuity in treatment programmes after the release, establishing a meaningful communication channel between prison authorities, governmental and non-governmental agencies, chalking out meaningful programmes for jobs, housing and financial stability through providing multiple skills, involving the community in treatment programmes, encouraging the prisoners to maintain family ties during the term were some of the suggestions made. The study also suggests that 'probation services' where a convict could be released but put on probation for maintaining good behaviour should be encouraged. Similarly, the concept of ordering community service for petty offences should be encouraged instead of incarcerating them.\(^{37}\)

Aftercare service is a service intended for a person or persons, who have undergone a certain period of ‘care’ and ‘training’ within an institution. It is a facility for a person or group of persons who, has been found to be in special need by reason of a social, physical or mental handicap. It is intended to complete the process of rehabilitation of an individual and to prevent the

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possibility of his relapse into a life of dependence or custodial care. This 
would involve the strengthening of his moral and emotional fiber and the 
removal of any stigma that may be attached to his previous 
institutionalization.

7.3.2.6 Full utilization of open prisons:

On the one hand we are facing problem of overcrowding in closed 
prisons, whereas the capacity in the open prisons is not properly used, the 
competent authority shall use such infrastructure of open prison at least to 
the capacity, even there is no any antecedent report from the prisoner sent to 
open prisons.

The open camp experiment is being successfully carried out 
previously in Uttar Pradesh and recently in Rajasthan. In Sampurnanand 
Open Camp, Sanganer, houses 150 to 160 convicts for offence of murder 
live with their families. There are no boundary walls, no fences and four 
policemen as guards. The convicts are free to pursue any vocation they 
choose. The experience states that there is no escape and state has not to 
incure any expenditure on them and moreover, prisoners gradually get 
established in the society. It is benefited to prisoners as well as society. In 
2005, the then Inspector General of Prison Shri Gahalot, having returned 
from a Conference held in China, expressed his desired to have an open 
prison where prisoner can stay with their own family just like Sanganer, and 
said primary correspondence has been started but no progress has been yet 
made towards this. It was a good step, if followed by the Government as 
early as possible, since West Bengal has too created same kind of jail in
Lalgola in Murshidabad district, where 10 prisoners can stay with their families.

**7.3.2.7 Constitute a committee to fix or revise the wages for prisoner workers:**

The wages for prisoner worker is still a token amount and does not aim at encouraging the person to show his skill. The Hon’ble Supreme Court also directed to constitute a Committee to fix or review the wages for prisoner workers, but unfortunately the rates were increased from Rs. 14 to Rs. 16/18/20 only which are neither rationale nor fair. A new committee must be constituted and research must be carried out to make the wage structure more effective. Gujarat is the State where such manpower can be utilized to take initiatives to satisfy the prisoners with some fair amount. As on the other hand we are claiming that industries in Jails of Gujarat are earning more than those in any other State of the country, the state must not hesitate to increase their fair wages. Worker order for prisons may be initiated by NGO or Social workers.

The rate of wages in prison must be classified in two categories, besides skilled, semi-skilled and non-skilled. In one category only those inmates must be kept who awarded with rigorous imprisonment and in another whom voluntarily accepting the work, includes the inmates awarded with simple imprisonment and undertrials. The later category is entitled to minimum wages, as they are not covered under clause (2) of Article 23 of the Constitution, where the first category is not entitled to minimum wages but eligible for less than that, which must be at least 2/3 of the minimum wages applicable in the State. Further, the prisoner who works is entitle to
all the wages he earned as a matter of right, which may be given to his family member(s) or may be kept for his own use or save for future, as per his directions. Secondly, any benefit earned by such industries, it must be transferred to Prisoner Welfare Fund, which can be used only for the welfare of prisoners.

7.3.2.8 Creating awareness about judicial judgement and recent development in law:

The Jail Training School should conduct periodically or whenever prison related or prisoners' related development took place through judicial pronouncement and/or legislation than should conduct special training / course for passing such information towards the person who is dealing with the situations.

7.3.3 Suggestions for judiciary:

7.3.3.1 Undertrial prisoners should be released on bail:

'Bail is rule and jail is the exception' as stated by Justice Krishna Iyer should be followed by the judiciary. As on the one hand, we are confronted with imprisoning large number of undertrials, and on the other there is serious overcrowding. It is also observe in the study that undertrial prisoners are committing crimes in the prison also. When court found that such prisoners are not fit to be released on bail or dangerous to the society, while on bail, they may be shifted to special jails with high security prisons. Courts take a long time to decide and we cannot afford to release the murderers and potential criminals. As already mentioned many of them are not criminals. We need only to recall that following Supreme Court orders in the case of

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Hussaniara Khatoon, the Bihar Government in 1979 released about 27,000 undertrials and there was no noticeable increase in crime. Recently the Delhi High Court also issued directions to the authorities to submit a list of the prisoners languishing in jail with their alleged offences and released 650 prisoners, who were behind the bar for the offence containing maximum of punishment up to seven years and 1/3 of them have been stayed in prison. This decision came on the fact that in a month eight murders were committed in the Tihar complex, due to overcrowding.

In the Gujarat four jails are more crowded than Tihar as observed by Delhi High Court of Tihar. In Sabarmati Jail, Ahmedabad also witnessed some murders, which were committed due to overcrowding. In such circumstances the Hon’ble Gujarat High Court should also follow the philosophy applied by Delhi High Court recently and release the prisoners on bail, who are kept in jails for the alleged offence punishable up to seven years and have actually finished 1/3 portion of it. In Gujarat, trials before subordinate courts are finalized as an average of then than two years, which seems to be reasonable in Indian scenario. But it is found that in appeal before High Court, it took more than five years. At this juncture Gujarat High Court must use the liberal principle of bail on flexible grounds. Anyhow court has to protect fundamental right to speedy trial and Article 21 of the Constitution.

7.3.4 Other Suggestions:

Researcher found that to maintain the dignity of a prisoner in general and prisoner in particular, innumerous judgments delivered by various High Courts and Supreme Court but real scenario is far away to convert
directions/judgments/orders of higher judiciary into reality. So researcher found that less or negligible time denoted by Legislative Assemblies to discuss the issues in relation with protection of the rights of prisoners as well as well being of prisoner and administration of prison institutions.

Extend the meeting with spouse in privacy; it is true that sex satisfies that person more than any other treatment. The study is suggesting that meeting with spouse should be increased to 4 to 5 hours at least once in two months in privacy.

Introduce open prison with family; it is possible for the State to introduce some of the jail just like - Sangner (Raj) and Lalgoala (W.B.), where the prisoners can stay with their family, and earn their livelihood. Increase number and capacity of open prisons or constitute new kind of open camps in the State.

Jail administrators also required to have professional knowledge and skills to deal with rapidly changing behavioral patterns and new types of crimes. Referring to penal reforms, it is not the severity of punishment but the certainty of punishment, which deters crime. Suggesting reforms in the penal administration and streamlining the criminal justice system to protect the rights of prisoners, delay in trials must be avoided and problems like overcrowding and unhygienic conditions in jails and must be for betterment. Health facilities in prisons need a lot of improvement. Diseases like tuberculosis, malaria and HIV are spreading in jails in an alarming manner.

Privatization of various prisons, while speaking on the occasion, Mr. Justice M.N. Venkatachaliah, Chairperson of the NHRC, advocated the need
for privatization of various prison management systems. He said that the massive growth of the prison population in recent years provides the cause and justification for privatization. The researcher is not agreed to the suggestion of privatization of correction institutions. Researcher is with the view that now Government has the control and supervision of the jail administrations with itself but is not able to protect full canopy of legal rights of the prisoners, how one can believe that Government will control over the jail administrations and protect the rights of prisoners in case of privatization. It may increase corruption among the officials and exploitation of prisoners. If privatization takes place, there will be gross violation of fundamental and human rights in private institutes and victims will not be eligible to file writ petition, as they may be filed against the State only. On the other hand, cases of misconduct, institutional offences and escapes may increase in number.

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38 A seminar held in New Delhi on 1 July 1999, on “Indo-British Project on Prison Reforms”