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CHAPTER 1

Introduction

1.1. Introduction

The union of India is a federal polity consisting of 28 states and 7 union territories directly administered by the Union Government, under which, the states have their own governments (state governments) and legislatures with powers and functions which are clearly defined under a written constitution. Under such devolution of executive and legislative power, the state governments manage education, health-care, policing and prisons within their jurisdiction among many other functions.

India is a large nation with a large population, which includes in large numbers the followers of every major religion in the world. According to the population census conducted by the Union Government in the year 2001, the population of our country has crossed the one-billion mark and the total population stands at 1,027,015,247 in number. This huge population includes 824 million Hindus (82.41%), 116 million Muslims (13.4%), 23 million Christians (2.32%) and 20 million Sikhs (2.0%). However, in terms of sex, male population count 531,277,078 in number while as female population counts 495,738,169 in number. The population density per square kilometre stands at 324. So far as the State of Jammu and Kashmir is concerned, the total population as per the official records is 10,069,917 among which males are 5,300,574 and females comprise 4,769,343, with a population density of 99 per square kilometre.

In India, over one million criminal cases are reported every year. Such annual incidence of crime in the country demands the existence of a huge network of prisons and other institutions of correctional administration, even when in our country, the number of prison inmates per million of population is one of the lowest in the world. As such, we have in our country a total of 1276 prisons of different categories and sizes, with an authorized inmate capacity of 2,77,304. In Jammu and Kashmir alone, thousands and thousands of cases are registered every year. In the year 2002, the number of the incidences of cognizable cases was 19,967; in 2003, there were 21,233
incidences of cognizable crimes; in 2004, 21,191; in 2005, the score was 20,115; in 2006, it was 20,787; and in 2007, there were 21,443 incidences of cognizable crimes. In view of this huge number of criminal cases registered, there is a demand for the existence of prisons in Jammu and Kashmir State in large numbers. However, there are twelve prisons in Jammu and Kashmir State including 2 Central Jails, 7 District Jails and 3 Sub-Jails. The available capacity in these 12 jails is 3050, which including 2980 exclusively for males and 70 exclusively for females.

Under the 7th Schedule to the Constitution of India, prisons are managed and governed by the State Governments and Union Territories. The Governments of the States and Union Territories have the last word in all the matters relating to the prevention and detection of crime, trial and sentencing of offenders and the custody of criminals in prisons. The State Governments have the powers to make rules and regulations for the administration and management of prisons and correctional institutions.

Prisons are an integral part and one of the three main constituents of the criminal justice system in India. They are often the dangerous places for those they hold. In accordance with the progressive and reformative penal policies, the primary function of Prison Department is not only to confine prisoners but also to reform, rehabilitate and reintegrate them with the society after their release and control recidivism. For this reason, prisoners are now being considered as reformatories and greater attention is being given to ameliorate conditions in the jails so that it has a healthy impact on prisoners in developing a positive attitude towards life and society.

The word prison is basically derived from a Latin word, which means to seize or in a cage. The word prison immediately evokes a stream of images – stark, forbidding walls spiked with watchtowers, inmates banging on the bars of their cells, the suspicious eyes of armed and uniformed guards. Conventionally, prisons have been used for punitive purposes only and it is only recently that public opinion has come round to accept the notion of using imprisonment to reform and rehabilitate the inmates.

The purpose of prison are the protection of the community, supply of food, clothing, shelter to convicted criminals, protection of inmates from each other and from persons in the outside community, imposition of punishment and rehabilitation
of criminals. The prisons during the last three centuries or so have evolved to the status of an institution of social control and symbol of legitimate coercion. It is no more a resting ground in the legal process where death penalty, banishment or life transportation may be the verdict. Rather, the institution of prison has imbibed and is influenced by the conventional norms, ideals and assumptions of humanitarianism, enlightenment and the welfare state. It not only carries the bearings of the ideals of period but is also impregnated with the expediencies of organizational science.\textsuperscript{10}

A hundred years ago prisons in India were not considered a distinct institution demanding separate and exclusive attention. For each district, there was a small jail known as Zillah Jail. But when the committals became numerous and the need for bigger prisons arose, it was necessary to make a distinct department of it. In response to this, there was the establishment of Central Jails, District Jails Sub-Jails, Borstal Institutions, Special Jails for political prisoners and Civil Jails for debtors. However, in most of the Indian states, there are no separate jails for women or Borstal Institutions for girls.\textsuperscript{11}

As such, it is not possible to provide the exact historical evidence to prove when and where the prison first arose. Imprisonment in its present form was not always in use however, punishments are as old as civilization itself. As places of detention, prisons are old institutions; and as the places of punishment, they are however comparatively modern. The instances of the use of former one may be found as early as 20\textsuperscript{th} century B.C. Prisons in the shape of dungeons had existed since time immemorial in all the old countries of the world.\textsuperscript{12}

\textbf{1.2. Genesis of Prisons:}

The genesis of the prison lies in the concept of curtailing the freedom and liberty of movement of a person found to have violated the law of the land. In theory, the concept of prisons has undergone some changes from the institutions of the state retribution in the past to institutions for reformation in the present with many human rights organizations promoting the latter view.\textsuperscript{13} However, in the minds of most people, there still stand the closed gigantic fortified walls of concrete and iron gates, filled with huge numbers of people, punished for breaking the law with little intervention from those beyond the boundaries of these penal institutions.
Prisons are the examples of a total social system in which members are to a
greater or lesser degree isolated from the society in which the total system exists\textsuperscript{14}. However, the prison system itself is isolated from the complex social system. The
structure of prisons is composed of a ruling group consisting of the prison staff and a
subordinate group consisting of prisoners. In India, except the State of Jammu and
Kashmir, there is a hierarchy among the ruling group with Inspector General of
Prisons as the executive head of the system followed by Deputy Inspector General,
Superintendents, Senior Jailors, Jailors, Subhedars (Wardens), Jamadars, Havildars,
Naiks and Sepoys (Sekoys are having lowest authority in the ruling group). In case of
Jammu and Kashmir, Director General of Prisons is the highest authority followed by
Inspector General of Prisons (IGP), DIG, Senior Superintendent, Superintendent,
Deputy Superintendent, Assistant Superintendent, Senior Head Warder, Head Warder,
Selection Grade Warder and warder. In Jammu and Kashmir prisons, there is no
concept of jailors.

Among the subordinate group of prisoners there is no hierarchy, however,
there are different types of prisoners like under-trials, convicted prisoners and
security prisoners. The under-trial prisoners are those who are facing trials in the
court of law and where the final decisions are awaited; convicted prisoners include
those who have been convicted of crime; and security prisoners comprise those
inmates who are detained under the maintenance of Internal Security Act. These three
categories of prisoners, which comprise the total prison population is a mixture of all
religions, castes, different age groups, having different educational status and
difference in sentences ranging from one-day to life-imprisonment. In India, the
inmate population of prisons system is received from the sentencing courts\textsuperscript{15}.

1.3. Prisons – Before and After Independence:

Prisons in India are not considered a house for incarceration to deter criminal
behaviour. On the subject of crime, Mahatma Gandhi, the father of our nation, had
once said, \textit{"crime is the outcome of diseased mind and jails must have an environment
of a hospital for treatment"}\textsuperscript{16}. This principle is believed firmly throughout the
country and during the last 62 years, attempts were made to convert our prisons into
the correctional institutions. The main goal of prison administration in India today is
to develop a sense of discipline and security among the prisoners.
But earlier before, imprisonment was not merely a punishment for the offenders who have committed some kind of crime. There were cruel and barbarous types of punishment in the Indian penal system like mutilation, throwing to wild animals, etc. But with the advent of the British, the administrative structure in India began to assume a new form. At first, very little alteration was made in the existing legal system. It was probably impossible for the English at once to assume the duty of administering the criminal justice but they could not help it long. In 1773, the Regulating Act was passed which established the Supreme Court at Calcutta to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction and indicated the intention of the British government to introduce English rules of the law and English Superintendence of law and Justice.

At the time of Arthasashtra in ancient India, justice was administered in accordance with the legal rules, which fell under one or the other of the following four heads: (a) Sacred Law (Dharma), (b) Secular Law (Vyavahara), (c) Custom (Charitra) and (d) Royal Commands (Rajasasana). Sacred law says chanakya is the embodiment of truth; secular law depends upon the evidence; custom is decided by the opinion of the people and royal edicts constitute administrative law. Of all these four divisions of law, customs were the most popular and Manu and all other law-givers of that time accepted it as the essential principle in the administration of justice that disputes should be decided in accordance with the customs of castes (jati), guilds (sreni) and of families (kula).

But whatever the legal rules be for the administration of justice, the King in the ancient Indian society was the fountain of justice and the punishment of offenders was considered to be his sacred duty. This being the fountain of justice in those days, the King was called Dhandadhara – the holder of danda, i.e, the power of punishment or an incarceration of the Yama, the judge of the souls of dead. At the same time, it was then strongly felt that “if the king ceases to punish the subjects who swerve from the path of duty, the whole world will be destroyed and hence the Shudras will rule the world. In fact, punishment protects mankind and keeps watch when mankind sleeps. The whole world is held in order by means of punishment”. With the idea of the utility and necessity of punishment, the law-givers of ancient India prescribed severe punishments for the crimes. In criminal cases, the punishments were fine, imprisonment, whipping, physical torture, death, etc. Barbarous punishments such as
mutilation of the limbs and detracting punishments such as riding on an ass, sprinkling of urine, shaving of head, etc were also provided for criminal offences. The brutal forms of punishments were beheading, drowning, burning, roasting, impaling, cutting into pieces, tearing to pieces by dogs, etc. Despite such severe and brutal punishments prescribed by the law-givers, the extreme penalty of death and any other kind of corporal punishments were rarely inflicted by the rulers in ancient India.

Of all these ancient punishments, punishment by imprisonment was very uncommon. It simply implies that the principle purpose of prison administration in ancient Indian was the detention of the offenders awaiting trial or execution of sentence. Another purpose was to deter others from committing crime by exposing the prisoner to public gaze for which Manu suggests that “the prison-houses should be built on public roads so that every body could see the suffering and disfigured criminals, who would produce a horrible impression on the on-lookers”\(^\text{20}\).

This cruel and barbarous penal system of ancient days in India continued for quite a long time in our country until the downfall of Mughal Empire. Under the judicial system of Mughals, the only law recognized in the country was the Quranic Law, which had originated and developed outside India i.e. in Arabia and Egypt, which are the chief centres of Islamic thought and culture\(^\text{21}\). This Quranic law too prescribed the brutal punishments for crimes. The orthodox Mughal Emperors and their judges, instead of supplementing or adding any new rule of law, accepted it.

The punishments for the crimes prescribed by the Islamic law were four classes i.e. \textit{Hadd, Tazir, Quisas} and \textit{Tashir}. Whereas \textit{Hadd} is a punishment unambiguously prescribed by common law and considered as the “right of God”, which no human judge can alter. The purpose of this punishment is to deter others from committing similar offence. The forms of punishment in this category include stoning to death for adultery, scourging for drinking wine and other intoxicant liquors, cutting off the right hand for theft, death by sword, for robber with murder, etc. The punishment of \textit{Tazir} is intended to reform the criminal and inflicted for such crimes as have no Hadd punishment. Its severity and magnitude were left entirely to the discretion of the judges for which attempts were often made to escape this type of punishment by bribery. \textit{Qisas} or retaliation rested on the personal right of the victim or his next of kin in case of murder. He could either demand the legal punishment or accept the money damages i.e. price of blood offered by the murderer or pardon him.
unconditionally as he wished. For minor offences, the retaliation was like the Mosaic Law i.e. a tooth for a tooth and an eye for an eye, with certain exceptions. Tashir or public degradation was a popularly devised punishment of universal currency throughout the Muslim world and even Hindu India and Medieval Europe. It included such punishments as shaving off the offender’s head, making him ride on an ass with his face turned towards tail and body covered with dust sometimes with a garland of old shoes placed around his neck, parading him in this posture through the streets with noisy music and finally turning him out of the city. Though these types of punishments are neither recognized nor condemned in Islam, yet these were inflicted by all the Muslim kings.

During Maratha period also, imprisonment as a form of punishment was not very common. Death, mutilation, fine, etc. were common forms of punishments. The forms of punishment, which was there during ancient and Mughal period continued in Maratha period also. These were Diwan-Danda or Raj-Danda (official punishment); Deva Danda or Brahma-Danda (Religious or spiritual punishments) and Jati Danda (Caste based punishments). Of these punishments, the Diwan Danda is the Royal Punishment and the state has separate department to administer it in order to maintain peace and order while the Deva-Danda and Jati-Danda are religious and social punishments respectively and they are closely related to each other.

About 1790, the punishment of mutilation was forbidden by law in Bengal and the criminal courts were directed to inflict imprisonment with hard labour in its stead. However, in 1833, the attention of the British Parliament was drawn to the anomalous and sometimes conflicting judicatures by which laws were hitherto being administered. Accordingly, in the same year, an act was passed which effected many changes in the constitutional set-up on this country. An Indian Law Commission was appointed to prepare a uniform code of legal rules. In 1858, the Royal Proclamation was issued whence-forth direct responsibility was assumed by the British Crown. In the next three years, first the Civil Procedure Code, then the Indian Penal Code and almost immediately afterwards the Code of Criminal Procedure were enacted, all of which had long been in preparation. A uniform system of legal justice was initiated in India. The Indian Penal Code defined each and every offence and prescribed punishment for it. Imprisonment became the most conspicuous and most commonly used instrument of penal treatment.
It was until the 19th century that imprisonment began to constitute an important sanction and not really until 1850s that with the abolition of transportation, it moved into first place. Prison is neither a power nor a power within the power itself. It is an autonomous body, an instrument of the state, shaped by its social milieu and by the stage of social, political and economic developments. Prison is a means to an end in itself. Prison is for the protection and it interests by down-grading the prisoner than protecting his social status.

1.4. Prisons towards Reformation

Prior to the arrival of British in India, the modern prison system was not in existence in India. The emergence and changes in the modern prison system are the result of different commissions appointed from time to time. Among them, the major commissions were Lord McCauley Commission, the Prison Discipline Committee, Commission of Jail Management and Discipline, Fourth Jail Commission, The Indian Jails Committee, Dr. W. C. Reckless Commission, the All India Jail Manual Committee, All India Committee on Jail Reforms, etc.

Reform in Indian prison administration came to occupy public attention more than 185 years ago. In India the first famous committee on prison reforms was set up in 1836 under the Chairmanship of Lord Macaulay. Lord Macaulay criticized the corruption of subordinate establishment and the laxity of discipline. A second committee was appointed in 1864 to minimize the high death rates in prisons and for considering other aspects of jail management. This committee fixed a minimum space for each prisoner in jail, recommended for improvements in diet, clothing and bedding and insisted upon regular medical inspection of prisoners.

In 1877, a conference of experts was convened at Calcutta to inquire into prison administration and this was the Third Jail Conference. This Committee was composed entirely of the officials actually engaged in prison work. In 1888, the Fourth Jail Commission was appointed on an all India basis by Lord Dufferin to inquire into the facts of prison. Its report covered nearly the whole field of internal management of jails and laid down elaborate rules for prison management. The work of the Fourth Jail Committee was supplemented by the All India Committee of 1892. It resurveyed the whole jail administration and laid down further detailed rules. The Prisons Act of 1894 was mainly the outcome of the efforts of this committee.
Thus, the Prisons Act of 1894 came into being which governs all the prisons in the country.

The Indian Jails Committee of 1919-20 was established by the government of India on 28th April 1919, under the Chairmanship of Sir Alexander Cardew, Member of the Executive Council of Madras, to investigate the entire system of jail administration in India. The Committee underlined the need for reformatory approach to prison inmates and discouraged the use of corporal punishment in jails. The committee for the first time suggested two conceptual pivots i.e. prevention and reformation for a more effective base for prison administration in India. It is also generally admitted by modern authorities that the aim of prison administration should further be to effect such a reformation in the character of the criminal as will fit him again to take his place in the society and to become a useful citizen. The publication of the report gave an immediate and great impetus to prison reform throughout India. The Government of India procured the strictures and recommendations of this report seriously and issued instructions to all local Governments to study the report and implement the suggestions mentioned in the report.

After independence, a Committee was appointed under the chairmanship of Justice Pakwasa in 1949. This Committee, known as Pakwasa Committee, accepted the system of utilizing prisoners as labour for road work without any intensive supervision on them. It was from this time onwards that the system of payment of wages to inmates for their labour was introduced. Due to the interest of the Government towards the prisons, an expert was invited from the United Nations to study the prison administration in India. Dr. W.C. Reckless was deputed in 1951 by the United Nations to study the prison administration in India. In his report, Dr. Reckless specifically wanted the development of whole time probation and after-care services, separation of juvenile delinquents from the adults and the revision of Jail Manuals. In 1952, a Conference of Inspector General of Prisons was held in Bombay (now Mumbai). This conference recommended for setting up a committee to draft a Model Prison Manual. Accordingly an All India Committee was appointed in 1957 which finalized a Model Prison Manual in 1959. The Committee furnished a detailed report containing necessary principles of the modernization of prisons together with a Model Prison Manual in 1960 on a broad guideline for the States to revise their outdated prison manuals.
In 1972, the Government of India appointed a Working Group on Prisons. The most remarkable recommendation of this Working Group was that it recommended the inclusion of prisons in the Five-Year Plan and a provision of Rs. 100 crore. This Group also emphasized the need for a National Policy on the Prisons and Correctional Administration. In 1980, Government of India constituted All India Committee on Jail Reforms under the Chairmanship of Justice Anand Narain Mulla. The recommendations of this Commission, universally known as *Mulla Commission*, constitute a landmark in the reformatory approach to prison reforms. The commission made thorough study of the problems and produced an exhaustive document. The National Expert Committee on Women Prisoners 1988 was constituted by the Government of India. The committee was headed by Justice V.R. Krishna Iyer. This committee recommended the induction of more women in the police force in view of their special role in tackling women and child offenders. The committee observed that women police have a greater potential to cool, defuse and de-escalate many situations and therefore greater use should be made of them.

With the evolution of modern prison system, hundreds of prisoners of varied categories are confined in prisons. A code of rules and regulations is prescribed for the running of prison system. The implementation of these rules and regulations is termed as *Prison Discipline*. The difference between the prison discipline and discipline in other large-scale organizations lies in the qualitative difference between the management and those who are managed and the common goal of achievement. Like all other organizations, prison system is also having two groups in the maintenance of discipline i.e. the ruling group (prison staff) and the sub-ordinate group (prisoners). But unlike other organizations, there is a caste-like division between the ruling group and the sub-ordinate group. The ruling group is socially integrated into the outside world and is composed of respectable members of the society whereas the sub-ordinate group is having a restricted contact with the outside world and is composed of rejected members of the society or members who have been publicly denounced and degraded. At the same time, the aim of discipline in industrial organizations of a bureaucratic type is production and profit. In contrast, the prison discipline aims largely in terms of institutionalized criteria of success such as observation of prison rules and regulations.
As regards the general objectives of prison administration, the report of the committee of 1919-20 observed: "there is very general agreement that crime is an anti-social act and that it is the task of the prison administrator to deal with the offender that he and others may be deterred from the commission of such acts in future". It is also generally admitted by the modern authorities that the aim of prison administration should further be to effect such a reformation in the character of criminal as will fit him again to take his place in society and to become a useful citizen. Whatever differences exist as to the methods to be employed, most penologists agree as to the objects in view namely the prevention of further crime and restoration of criminals to the society as reformed characters.

In a society governed by the Rule of Law, the prisons, like the other wings of the criminal justice system, function within the legal frameworks of the Constitutional and the Municipal Laws that comprise mainly of the Constitution of India – 1950, the Prisons Act 1894, Prisoner’s Act 1900, laws related to Preventive Detention, Probation of offender Act 1958, the State Prison Manuals, Code of Criminal Procedure 1973, the Indian Penal Code 1860, the Protection of Human Rights Act 1993, etc. Though the wide range of statutory laws constitute the normative basis for the prison functions, but at the actual, functional level often doubts and controversies arise regarding the ambit and interpretations of the statutory rules, thereby calling for frequent adjudications by the courts.

The management of the prisons in our country is regulated by the Prisons Act of 1894 and the Prison Manuals/Regulations framed by various states. As prison rules and regulations vary from one state to another, the much needed coordination is lacking. However, it was realized soon after independence that the Jail Manuals of the states of Union based on the antediluvian Prisons Act of 1894 could not cope with the new ideas and awareness of crime, criminals and their treatment that had been growing fast in the country. The decade 1951-60 that followed immediately after independence was a decade of enthusiasm for prison reforms. While local committees were being appointed by some state governments to suggest prison reforms, the Government of India invited technical assistance in the field from the United Nations.

Prison management needs to operate within an ethical framework. Without a strong ethical context, the situation where one group of people is given considerable
power over another can easily become an abuse of power. The ethical context is not just a matter of the behaviour of individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from the top down. In fact, the management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which go beyond effectiveness and efficiency. When making decisions about the treatment of human beings, there is a fundamental consideration. When people think of prisons, they tend to consider their physical aspects i.e. walls, fences, a building with locked doors and windows with bars. In reality, the most important aspect of a prison is the human dimension since prisons are primarily concerned with the people. The two most important groups of people in a prison are the prisoners and the staff who look after them. The key to a well managed prison is the nature of the relationship between these two groups.

Prisons cannot usually select their prisoners. They have to accept whosoever is sent to them by the court or some other legal authority. However, they can choose their staff. It is essential that the staff should be carefully selected, properly trained, supervised and supported. The prison staff plays an important role towards the prison and prisoner's as well. The role of prison staff are:

a. To treat prisoners in a manner which is decent, humane and just;

b. To ensure that all prisoners are safe;

c. To make sure that dangerous prisoners do not escape;

d. To make sure that there is a good order and control in prisons;

e. To provide prisoners with the opportunity to use their time in prison positively so that they will be able to re-settle into society when released.

Working in prison requires a unique combination of personal qualities as well as technical skills. Prison staff needs personal qualities so that they can deal with all prisoners including the difficult and the dangerous ones, in a humane and just manner. This means that recruitment should be done in such a way that only the persons with right qualities are selected. Keeping this factor in view, it will be possible to describe work in prisons as a profession. However, in many countries, it is very difficult to recruit anyone to work inside the prison. In those countries, only such persons are ready to work in prisons who cannot find any other means of employment. Since they
are also badly trained and poorly paid, it is predictable that they have little professional pride in their work; that they are vulnerable to temptations to become involved in corrupt practices and that they have no sense of carrying out a worth while public service

The basic requirement for the efficient management of any institution is its manpower. In fact, the prison institutions are managed by three categories of personnel viz. jail cadre staff, correctional staff and medical staff. The number of inmates per official is a real indicator of how well inmates are looked after in prisons. The highest number of inmates per prison staff was reported from Bihar (24), followed by Jharkhand (23), Gujarat (16), Delhi (13), Chattisgarh, Karnataka and UP (11 each), Assam and Madhya Pradesh (10 each), UP, Chattisgarh, Karnataka, Jharkhand, UT of Delhi, Rajasthan and J&K have only one correctional staff for 66669, 10359, 6350, 2589, 1914, 1398 and 1135 inmates respectively. The training of these jail personnel on various aspects of correctional administration is of vital importance and available statistics shows that only a few states/UT have made use of such facilities available in various national and state level institutions.

Central to the prison administration is the problem of demoralization and lack of motivation of the prison staff. It was pointed out that the conditions in which the lower echelons of prison staff lived were in some cases worse than those of the prisoners. This was seen as an important factor contributing to the poor functioning of the prisons, apathy of the prison staff towards the plight of the prisoners, corruption and the over-all deprivation of the prisoners of their basic amenities. Such sub-standard condition of service produces a culture of frustration and dehumanization in the service which often spills over and gets translated into aggression on prisoners. As expressed by the members of the prison staff and acknowledged by other delegates, the conditions of the work creates an environment that discourages initiative, leadership qualities and enlightened rights based approach.

Mr. Aivalli, the then Additional Deputy General Prisons of Jammu and Kashmir pointed out that the prison administration has basically three levels – the management level, the supervisory level and the grass-root level. At the management level, there are DG/IG/DIG, etc; at the supervisory level are Superintendents/ Deputy or Assistant Superintendents/Jailors, etc. while at the grass-root level are Head Wardens/Wardens, etc. The officers at the management consider this as a punishment
posting and are generally too demoralized to contribute significantly to the building up of the department. The supervisory level staff too is demoralized because of poor service condition, lack of career opportunities and low public esteem. However the staff at the grass-root level, which includes Head Warden and Wardens, are supposed to remain inside the prison walls to interact with the prisoners most of the time. This factor, in combination with their pathetic service conditions has the effect of dehumanizing them. Some of them develop vested interests and join hands with criminals. Mr. Aivalli suggested drastic changes in the organizational structure, control and service conditions of the prison department.

1.5. Prisons and Legislations:

The prisons Act 1894 streamlines a general and uniform footing of prison administration throughout the country. It has provided for the separation of prisoners on the basis of age, gender, stage of proceeding, nature of crime and punishment, etc. The IG Prisons has been made the supreme authority for the general administration, supervision and coordination of prisons in a State. Each prison generally headed by a superintendent is assisted by other subordinates. The medical officer has been made responsible for the overall health condition and care of the prisoners. According to the provision, the sick prisoners can report to the Deputy Superintendent of Prisons if there is a genuine problem of health service. The powers of the prison executive staff to inflict punishment for prison offences are restricted to maintain discipline. Only the officers equal to the rank of superintendent and above are empowered for prison punishment.

While the Prisons Act of 1894 is based on the principles of deterrent theory of punishment but female and civil prisoners are excluded from the punishment of handcuff, bar fetters or whipping. If an inmate commits wilful disobedience, assault, use of criminal force, insult, treating immoral and indecent behaviour, refuses to work, causes wilful damage, tempering, false accusation and conspiring to escape than in order to control them, the Act provides for the punishments like warning, labour (7 days), handcuff, fitter, confinement, penal diet, etc. subject to the examination and issue of certificate of fitness by the medical officer in order to sustain the punishment. In case a prisoner committed a heinous crime, the Act provides for the initiation of the process by the District Magistrate upon the recommendations of the Prison Superintendent. Besides this, the Act enumerates
comprehensive plans on the issues like prison administration, health care, clothing, bedding, sanitation, pre-release and employment of prisoners under different chapters. With the aforesaid mandates, the Prisons Act since the date of inception i.e. 1st day of July, 1894 has been providing a comprehensive legal framework for the management of prisons in India.

The Prisoner's Act 1900 consolidates the law relating to the prisoners confined by the order of the court. It authorizes the officer in charge (OIC) of a prison to receive and detain all persons duly committed to his custody. After execution, the OIC has to return the writ, order or warrant, etc. to the issuing authority. Part III of the Act specifically deals with the prisoners in presidency towns. For the implementation of this provision, a Superintendent of Police is to be appointed by the state government. If any writ, warrant, etc. is issued by the high court under criminal jurisdiction, it shall be executed by a police officer not below the rank of the Superintendent of Police appointed for this purpose according to and under the Act. The Prisoner's Act of 1900 is applicable to the detention of young offenders in the reformatory school. It gives authority to the OIC for the execution of sentence, order and warrant of subordinate courts and tribunals. In case of doubts, the OIC shall refer the matter to state governments after detaining the convict or accused for the time being. Special provision has been made for traumatic prisoners, those to be kept in lunatic asylum and could be discharged by the order of the state government. The State Government and Inspector General of Police has power to order for the removal and discharge of prisoners those granted free pardon according to the recommendations of the high court.

The Prisoner's (Attendance in Courts) Act of 1955 provides rules and procedures for the attendance of prisoners in courts, in persons, for obtaining their evidence or for answering criminal charges. The Civil and Criminal Courts have power under the Act to require the appearance of prisoners to give evidence or answer any question. Such judicial orders shall be forwarded to the OIC of the prisons by the Judicial Officer not below the rank of district Judge as Judicial Magistrate – I. This jurisdiction is, however, limited within a state only. The OIC of prison shall take the concerned person to the court and cause him to be detained in custody near the court until the completion of the court process. If a prisoner could not be brought before the court, the Magistrate has the power to issue the commission for the examination of
prisoners inside the jail. On the other hand, the State Government has the power to exempt certain persons from the personal appearance before the court after detention and to make rule in this regard.

The Transfer of Prisoner's Act 1950 provides mechanism for the inter-state transfer of prisoners. The Government of the state with the consent of the other state, by order, can issue a process for the removal of prisoners from the prison of one state to another. The prison officers have to abide by the policy decisions of both the governments at the central and the state level.

The proposed Indian Bill 1996 is based on an outline prepared by the National Human Rights Commission (NHRC) which has been circulated among the state governments and union territories for their comments, suggestions and observations. The Bill has emphasized an urgent need to bring the existing Indian prison system up to the time of the modern criminological and penological thinking and to effectively cater to the changed and changing demands for the society in transition. According to the recommendation of the Mulla Committee, a separate chapter about the rights and duties of prisoners has included in the proposed bill. These are right to human dignity, right to access of law and speed trial, duty to obey lawful orders and instructions, to abide by the prison rules and regulations, to respect human dignity of fellow prisoners and staff, to refrain from making false and exaggerated allegation, to use government property with due care, to assist prison authorities in their performance, etc.

The Bill clearly specified that the administration should deal with the prisoners in conditions compatible with human dignity. It called upon the state governments to work out definite norms for the accommodation of prisoners. For this purpose, it has suggested a comprehensive plan regarding residence, sanitation, health care and food. While recognizing every other aspects of prison management, the Bill specifically highlighted the need for an effective and adequate after-care strategy and staff development mechanism policy. The Bill also suggested for the establishment of an Advisory Board for the development of prisons and correctional services under the chief secretary of the state to advise the government on relevant issues.

The Prison Administration and Treatment of Prisoner's Bill 1998, the basic objective of which is to introduce a progressive legislation on prison in order to
reform the prison administration in the country and to lay greater emphasis on the care and treatment of prisoners in the line with the current correctional humanism permeating penal sanctions. The Bill while recognizing the fact that the Parliament has no power to make law for the states with respect to prisons and prisoners, it explained the utility of Articles 249 and 252 of the constitution in order to legislature Model Prison Laws at the national level and its applicability at the state level. On the issues of prison discipline and punishment, the proposed Bill strongly recommended the application of the rule of national justice, as a pre-condition at the time of punishing of inmates. The Bill gives due attention to the issues like after-care, rehabilitation of prisoners, open institutions, prison facilities, visitors, etc. Most importantly, it suggested some amendments in IPC and Cr. PC in connection to punishment and imprisonment under various sections.

The Prison Management Bill 1998 aims at consolidating and amending the Indian laws in relation to prison. The proposed bill while recognizing the rights and duties of prisoners as of the Indian Prisons Bill 1996 also enumerates the duties of the prison staff. Accordingly, every officer of the prison shall all the time avoid all contacts calculated to unduly irritate or among any prisoners, treat every prisoners with tact, good temper, humanity and strict impartiality with all necessary kindness and consideration to every prisoner by maintaining strict discipline and explore all laws, rules and regulations in order to discharge all the duties assigned to him. Specific guidelines are suggested to maintain integrity in the public office holders in the prison. The proposed Bill has given special attention for the protection of under-trial prisoners. The state government shall provide to every un-convicted criminal prisoner the transport facility to carry them conveniently to the court of law and adequate strength taken out of the prison for such purposes. It empowers the state government to establish open institutions and to prescribe rules for the proper management of the same. Section 71 identifies the grounds that constitute prison offences and section 72 prescribes the punishment provisions for the same. The Bill also suggested regulations for the welfare of women, adolescent and life-convicted prisoners.

The UN Standard Minimum Rules for the Treatment of Prisoners was adopted on 30th August 1955. It consists of 5 parts and 95 rules. Part one provides rules of general applications. It declares that there shall be no discrimination on the grounds
of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time, there is a strong need of respecting the religious beliefs and moral percepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of different categories of prisoners. It says that men and women shall be detained in separate institutions. The under-trial prisoners shall be kept separate from convicted prisoners. Furthermore, there must be a complete separation between the prisoners detained under civil law and criminal offences. The UN Standard Minimum Rules also made it mandatory to provide separate residence for young and child prisoners than from the adult prisoners in the prisons.

On the issue of prison offences and punishment, the Standard Minimum Rule provides clear rules. It states that no prisoner shall be punished unless he or she has been informed of the offences alleged against him or her and given a proper opportunity of presenting his defense. It has recommended that the corporal punishment, by placing in a dark cell and all cruel, inhuman or degrading punishments, shall be completely prohibited as a mode punishment as disciplinary action in the jail. All such punishments including reduction in diet shall never be inflicted unless the medical officer has examined the prisoners and certified in writing that the prisoner is fit to sustain itself. While recognizing the basic principles of punishment, the purpose of punishment is not to torture a person but to reform him and ultimately making him a good citizen. To achieve this objective, Rule 79-81 of the Standard Minimum Rules provides for social relations and after-care provisions. It says that from the beginning of a prisoner's sentence, consideration shall be given to his future after release and he should be encouraged and assisted to maintain or establish relations with persons outside the institution as may promote the belt interacts of his family and his own social rehabilitation.

1.6. Objectives of the Study:

In the whole of the criminal justice system, prison system constitutes an important part other than police and judiciary. The basic reason for the existence of prisons is to separate and isolate some people found to have broken the law. The living and working conditions in the prison are not conducive to bring reform in the attitude of prisoners. In the prisons of Jammu and Kashmir, the milieu is such that it leads to the progressive poverty of body, mind and spirit.
Political activists, administrators and social workers are showing their concern over the matter. It is surprising to note that research in this field is yet to attract the attention of social scientists in Jammu and Kashmir. Till now, no in-depth studies have so far been taken up to throw sufficient light on the prison system in Jammu and Kashmir. The present study is a humble attempt to produce a piece of research based on secondary data to let the general public know what happens between when a criminal steps inside the prison and till he is released from it.

The basic objectives of this study are:

- To present a historical account of the prison system in India;
- To analyze different problems related to prisons, prisoners and staff as well.
- To outline the reports of various Commissions and Committees constituted towards the reformation of prison system;
- To analyze the administration in prison system;
- To analyze the different classes of prisoners in the jails; and
- To scrutinize measures for the rehabilitation of prisoners;

In India, quite a few research works on the prison system have so far been made in Uttar Pradesh, Maharashtra, Andhra Pradesh and Orissa. No study on prisons in Jammu and Kashmir has so far been conducted in the State of Jammu and Kashmir. Although a lot of literature is available in India but that literature does not say much about the prison system in Jammu and Kashmir.

Finally, it is hoped that this work may act as a catalyst agent to generate a process of thinking. It will rationalize and streamline the procedure and practices as well as improve the standards to keep pace with the changing legal conditions.

1.7. Methodology

The present study aims at utilizing the secondary research in which an attempt has been made to combine both qualitative as well as quantitative sources. Existing qualitative research will be extracted from books, journals, Internet resources, documents and newspapers. For quantitative research, official statistics from the Governmental and non-Governmental sources will be utilised. There are many
advantages of using secondary data for analysis. There is an overwhelming amount of information available. If research were to be conducted in prisons, it would require a significant amount of travelling and would be expensive; therefore secondary research is advantageous in terms of saving time and money.

The study provides a broad conceptual framework on the prison system in its Indian context and at the same time in the context of Jammu and Kashmir. It places particular findings very thoroughly in the context of the existing body of qualitative as well as quantitative literature. An in-depth study of the classification of prisoners and their problems provide a valuable understanding of the prison system in the State of Jammu and Kashmir.

The study is however beset with certain limitations since not much data – qualitative and quantitative – on prisons in Jammu and Kashmir is available neither has yet any in-depth study been carried out on this topic. For this reason, there is no other alternative left than to rely on what is available at present. While as the present study does not reflect the total picture of the prison system, however, it throws sufficient light to understand the issues in the right perspective. And as such, I will try my level best to maintain the standard of this dissertation.
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6. Supra note 4.

7. Supra note. 1


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24. Ibid. pp. 55 - 56

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35. Paranjape, N.V, op. cit. pp. 360


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