CHAPTER-II

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2.1 INTRODUCTION

Crime is a violation of the legally established order and the Punishment is the penalty for such transgression of the law inflicted by the group. Since the problem of crime and its control is as complex as the society from which it springs, the society has to evolve a penal system which can "reduce crime by making as many people as possible to obey the criminal law", and to provide security to persons and property by preventing criminal act that threaten or violate them. The criminal law can achieve this objective, "... through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals or society". Naturally, the distinctive features of criminal law are strict prohibitions of actions, which cause harm to persons and property, and infliction of punishment for such harm.

2.2 OBJECTIVES OF IMPRISONMENT

Imprisonment is an important form of punishment. The punishment by way of imprisonment consists of deprivation of liberty for a certain period. Over the centuries various justifications have been suggested for the legal punishment and the imprisonment as a chief form of punishment is considered as a means for attaining them. Among the justifications that have been suggested for imprisonment the following are the more important: (i) to deter people from criminal acts - deterrence, (ii) to requite wrong doing retribution, (iii) to
incapacitate the offenders-incapacitation, and (iv) to reform offenders-
reformation.8

The fulfillment of these various tasks may be considered as the objective of imprisonment. But, any attempt to perform the duties necessary for the accomplishment of these various tasks would result in conflict, as they are mutually conflicting and contradictory to each other.9 Thus, the conditions necessary for the reformation of prisoners may be in conflict with the conditions necessary for exacting retribution and for maximum incapacitation and deterrence. On the other hand, retribution and deterrence by purposive infliction of suffering always necessitate prison conditions, which are inconvenient and intolerable. The prison is expected to make life unpleasant for people, who, by their crimes, have made others' lives unpleasant. This dilemma between the demands of punishment and control on the one hand and rehabilitation and reform on the other, places the prison system in an "uneasy and irrational equilibrium".10 At various times and places one or the other of the above aims and objectives of imprisonment have been offered as justifications for the punitive reaction.

2.2.1 The Retribution:

One of the important objectives of punishment is retribution, which is based on the belief that the criminal deserves to suffer. The suffering imposed by the state in its corporate capacity is considered as the political counterpart of the individual revenge.11 According to it, criminal punishment is requital for wrongdoing. Justice requires that the same rules apply to every one. If some
one violates a rule of the criminal law then that person has an unjust advantage over others and justice requires that this wrong be requited or expiated by punishment.\textsuperscript{12}

More specifically, punishment is imposed by the society on criminals in order to obtain revenge or perhaps because it is only fitting and just that one who has caused harm to others should himself suffer for it. Thus, Salmond argues that the administration of justice owes a great part of its strength and effectiveness to the fact that the punishment to wrong doer is at the same time the vengeance of the wronged.\textsuperscript{13} Further he says, that the criminal law would be but a feeble instrument if we punish criminals merely from an intellectual appreciation of the expediency of so doing, and not because their crimes arouse in us the emotion of anger and instinct of retribution.\textsuperscript{14}

Further, on behalf of the retributive theory it is argued that unless the criminal gets the punishment he deserves, one or both of the following effects will be produced: The victim will seek individual revenge, which may mean lynch-law if his friends co-operate with him, or the victim will refuse to make complaint or offer testimony and the state will therefore be handicapped in dealing with criminals.\textsuperscript{15}

The retributive theory which insists on satisfaction of vengeance suffers from a basic flaw because 'vengeance is not a rational sentiment, for it is simply a desire to inflict harm on those who have harmed one'.\textsuperscript{16} Its practical effect is merely to increase the amount of harm in society. One surely would not design a legal system that encourages vengeance. Indeed, one reading of the historical
development of criminal law is as a gradual substitution of a reasonable public system of punishment for private vengeance. Consequently, one cannot rationally accept criminal laws imposing cruel punishment merely to satisfy irrational desire for vengeance, because they will make a criminal more hardened.17

2.2.2 The Deterrence:

The second justification for criminal punishment is deterrence. Societal punitive reaction to crime is supported by another theory—The deterrent theory. According to this theory one of the principal aims of punishment for crime is to deter the individual offender and also others who may be minded to commit similar offences, and hence to prevent further crimes.18 First, by 'specific deterrence' persons who are punished are deterred by fear of further punishment from performing future criminal acts.19 Second, by 'general deterrence' punishment deters others from committing criminal acts out of fear of being similarly punished.20 Third, some forms of punishment 'incapacitate' offenders. While in prison, offenders cannot commit any crime.21

The theory of general deterrence has been stated by Reverend Sydney Smith as follows.

When a man has been proved to have committed [sic] a crime, it is expedient that the society should make use of that man for the diminution of crime; he belongs to them for that purpose. Our primary duty, in such a case is to treat the culprit so that many other persons may be rendered better, or prevented from being worse, by dread of the same treatment and making this the
principal object, to combine with it as much as possible the improvement of the individual.\textsuperscript{22}

But punishment on this ground of general deterrence has been criticised by Bittner and Platt who contend that "punishment on the basis of deterrence is inherently unjust. For, if an example is made of a person to induce others to avoid criminal actions then he suffers not for what he has done but on account of other people’s tendency to do likewise."\textsuperscript{23}

Similarly, Immanuel Kant, opined, "legal punishment... never can be inflicted on a criminal just as an instrument to acquire some other good for the criminal himself or for civil society... for a man may never be used just as a means to the ends of another."\textsuperscript{24} Kant believed that man should always be treated as an end in himself, not only as a means for some other end. Regarding the Kantian principle, Mr.Johannes Andenaes said that, the principle had a persuasive ring, but could hardly be treated as a binding rule without closer scrutiny. As with other abstract principles, it lends itself to different interpretations, and it is difficult to evaluate the validity of the principle without examining its practical applications. Realistically, societies often treat people in ways designed to promote the good of society at the expense of the individual concerned. Military conscription might be the prime example of this phenomenon which also finds expression in quarantine regulations, confinement of dangerous mentally ill patients, and detention of enemy citizens in wartime.\textsuperscript{25} Thus, the Kantian principle in its practical application, is of doubtful value. Regarding the Kantian opinion, it is also said that the criminals by committing offences have
voluntarily forfeited the right not to be used as a means to deter others. Society can use offenders to deter others and thereby to protect itself as it uses policemen.\textsuperscript{26}

The general notion of the deterrent theory is that the punishment reduces crime and is based on the hedonistic assumption that people regulate their behaviour by calculation of pleasures and pains.\textsuperscript{27} If the pleasure they can derive from crime is more than the pain they suffer by punishment, they feel less inhibited in committing crime. So, when deterrence is regarded as the principal purpose of punishment penalties are to be made as public and as brutal as possible.\textsuperscript{28}

But the deterrent effect of punishment is possible only when the criminals consider the penalty. But many criminals may never consider the penalty because they are psychopathic or feeble minded or acting under stress of a great emotion.\textsuperscript{29} But it can be said that such cases are only exceptions and by and large, the criminal code with its penal sanctions probably has a long run deterrent effect upon criminalistic ideologies. The existence of the criminal law and the procedures for implementing the criminal law, including the imposition of swift and certain punishment, would emphasize the undesirability of certain types of behaviour.\textsuperscript{30}

But the deterrent theory of punishment totally overlooks the effect, which a harsh and brutal punishment like solitary confinement may have on the mind and personality of the criminal incarcerated. A criminal subjected to harsh and brutal treatment in a prison may become a hardened criminal. Such a treatment may
have deterrent effect on the future potential criminal but the individual criminal subjected to such a dehumanized treatment can never be retrieved back to the mainstream of the society. He may return to society after serving his prison term as a more hardened criminal and may employ more ingenious methods to conceal his crime to avoid detection and such harsh punishment. Thus, deterrent punishment may cause more harm to society than protecting it.

2.2.3 The Reformation

The goals of punishment have been undergoing radical changes along with the growing awareness about the rights of even wrong doer. The trend in modern countries has been towards humanising punishment and towards the reduction of brutalities. The emphasis is on the decreased use of capital punishment, the introduction of amenities into the modern prison by enlightened penology and the increasing emphasis on non-punitive and individualized methods of dealing with prisoners, eg: probation, parole, psychotherapy. It is widely believed that the objects of punishment are to bring about reformation of the offender, to prevent him from committing crime again, and to prevent other persons from committing crimes. It is widely perceived that the crime is the outcome of a diseased mind and the prison must have an environment of hospital for treatment and care of mental disease. This approach rejects the deterrent and retributive elements of punishment and strongly advocates reformative approach.

According to this school of thought, punishment cannot work through repressive methods, for repression does not root out the criminal desire and
repression merely checks the wrong doing for some time, but that which is repressed will rebound with as much vigour as it was repressed and produces some unanticipated consequences. Punishment, then with the detention involves a re-educating process and not a bare tormenting process. The offender should, while punished by detention, be put to educative and healthy or ameliorative influences. He should be reeducated and his character traits re-shaped and put once again in the furnace for being moulded.

According to Seth J.:

The deepest warrant for the effectiveness of punishment as a deterrent and reformative agent is found in its ethical basis as an act of justice. True reformation comes only with the acceptance of the punishment by mind and heart, as the inevitable fruit of the act... The judgment of society upon the man must become the judgment of the man upon himself, if it is to be effective as an agent in his reformation... Punishment is, in its essence, a rectification of the moral order of which crime is the notorious breach. Yet it is not a mere barren vindication of that order; it has an effect on character, and moulds that order.

The idea that the punishment is basically for reformation and rehabilitation has found wide acceptance by psychologists and behavioural scientists and many thinkers. Concerned with the future personality and conduct of the offender, the behavioural approach replaces the justice model of punishment with a therapeutic one. Thus Barbara wooten urges that the formal distinction between prison and hospital be eventually obliterated altogether. Similarly, Richard H.Brandt said, "if an accused were adjudged guilty, decisions about his
treatment would then be in the hands of the experts, who would determine what
treatment was called for and when the individual was ready for return to normal
social living it would be criminal centered treatment, not crime centered
treatment. For it is doubtful whether threats of punishment have as much
deterrent value as is often supposed.  

Prof. Allen has described the Rehabilitationst School of penology that the
rehabilitative ideal is itself a complex of ideas which perhaps defies exact
definition. The essential points however, can be identified. It is assumed, first,
that human behaviour is the product of antecedent causes. These causes can
be identified as part of the physical universe, and it is the obligation of the
scientist to discover and to describe them with all possible exactitude.
Knowledge of the antecedents of human behaviour makes possible an approach
to the scientific control of human behaviour. Finally and of primary significance
for the purposes on hand, it is assumed that measures employed to treat the
convicted offender should serve a therapeutic function and that such measures
should be designed to effect changes in the behaviour of the convicted person in
the interests of his own happiness, health and satisfaction and in the interest of
social defense. 

Mahatama Gandhi also believed that the criminals should be treated as
patients in hospitals and jails should be hospitals admitting such patients for
treatment and cure. Similarly Dr.Walter Reckless, a leading American
criminologist, made a plea for transforming jails into reformation centres and
advocated the establishment of new jails to perform specialised functions.
Reformation School of thought found a strong support from Lord Lytton, who said: "The ideal I wish to set before me, stated in the briefest and simplest form, is just this - the substitution of reformation for retribution as the basis of our penal code".45

Similarly Pandit Nehru observed "Any reform must be based on the idea that a prisoner is not punished but reformed and made into a good citizen. If this objective is once accepted, it would result in a complete overhauling of the prison system."46 The Mulla Committee also echoed similar opinion when it said that the primary objective of punishment is reclamation and rehabilitation of the offender.47

Thus, it can be seen that the reformation of a convict is the main purpose of punishment and any other consideration pales into insignificance. However it has been objected that in this idea of reformation, there is no aspect of punishment. Imprisonment being a kind of punishment, reformatory treatment cannot be regarded as punishment. But it is argued by the supporters of the reformatory school of punishment that it is the mental pain received from deprivation of liberty that is a punishment. Man wants and likes liberty.48 Thus Sethna says that to the bird in a golden care with the crumbs it receives, there can be no attraction whatsoever. And so also to a human being it is liberty that counts more than comfort. A person may part with comfort and bear pain, if his the liberty is not taken away. But when he is deprived of his liberty, he feels the deprivation. It can be validly described that detention for reformation as a form of punishment.49
Similarly Pandit Nehru said, "[a]nother error which people indulge in is the fear that 'if jail conditions are improved people will flock in'. This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty, family life, friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. To improve prison conditions does not mean that prison life should be made soft; it means that it should be made humane and sensible." Thus, prison comforts would not encourage people to commit crimes.

2.3 CHARACTERISTICS OF PRISON LIFE

Generally the imprisonment entails a great hardship to a prisoner. Thus, Gresham M. Sykes explains that basically, of all the painful conditions imposed on inmates, none is more immediately obvious than the loss of liberty. The mere fact that an individual movements are restricted, however, is far less serious than the fact that an imprisonment means the inmate is cut off from family, relatives and friends, not in the self-isolation of the hermit or the misanthrope, but in the involuntary seclusion of the out law.

This isolation would be frustrating in terms of lost emotional relationships, of loneliness and boredom. But what makes this pain of imprisonment more deep is the fact that the confinement of the criminal represents a deliberate, moral rejection of the criminal by the society. It is the moral condemnation of the criminal that converts hurt into punishment.
A small number of offenders may be indifferent to the penal sanctions of the free community as they are so alienated from conforming to society and so identified with criminal sub culture. For the great majority of criminals in prison, the prison life will have degrading effect. The wall which seals off the criminal is a constant threat to the prisoner's self conception, and the threat is continually repeated in the many daily reminders that he must be kept apart from "decent" men.54

In a prison, though the prisoner's basic material needs are met, he is deprived of many goods and services of his choice. He loses variety in foods, clothing, individual furnishings, shelter, privacy and space. The regimented monotonous prison life may bore him to death.55

Another discomforting feature of prison life is the loss of autonomy as he is subjected to a vast body of rules and commands which are designed to control his behaviour in minute detail. The prisoner would lose the ability to make choices and the frequent refusals to provide an explanation for the regulations and commands descending from the bureaucratic staff, involve a profound threat to the prisoner's self image because they reduce the prisoner to a state of helplessness of a child.56

Imprisonment of an offender involves the pushing him in to the company of many hard-core criminals for years. This involuntary union has the danger of making him, a more hardened criminal.57 Another frustrative experience of prison for the criminal is the lack of hetero sexual intercourse.58 Thus, Sykes says: "A society composed exclusively of men tends to generate anxieties in its
members concerning their masculinity regardless of whether or not they are covered, bribed or seduced into an overt homosexual liaison".59

Thus, as Bentham opined, prisons with the exceptions of small number, include every imaginable means of infecting both body and mind. In an ordinary prison, want of exercise enervates and enfeebles their faculties, and deprives their organs of suppleness and elasticity, despoiled, at the same time, of their character and of their habits of labour, they are no sooner out of prison than starvation drives than to commit offences.60

Further speaking about the ill effects of an ordinary prison, Bentham said, "All the inmates raise themselves to the level of the worst; the most ferocious inspires the others with his ferocity; the most debauched inculcates his licentiousness. All possible defilement of the heart and the imagination become the solace of their despair. United by a common interest they assist each other in throwing off the yoke of shame. Upon the ruins of social honour is built a new honour, composed of falsehood, fearlessness under disgrace, forgetfulness of the future, and hostility to mankind; and thus those unfortunates, who might have been restored to virtue and to happiness, reach the heroic point of wickedness. Thus sublimity of crime".61

Thus Bentham paints a very dark and gloomy picture of an ordinary prison.

There are many other, writers who have been convinced that the entire idea of imprisonment is wrong, or at least it is bound to fail. Thus, sir, Godfrey Lushington commented:

I regard as unfavourable to reformation the status of a prisoner throughout his whole career; the crushing of self-respect, the starving of all moral instinct he may possess, the absence of all
opportunity to do or receive a kindness, the continued association with none but criminals ... the forced labour, and the denial of all liberty. I believe the true mode of reforming a man or restoring him to society is exactly in the opposite direction of all these; but, of course this is a mere idea. It is quite impracticable in a prison. In fact the unfavourable features I have mentioned are inseparable from prison life.62

This, comment was cited by the Gladstone Committee set up to examine the prison system as "a broad description of prison life". Mc Clean and Wood feel, "most observers see a great deal of truth in these and similar criticisms, but very few would conclude that imprisonment should be abandoned".63 This is mainly due to the fact that there are no adequate alternatives to imprisonment. The Gladstone committee advised some modifications of the prison system to reduce its unfavourable features.64 Further, there is a growing pressure on the Court to be more discriminating in their use of imprisonment and not to use it for first offenders, or young offenders, and not to impose sentence which are too short, or too long, to be useful. There are still many who are sent to prison because they have committed a serious offence for which no other form of treatment is available. Mc Clean and Wood opine that the next stage in penal history may be the development of alternatives to imprisonment.65 But, there is no doubt that imprisonment, as a form of punishment cannot be totally substituted by any other type of punishment. Imprisonment has become the most important and an inevitable way of dealing with criminals. What can be done at the most, is to minimise its ill effects.
All the dark and negative features of an ordinary prison need to be held under leash, so that prisons may operate as real reformatories or correctional houses and not as hounded houses. Imprisonment for a sufficient time under healthy conditions in an ideal house of correction, institutional treatment and probation under the care of trained, competent and sympathetic probation officers are the ideal means of reformative dealing with offenders. Practically all prisoners return to free society sooner or later and that the use of punitive methods alone does not produce the desired reformation of these prisoners. Consequently, non punitive methods should be used to change the prisoner so that they will desist from crime. When reformation is assumed to be induced by treatment, rather than by purposive infliction of pain, the conditions which led inmates to crimes are determined, and through the inculcation of psychological, social, educational, and technical skills they are sought to be reformed. An efficient performance of this task depends on prison conditions which are conducive to free inquiry and to intimate, helpful, constructive action based on the inmates’ needs. The conditions viewed as conducive to reformation through treatment, thus, almost never include the purposive infliction of suffering. Through the instrumentality of reformation if a person is made to understand thoroughly the heinousness or the wickedness from recidivism, he would not commit the same act or omission again. It is reformation, then, that can really ensure prevention. Prevention of crime can be achieved not by elimination of the wrongdoer but by educating and reforming him.
The idea is not to make prisons pleasant, but to construct a system of training so that it will fit the prisoner to reenter the world as a citizen. To this end the first requisite is greater activity in mind and body, and the creation of habits of sustained industries. Next comes the removal of any feature of unnecessary degradation in prison life, the promotion of self-respect, education on broad lines calculated to arouse some intelligent interests, and to raise the mind out of sordid circle of selfish broodings.68

If the prisons are to be reformative and not punitive and that they have to serve as correctional institutions, a thorough reorganization of prison administration should be undertaken. As the Mulla Committee opined the foundations of a progressive prison have to be laid by providing certain essential pre-requisites.69 The committee felt that unless certain conditions essential for a good prison system are created, prison administration as it exists in India at present, cannot function efficiently; it cannot protect prisoners from the harmful effect of life in prisons and it cannot claim that it is operating as an effective correctional system.70

2.4 CONDITIONS ESSENTIAL FOR A GOOD PRISON SYSTEM

There are certain pre requisites essential for organising a good prison. They are as follows:

2.4.1 Classification of Prisoners

The first requisite of a progressive prison is the scientific classification of prisoners. The reformation of prisoners cannot be effective if all types of prisoners are huddled together. The different types of criminals are led to crime
by different forces and need individual treatment. Unless a well-planned classification is made and habitual and hardened criminals who have adopted crime as a way of life are separated from the rest, it would be difficult to save the first offenders from the crime infection. The primary condition against which early American prison reformers enweighed was the association of all types of criminals in a conglomerate group. In U.S.A, at first, classification consisted of mere segregation, for purposes of discipline and administrative control, of prisoners according to such criteria as age, sex, race and dangerousness. Formally this kind of definition and practice has been abandoned. As the treatment reaction became popular, differentiation was to be made on the basis of individual needs and probable reformability of inmates, and specific treatment programmes were to be directed towards individuals. The term is now used to designate the entire process by which persons attempt to attain the objective of reformation through individualized treatment. Without proper classification individualised treatment through which prisons now seek to attain their basic objects is impossible.

The principal objectives of classification as laid down in the All India Jail Manual Committee's Model prison manual are:

(i) to study the offender as an individual; to understand sequence of his criminal behaviour and the problems presented by him;

(ii) to segregate inmates into homogeneous groups for the purpose of treatment;
(iii) to organise an overall, balanced, integrated and individualised training and treatment programme;

(iv) to review the inmate's response to institutional regime and treatment and to adjust the programme to suit his needs;

(v) to co-ordinate and integrate all institutional activities and to develop a system of constructive institutional discipline; to maintain a uniform continuity in various phases of institutional management;

(vi) to ensure maximum utilisation of resources and treatment facilities available in the institution as well as the community. Thus classification is the basis of individualised correctional treatment. The scientific classification in prison should be based on certain principles, viz., age, sex, physical and mental condition, educational and vocational training needs and potentialities for reform and rehabilitation. Further, factors like nature of crimes, motives, provocation, previous history of the offender, his social processing, his 'sophistication in crime' should all be taken into account to determine his gradation in custody and appropriate treatment.

Mere segregation of offenders on the basis of certain principles is not sufficient. In fact for the scientific handling of prisoners classification is the first step in "a continuous process of individualizing correctional treatment till the prisoners are released. A well-planned and coordinated system of classification and reclassification makes the correctional course dynamic".
The model prison manual has provided for classification and reclassification of prisoners in the following stages: (a) Admission - quarantine - orientation; (b) study of the offenders through (i) interview, (ii) collection of social information, (iii) tests and examinations, (iv) observations; (c) analysis of the collected materials, compilation of various reports, preparation of the case file central indexing; (d) planning of training and treatment, implementation of the same and observation of response to treatment programmes; (e) review of progress and reclassification, adjusting institutional programme to the needs of the inmates; (f) planning post-release rehabilitation programme (g) pre-release preparation; (h) release procedure. If the prisoners are to be properly classified and reclassified a Classification Committee consisting of the Superintendent, Deputy Superintendent, Deputy Superintendent-in-charge of production and vocational training, Medical Officer, Correctional Social Worker and Education Officer, should be set up. In addition experts like psychologists and criminologists should be associated. 

It is submitted that if the classification and reclassification of prisoners is undertaken as recommended, a more effective individualised treatment of each prisoner could be undertaken.

2.4.2 Prison Discipline and Control:

In order to function as an organised institution, the prison requires certain rules of discipline to regulate the behaviour of prisoners. In any prison, some minimum organisation is necessary in order to provide for a division of labour amongst staff and inmates, a schedule of work and meals, a satisfactory
relationship with the outside community, and other similar arrangements.\textsuperscript{81} Prison discipline is concerned with the reasonable regulation of everyday institutional life so that the institution will be an orderly, self-respecting community. The aim of discipline, so far as the individual inmate is concerned, is "self reliance, self control, self respect, self discipline, not merely the ability to conform to the institutional rules and regulations, but also the ability and desire to conform to accepted standards for individual and community life in a free society."\textsuperscript{82} If the rules of discipline are not observed by the prisoner, disturbances are bound to arise. However, the enforcement of these rules of discipline in a prison is not an easy task. While enforcing these rules the prison officials should not have retributive or repressive attitude in maintaining discipline, and, on the other, they should not be too lenient. Discipline and order shall be maintained with firmness, but with no more restrictions than required for safe custody and well ordered community life. The tone of discipline should be adjusted to the requirements of each individual inmate.\textsuperscript{83}

Jail manuals provide in detail the acts which constitute offences against prison discipline and the permissible methods of punishment. The prison offences may be grouped under three categories: (1) Those connected with work, for instance, omitting to report at once any loss, breakage or injury caused to prison property or implement, or not performing any portion of the task allotted to another prisoner, etc; (2) those connected with quarrelling, assaults, mutiny and so on; (3) those connected with the possession of contraband articles.\textsuperscript{84}
The punishments prescribed for prison offences vary from the highest to the lowest. For minor violations of rules minor punishments are inflicted. These may include a formal warning, change of labour for a stated period to some more irksome or severe forms, forfeiture of remission earned, not exceeding four days, forfeiture of remission earned, not exceeding fourteen days, imposition of handcuffs and imposition of link fetters for a period not exceeding thirty days. For major offences major punishments may be inflicted which may include hard labour, forfeiture of remission earned exceeding four days, solitary confinement bar fetters, and whipping. Some of the harsh punishments provided for prison offences like fettering, whipping, solitary confinement should never be inflicted in a prison because of their harmful consequences on the prisoner.

Whenever violation of any rule of discipline occurs, the prison authorities should first ascertain the facts, give a fair hearing and take an unbiased decision. For any excessive action, the prison authorities would be answerable to the court.

2.4.3 Efficient Prison Personnel:

The functioning of a prison as a correctional house to a large extent depends on the efficiency of the personnel who manage its affairs. When personnel are selected on the basis of political patronage it is very difficult to serve efficiently. Unqualified men obviously cannot, by reason of their indifference or ignorance, perform the duties necessary for prevention of waste and for efficient business operations of the institution. When unqualified personnel are appointed, the prison cannot attain its reformation objective, as "it
is becoming increasingly apparent that the success of treatment programmes depends to a large extent upon the attitudes of the subordinate staff toward prisoner participation in such programmes. The Guards by their close contact with the inmates have more opportunities to change their attitudes, than any other class of prison workers. So, recruitment of well qualified and well trained staff is very crucial for proper prison administration.

2.4.4. Prison Education:

Education in prison is a factor, which contributes to reformation of prisoners. Education of prisoners is understood in two ways. On one hand, it was once taken to mean little more than academic school programme which were offered to inmates. On the other hand, all intentional efforts to direct inmates away from crime by means of non-academic, as well as academic, measures are now usually considered as prison education. It is in this broad sense the term "education" is used in contemporary correctional programme. This broad conception of prison education is very clearly expressed in the New York State Correctional Law:

The objective of prison education in its broadest sense should be the socialization of the inmates through varied impersonal and expressional activities, with emphasis on individual inmate's needs. The objective of this programme shall be the return of these inmates to society with a more wholesome attitude towards living, and with a desire to conduct themselves as good citizens and with the skill and knowledge which will give them a reasonable chance to maintain themselves and their dependents through honest labour. To this end each prisoner shall be given a programme of
education which, on the basis of available data, seems most likely to further the process of socialisation and rehabilitation. The time devoted to such education daily shall be such as required for meeting the above objectives.88

Further, in the prison itself, the prison education would be desirable as it aids prison discipline. It is a remedy against idle mind and makes prisoners friendly and co-operative.89 The prison education should aim at giving to every prisoner whatever he requires of the following:

1. Fundamental Academic Education, designed to provide the intellectual tools, needed in study and training and in his everyday life.
2. Vocational Education, designed to give training for an occupation,
3. Health Education designed to teach the fundamentals of personal and community health,
4. Cultural Education, embracing the non-utilitarian fields which one enters for intellectual or aesthetic satisfaction alone;
5. Social Education, to which all other types of education and all the activities of the institution should contribute.90

An educational programme could be made more effective by establishing well equipped library. Lessons, discussions and other activities are confined to the appointed house and the assigned place, but a book from a library would be constant companion to prisoners. A good library is an adjunct to a sound educational policy. Even when poorly stocked, a prison library can be a blessing.91 In addition to affording recreational reading activities, a well-organised prison library can contribute to all phases of the educational
programme. It may also serve to connect the inmate with outside law-abiding society, and if there is a reading room, it provides him with an oasis where momentarily at least, he can exclude from his life the deleterious influences of the prison environment.  

According to the guidelines laid down by the model prison manual (i) the library should provide reading opportunities of a whole some nature. It should serve as a source of any supplementary information. Books, periodicals and newspapers should be carefully selected to meet the needs of the inmates; (ii) There should be a close integration between the library and other educational activities of the institution; (iii) Arrangements should be made to distribute books, newspapers and periodicals to sections of the institution where inmates are housed; (iv) The librarian should stimulate interests of inmates in reading. Thus, the library facilities and educational programmes in prison should be well integrated to provide opportunities to the prisoners to develop their personalities and become useful citizens of the society.

2.4.5 Prison Labour:

The notion that works should be provided for prisoners is almost as old as the prison system itself. When institutions became places of punishment rather than places of detention for persons awaiting trial, systems for occupying the time of prisoners also arose. Since the aim of imprisonment is reformation and not retribution, every prisoner should be assigned with such work which will lead him to his social rehabilitation. Profit cannot be the predominant motive.
Analysing all the possible aims of prison labour, the Indian Jail Committee, 1919 stated that mere exaction of profit cannot be the true object to be kept in view in the selection of prison labour. That object must, rather, be the prevention of further crime by the reformation of the criminal.96

Prison labour has many positive aspects about it. Thus the prison labour may be (a) the prime factor in alleviating the problem of prison discipline, (b) the principal means of making the prisons self-supporting, (c) a just means of punishment, (d) to protect and preserve mental and physical health of the prisoners, (e) the means of preparing the prisoner for return to society, and (f) a form of labour that will not compete with private industry, that is, with honest labour.97 Most importantly, through prison labour inmates learn skills, which enable them, in the post-release period, to support themselves and their families by legitimate means so that they do not have to turn to crime. Thus the prison labour has the value of habit forming and has a therapeutic value.99

The prison labour should be so arranged that the prisoners acquire certain skills which they can use after discharge. But the possession of these skills does not, by itself produce reformation. Instead, it is at least probable that possession of the skills affects the social mobility of the discharged inmate and that as he moves from the status of an unskilled worker or of an unemployed person to the status of a skilled worker, his association and, consequently, his attitudes towards legal norms also change.100 Rather than return to the social situation which produced his criminality in the first place, the discharged inmate who has been trained for an useful occupation, conceivably will move into a new social
situation, perhaps one not conducive to criminality. On the other hand, idleness seldom equips inmates for shifts in loyalty from criminal groups to law-abiding groups. Thus, prison labour is quite conducive to reformation and rehabilitation of prisoners.

2.4.6 Living Conditions in Prison:

Prison should be a place where the prisoner can be confined safely to serve his sentence under conditions, which are conducive to correctional treatment, and maintenance of minimum basic standards of human dignity. The different categories of prisoners should be provided separate accommodation. This is an essential requirement for any meaningful reformation of prisoners, otherwise no individualized training and treatment would be possible.

Firstly, a prison must be free from overcrowding of inmates, overcrowding is injurious not only to the morale of the prisoners but also to their health and mind. It makes custodial surveillance difficult. Sanitary conditions cannot be properly maintained. Unhealthy, unhygienic conditions create health problems. Report of the All India Jail Manual Committee, 1957-59 observed: "owing to a continuous state of overcrowding minimum standards for housing and equipment, sanitary services, water-supply, segregating inmates of various categories etc., cannot be properly maintained; unemployment and idleness increase in prisons; discipline becomes a complicated problem attention to the care, welfare and training of inmates becomes a difficult proposition. The overall efficiency of an institution thus gets lowered". Thus, in a prison effects of overcrowding on inmates and institutional environment are deleterious,
destructive and dehumanizing. In order to secure humane conditions in a prison, decongestion of prisons should receive top priority. Because, on it hinges the humanisation task.

2.4.7 Medical Facilities:

Another important obligation of prison administration is to protect prisoners' health. Proper care of prisoners' health requires not merely provision for medical aid but also of making available various other facilities in regard to food, dress, bed, air and light, work, games, etc, transfer of ailing prisoners to other institutions for specialized treatment and care and treatment of lunatic and drug addicts.

The Model Prison Manual States that the object of medical administration in prisons is mainly to restore and maintain the physical and mental health of prisoners and to keep up the general sanitation and hygiene of the institution to a satisfactory standard. Further the manual laysdown that there shall be (i) medical staff specially selected for prison work and arrangement should be made for imparting necessary training to them; (ii) adequately equipped hospital, both for men and women prisoners, with provisions for medical, surgical, dental and psychiatric services; (iii) adequate arrangement for taking prophylactic measures against infectious diseases and epidemics; (iv) sufficient aids in developing research, and reducing the incidence of delinquency and crime and conduct disorder. 103
2.5 CONCLUSION

The above analysis of aims and objectives of imprisonment has revealed that there are mainly three different objectives of imprisonment. They are: Retribution, deterrence and reformation. Obviously, considerable debate and controversy surrounds all the three justifications of punishment. The reformatory theory emphasises educative and therapeutic value of imprisonment. Deterrent theory emphasises the effect of punishment on actual and potential offenders. Retribution considers punishment as an end in itself. Too much emphasis on reformation undercuts deterrence; too much concern for retribution affects reformation; and too much emphasis upon deterrence obscures the retribution's concept of desert. The presence of these conflicting justifications has rendered the prison system confused. According to Salmond a single-minded pursuance of any of these particular aims of punishment could lead to disaster.

Of these various justifications, the reformative theory is in conformity with the present day emphasis on human dignity. The idea that the punishment is basically for reformation and rehabilitation has been accepted by majority of thinkers on penal reform. However, many thinkers firmly believe that, it is quite impracticable that the prison can act as a reformatory and the entire idea of imprisonment is wrong. But these very critics admit that there is no suitable alternative to imprisonment as a punishment. It may be stated that the imprisonment for a sufficient time under healthy conditions, under the care of trained, competent, sympathetic prison personnel, is an ideal means of reforming offenders. This reformative object assumes all the more importance in order that
all the prisoners would return to free society, sooner or later. If they return as reformed individuals, it is the society which would be ultimately benefited.

Every prison should be organised in such a way that all its negative features are minimised. To achieve this objective a thorough reorganisation of prison administration should be undertaken. In this direction every prison should provide for scientific classification of prisoners; maintenance of prison discipline through regulation of everyday institutional life; appointment / recruitment of competent trained personnel; prison education, library facilities; prison labour; proper and adequate living conditions; and efficient medical facilities. The prison should be decongested. If these prerequisites are taken care of a prison can fulfill the important objective of imprisonment- i.e. Reformation.
NOTES AND REFERENCES

1. Ramond Saleilles, *The Individualisation of Punishment*, Montclair: Patterson smith, 1968, at 4-5.; According to Sutherland and Cressey: "[T]wo essential ideas are contained in the concept of punishment as an instrument of public justice- (a) it is inflicted by the group in its corporate capacity upon one who is regarded as a member of the same group, (b) punishment involves pain or suffering produced by design and justified by some value that the suffering is merely accidental, to be avoided if possible, it is not punishment". See Sutherland Edwin H And Cressey Donald R. *Principles of Criminology*. 12th ed. Bombay: The Times of India Press, 1985.

While explaining the aims of punishment J.E.Hall Williams very pertinently remarked: "Punishment... a convenient word by which to describe the various methods available for dealing with offenders upon conviction of crime". See J.E. Hall Williams, *The English Penal System In Transition*, London: Butterworths, 1970 at 3.

2. Thus Bhattacharya writes: "causes of crime are multiple and complex. The roots of crime lie deep in the social system, and the criminal is more often than not a "product". See B.K. Bhattacharya, Prisons, Calcutta: S.C. Sarkar and Sons, 1958 at 2.


4. *Id.*


7. *Id.*

8. See Sutherland and Cressey, *supra* note, 1, at 460; J.E. Hall, *supra* note 1 at 3; Oliver Wendell Holmes J.R., *Theories of Punishment and the External standard in Goldstein* *Id.* at 27-28.
9. Thus, Ralph A. Rossum opines that: "Each of these justifications is in conflict with the others; yet correctional personnel in the United States often attempt to rely on all of them and, as a consequence, fail to achieve the objectives of any of them" See Ralph A. Rossum, *The Politics of the Criminal Justice System*, New York: Marcel Dekker, INC 1978 at. 225.

10. Thus Galtung John points out that "[t]he structure of the prison system is an uneasy balance between the different functions it is designed to meet" See Hozelrigg, Lawrence (ed) *Prison Within Society*, New York, 1968 at 47.


12. Michael D. Bayles, *supra* note. 5 at 285.; "... the state is entitled to impose penalties on criminal acts because they are immoral...” see, Michael Phillips, *The Justification of Punishment*. 5 Law and Phil 393 (1986) at 396.


14. *Id*.

15. *Sutherland and Cressey supra* note.1 at 288.


17. Thus, Cessare Beccaria opined : "As punishment becomes cruel and more severe, the minds of men... grow more hardened and calloused.... In order to insure that a penalty will produce the desired effect it is sufficient to provide that evil attendant on the penalty exceeds the good expected of the crime”. See Hermann Mannheim, *Pioneers in Criminology*, Mont clair : Patterson Smith, 1973 at 45.

18. Thus Ralph A. Rossum Says: "It is based on the view that punishment either actual or threatened, will inhibit those who are otherwise disposed to commit crimes" *supra* note. 9 at 226.

19. J.E. Hall Williams, expresses a great deal of doubt concerning the effectiveness of punishment as a deterrent on the individual offender. According to him, the threat of punishment is more likely to be effective as a
deterrent in the case of property crimes than in the case of crimes of a more
impulsive nature. Secondly, punishment as deterrent depends on the
character and personality of individuals, it may deter some individuals than
others. Thirdly, the punishment should be swift and sure, like a seal of hot wax". *supra* note 1 at 6.

20. But J.E.Hall Williams feels that: "[t]he effectiveness of general deterrence
may well be influenced by the following: (i) if requires the public to be
informed of the offence and penalty imposed for it. General deterrence
depends on the widespread dissemination of knowledge what happens to
offenders who are caught and convicted; (ii) the public must be in general
sympathey with the law and the way it is being administered; (iii) the public
are not moved to compassionate sympathy in the individual case for some
special reason". *Id.*, at 7-8. The theory of general deterrence is explained
by Ernest Vanden Haag that: "unlike incapacitation and reform deterrence is
not concerned with the convict. It is a message addressed to the public at
large... Deterrence protects the social order by restraining not the actual
offender, who, eo ips has not been deterred, but other members of society,
potential offenders who still can be deterred". See Ernest Vanden Haag,


22. See Hyman Gross and Andrew von Hirsh (ed.) *Sentencing*, New York :

23. Cited by Johannes Andanaes, *The Morality of deterrence* in Hyman Gross,
*Id.* at 191.


27. Explaining the genesis of this argument, Sutherland and Cressey noted that
the classical school, to which Beccaria made one of the first significant
contributions and to which Rousseau, Montesquieu , and Voltaire belonged
maintained the doctrine of psychological hedonism, that the individual
calculates pleasures and pains in advance of action and regulates his
conduct by the results of his calculations. The implication of the doctrine
according to them, was that the societal reaction to crime should be to the
administration of a measured amount of pain. The general proposition of
the classical school was that it is necessary to make undesirable acts
painful by attaching punishment to them and to make the amount of pain
thus attached entirely definite, so that the prospective criminal could make
his calculations on it and to make it just sufficient so that the pain would exceed the pleasure." See supra note 1 at 259.

28. Lord Reid highlighted the danger inherent in this argument by saying that "This I would say will all the emphasis that I can command: the author is not increased penalties. All history shows that once you increase penalties beyond what public opinion will support, you do more harm than good and the frequency with which juries acquit in cases where the evidence seems almost overwhelming shows that already public opinion is strained to the limit on the matter". See J.E. Hall Williams, supra note 1 at 8.

29. Sutherland and Cressey supra note 1 at 288.

30. Id. at 289.

31. According to Sutherland and Cressey, some of the types of unanticipated consequences produced by punishment are that: (1) It often isolates the individual who is punished and makes him a confirmed enemy of society and his influence may extend to other individuals; (2) punishment may make criminals more cautious, and they may take many precautions to provide in advance for immunity in case they are caught, (3) punishment may create other unanticipated attitudes like lack of respect for law, lack of patriotism, lack of initiative and loss of self respect, (4) punishment often gives an offender a high status, (5) punishment generally stops constructive efforts see supra note 1 at 317 - 320.


33. Id.


35. See supra note 31.

36. M.J. Sethna, Society and the Criminal, Bombay: N.M. Tripathi, 1977 at 237


41. Francis A. Allen, Criminal Justice, Legal Values and the Rehabilitative ideal in Goldstein and Goldstein supra note at 272.

42. Id.


44. Dr. Walter C. Reckless Visited India as an U.N. Expert during the years 1951-52 to suggest ways and means of prison reforms in India.

45. Quoted with approval by M.K. Gandhi, in Young India 18-2-1926, p. 67.


47. Report of All India Committee on Prison Reforms, 1980-83 Government of India: Ministry of Home Affairs. "A duty is, therefore, cast on the Government to see to it that a prisoner when he is released, is not materially handicapped in any way and he should be able to walk back straight to his place in the social structure of life after paying due price for his lapse". Id. preface p.(ii).


49. Id.

50. Jawaharlal Nehru supra note 46 at 122.


52. Id.

53. Id. at 447-8.

54. Id.

55. Id. at 448.

56. Thus Bettelheim opined: "[m]en under guard stand in constant danger of losing their identification with the normal definition of an adult and the
imprisoned criminal finds his picture of himself as a self-determining individual being destroyed by the regime of the custodians" \textit{id.}, at 453.

57. \textit{id.}

58. \textit{id.}, at 450.

59. \textit{id.}


61. \textit{id.} at 211.


63. \textit{id.} at 94.

64. \textit{id.},

65. \textit{id.}

66. Sutherland and Cressey \textit{supra} note 1 at 460-61.

67. M.J. Sethna \textit{supra} note at 246.


69. \textit{id.} at 25.

70. \textit{id.}

71. Sutherland and Cressey \textit{supra} note 1 at 462.

72. \textit{id.}

73. \textit{id.}

74. \textit{id.}

75. Jaya Tilak Guha Roy \textit{supra} note 34 at 44.

77. *Id.*

78. Some modern criminologists have opposed the consideration of the nature of crime for the purpose of classification. For instance, Barnes and Teeters opined: "[T]he function of classification is to differentiate the various inmates... in terms of their potentialities for rehabilitation regardless of the offence on the sentence". See Harry Elmes Barness and Negley K. Teeters, *New Horizons in Criminology*, Ind. Ed., 1966 at 467.


80. *Model Prison Manual* *supra* note 76 at 60.

81. Sutherland and Cressey *supra* note 1 at 471.


83. *Model prison manual* *supra* note 76 at 194.

84. *Id.*

86. Sutherland and Cressey *supra* note 81 at 477-78.

87. *Id.* at 529.

88. *New York correctional law*, chapter 864, Section 136, cited in Sutherland and Cressey *Id.*, at 529


91. B.K.Bhattacharya *supra* note 2 at 82.

92. Sutherland and Cressey *supra* note 1 at 529.


94. Sutherland and Cressey *supra* note 1 at 513, "Originally Prison Labour was intended to inflict punishment," says Bhattacharya, to disgrace and humiliate him and finally to crush him. *supra* note 2 at 59.
95. Id.


98. Sutherland and Cressey, supra note 1 at 521.


100. Id.

101. Id.
