CHAPTER-II

PRISON SYSTEM IN INDIA : RETROSPECT AND PROSPECT

I. Introduction

The Indian legal system can retrospectively be divided into the ancient period, medieval period and modern period. Initially, the whole legal system was dominated by the religious principles mostly derived from the verses of the Vedas in the contemporary social conditions. In this chapter an attempt has been made to find out how and from where reformation of prisoners came to be recognized as independent subject calling for attention of criminologists and sociologists asserting that the offenders to be resorted back to society as socialised human being and are able to contribute to the common good. To throw more light on the development of the concept of prison system retrospectively and prospectively which may resocialize a prisoner into a productive law abiding citizen. The chapter has been further divided into three parts.

II. Prison System in Ancient Period

In ancient India the penal system has deep roots. Various jurists gave their own theories of punishment. It is known as 'danda-niti' which literally means principle of punishments.\(^1\) Manu,

the great law giver of India, emphasized that 'Danda' was created as derivative of Dharma.\(^2\) R.C. Nigam has the view that, while criminal science or criminology is modern growth in the west, it would be interesting that it was a fully developed subject of study in India even before the dawn of the Christian era.\(^3\) It simply indicates that criminology of Danda-niti is not new science, but the Indian law governing agencies were very familiar to the concept of Danda-niti. It is as old as the Smrities. A lot of ancient Indian literature contained about Danda-niti i.e. Vedas, Smritisashastras, Dharamsastras, Kautilya's Arthsashtra. According to the work done by Bana, there are indirect references to crimes and rigorous imprisonment. Manu said that after considering the inclination in the offender, his antecedents and capacity punishment should be given. According to Brihaspati, a gentle admonition should be given to a man for light offence. Kautilya advised the king to award punishment which should neither be mild nor severe. In "Brahmbibatra Puran, Lord Mahadeva\(^4\) told Brahma\(^5\) that if people commit offence, it is duty of pious man to forgive him.\(^6\)

During Mauraya ruler, particularly in the reign of Ashoka (269-232 B.C.) a new official known as 'Dharam-Mahamantri' was appointed who was to look after among other matters of the prisoners in jail.

In fact the Hindu jurisprudence was looked upon offences from the moral and religious angles. Not merely did the king

\(^2\) Manu Smriti, VII-3, 4, 15, 18, 22.
\(^4\) Lord Mahadeva is God known for destruction of evil among the Hindus.
\(^5\) Brahma is God known for creation among the Hindus.
consider it his duty to punish the offender without leaving him to be avenged by aggrieved person either privately or through court by punishment or compensation, but also took cognizance of the 'Apradh' (crime) without any petitions or information by the aggrieved. The King as keeper of peace was not satisfied in merely augmenting the royal coffers, thus permitting the rich subjects to commit breach of peace and pay the penalty. It was not even necessary that the delinquency should result in harm or injury to somebody else. The fact that drinking of wine by a Brahmana is considered as serious a sin as the incest with one's nearest relatives is an illustration of this point. Compounding of certain offences without permission of the court is punishable.\textsuperscript{8}

The accused persons were punished mostly with fine only, who were having capacity to pay it off. But in the case of poor criminals, who had not enough money to pay the fine the Manu observed that:-

“Persons belonging to Kshatriya,\textsuperscript{9} Vaishya,\textsuperscript{10} Sudra\textsuperscript{11} castes, who were unable to pay the penalty money could be freed or their debts by labour. A Brahmana should be asked to pay in easy installments.”

It is pertinent to observe that the above expressions i.e. labour; indicates forced labour. It was the discretionary power of

\textsuperscript{7} Brahman were the persons of community who look after into religious matters and run the educational programmes.
\textsuperscript{8} Supakar Shruddhakar, Law of Procedure and Justice in Ancient India, 1986, p. 296.
\textsuperscript{9} Kshatriya- Who involved in political & defense matters.
\textsuperscript{10} Vaishya- Who involved in business.
\textsuperscript{11} Sudras- Who involved in labour works.
the king to engage such persons in work either inside or outside the prison.

From the above observations it is evident that criminal justice system was having multifarious situations with a view to provide proper punishment to the wrongdoer. Moreover, as per evidences the punishment was further subject to certain factors like; if the Brahmana commits crime, obviously punishment was in the nature of fine. But contrary to this vice-versa the situation was not same. It depicts from evidences that when the Kshatriya, Vaishya or Sudra, as the case might be was sentenced to fine, was neither able to pay it nor work in lien thereof (on account of disease, old age or any other sufficient reason) was sent to the prison. About Prisons, Manus observed:-

"Let him (the King) place all prisons near a high road where the suffering and disfigured offenders can be seen."12

Thus from the above observation it is clear that the prisons were meant mere for public dishonor of the persons imprisoned and that the prisoners were exposed to public view, unlike as at present. The basic purpose for such kind of incarceration is to fit an example to the general public, so that no other may dare to commit similar kind of crime in the kingdom. The prisoners were probably required to do some labour. It was an age when slaves were forced to work without any wages. Persons who could not pay fine could be made to work, without wages even without the necessity of putting them in prisons. Kautilya speaks of such

forced labour and provided that women committing offences should be made to work half as much as a man does.\textsuperscript{13}

It is evident from the fact that during this period there was no development of science of penology. The revenge seemed to be causation of crime. King being the fountain of justice was capable of taking any kind of decision. Moreover, it is further evident that caste played an important role while awarding punishment to the guilty. It simply means, the main purpose to provide prison was to give an opportunity to offender/wrongdoer by the state authorities, such circumstance where reformation of prisoner can be done.

Reformation of prisoner is the basic aim of prison. Presently the Laws and Governments provide various kind of prisons, keeping in view, the nature of offence.

\textit{Kautilya} prescribes that a jail should be constructed in the capital, provides with separate accommodation for men and women. They have to kept apart from each other. The jails were well guarded at the entrances. He further states that among the duties of the \textit{‘nagaraka’} is to let out of the jail on the day of the festival of the birth constellation of the king and on the full moon day of every month. Such persons as are young, very old, suffering from diseases and helpless or those who are charitably disposed may pay the fines or others bind themselves by an agreement to pay in cash the fines for the offences for which the prisoners are jailed and then the prisoners may be released. The persons jailed may be set free on their working every day or once in five days or by undergoing corporal punishment and paying fines in cash.

\textsuperscript{13} Supakar Shruddhakar, Law of Procedure and Justice in Ancient India, (1986), pp 298.
Prisoners may be released from jails (as a favour) on the conquest of fresh territory or on the coronation of the Crown Prince or on the birth of a son to the King. In the Delhi Topra Pillar Edict No. IV emperor Ashoka promulgates that he gives three days respite to prisoners on whom judgement has been passed and who have been condemned to death and in the 5th Pillar Edict of Delhi Topra he says that he let off prisoners 25 times in 26 years (which is in conformity with Kautilya's dictum cited above). In the first separate Edicts at Dhauli Ashoka address his officers of justice in the capital (Nagaravyavaharikah) that they should so act that even a single person should not unnecessarily suffer imprisonment or pain. In spite of this if we are to believe Yuan Chwang, Ashoka in his early career was most cruel and had constructed a jail that was called Hell-prison of Ashoka.

The Silappadikaram, one of the earliest works in Tamil, mentions the release of prisoners on the king's birthday and at the founding of a temple. Kalidas in the Malavikagnimitra (Act IV) makes the Vidusaka report to the king, the astrologers think that as the constellation on which our majesty was born is in evil aspect now, let all prisoners be released. Kalidas alludes to the release of prisoners and the commutation of death sentences at the time of the coronation of King Atithi. The Brhat-Samhita (47.81) states that when the king takes the 'pusyasnana', he may order release except as to those prisoners who were convicted for

17 Id., pp 38-39
18 Raghu 17.19
19 Ceremonial bath on the day on which the moon is in conjunction with the Pusya constellation in the month of Pansa or every month
offences connected with his own person or with the harem. In the *Mrcchakatika* (Act X) also various occasions for the release of prisoners are mentioned by the executioner. The *Harsacarita* refers to the usage of releasing prisoners at the time of a coronation and on the birth of Harsa IV. The prisoners are described in the letter passage as having long beards and as darkened by the accumulation of dirt on their bodies.

In present time the government is provided a lot of budget so as to establish to maintain and to run the prisons. But in ancient India, there were no elaborated provisions for prisons given in the legal literature. Even *Kautilya’s Arthasastra*, which deals with the superintendence of treasury, the stables, the octroi, the prostitutes and others, does not deal with the superintendence of prisons. Of course, *Kautilya* speaks of putting the princes in prisons for political reasons. Traitors or political prisoners are mentioned in ‘Puranas’ and history. The ‘Kansa’ in *Bhagavata* imprisoned his sister and her husband. In Mahabharata too we find that *Duryodhana*, imprisoned the entire family members of his maternal uncle. In Muddaraksha there is also the incidents of imprisonment for political reasons. There are also the stories of imprisonment in the ‘Panchtantra’.

**III. Prison System in Medieval India**

In the Medieval period India was governed by the Mughlas and Muslim law which was prevalent in India at that time. They have developed their own system for law and justice. They have their own jurisprudence i.e. Islamic Jurisprudence which was also
known as 'fiqh'. The literal means of 'fiqh' is wisdom. Theoretically it is believed that 'fiqh' is derived from the Quaranic Law (the Sharia) and is, therefore, regarded as immutable by any human institution. The 'fiqh' is mainly drawn from two sources, the Quaran and the Sunna which consists of the traditions revealed to explain the Quran. It was observed that 'fiqh' did not cover all cases. Ultimately, there was the conceptualization of the analogy, which was called qiyas (analogy). Moreover, one source was found which ultimately got recognition was ijma or in simple words 'universal consent'.

According to fiqh, four mains schools grew up i.e. (1) the Shafite (2) the Hanifite (3) the Malikite and (4) the Hanbalite.

The theory of fiqh does not recognize the non-muslims as a citizen of the state. At that period of time there was vast non-muslim population. It was impossible to rule the whole population according to the strict injunction of their creed. From Shershah onwards, the attitude of the rulers underwent a complete transformation. They allowed this religious liberty and Hindu were governed by their own laws. In any matter i.e. civil or criminal first of all it was village panchayat who were allowed to use their powers. When the parties are not satisfied to the judgment of the Panchayat either party is free to prefer an appeal Qazi Court (it happened rarely). Qazi was judicial officer (both in Civil and Criminal matters). The 'Qazi' was supposed to perform following functions:

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21 Ibid. Keeping this in view faqihs were compelled to apply analogous cases on such occasions.
22 Ibid
1) To try and decide the cases.
2) To execute judgment.
3) To appoint guardians for those are incapable of dealing with their property e.g. lunatics, minors and to manage Waqf property.
4) Supervising and manage Waqf property.
5) Execution of wills
6) Charge of remarriage of widows.
7) Execution of punishment prescribed by religious laws.
8) Supervision of streets and buildings.
9) To collect the tax (in some cases).²³

Moreover, in the Muslim period the system of awarding the punishment was not uniform. It simply means that few men must be punished for his first fault whereas as per situation or group some were forgiven for many occasions.

In Muslim period the imprisonment was not recognized as punishment. It was Abul Fazal one of the Ld. Minister of Akbar who gave an interpretation that the Muslim rulers could award imprisonment to the offenders.²⁴ Before him in criminal justice, the Islamic principles of punishment was divided into three classes i.e. (1) Hadd (2) Qisas (3) Tazib.

Hadd is that punishment the limits of which have been defined in Quran and Hadis. The following belongs to this class:

(a) Adultery (Zina) for which the adulterer must be stoned.

(b) Fornication (Zina), for which the guilty person must receive one hundred stripes.

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²³ Id., at p 321.
(c) The false accusation of a married person with adultery (Kazf) for which offender must receive eighty stripes.

(d) Apostasy (Ittidad), which is punishable with death.

(e) Drinking wine (Sharab), for which the offender must receive eighty stripes.

(f) Theft (Sarikah), which is to be punished by cutting off the right hand.

(g) Highway robbery (qata’ut-tariq) for robbery only, the loss of hands and feet and for robbery with murder, death either by the sword or crucifixion.

Qisas, literally means “retaliation” is that punishment which although fixed by law, can be remitted by the person offended against or in the case of a murdered person, by his heirs. It is applicable to cases of murder and of wounding. Qisas is the ‘lex talionis’ of Moses i.e. “eye for eye, tooth for tooth.....”, but in allowing money compensation Muhammad departed from the Jewish Code.

Ta’zib is a punishment which is left to the discretion of the qazi or judge.25

In the above classification it is found that no distinction is recognized between the offenders on the basis of their status or characters. Secondly, the principal of punishment was not uniform. Sometime it is deterrent, sometime retributive and sometimes it is comparatively milder and hence, reformative.

It is important to mention here that *Abul Fazal*, Minister in *Akabar* government and in his preface to *'Ain-i-akbari*’ discussed the general principles of punishment in which he takes the personal character of the offender also into consideration.\(^{26}\) He classified men worthy of punishment into two broad categories, the inconsiderate man and the vicious man. If the inconsiderate man commits some fault or crime owing to his foolishness, he should be corrected by advice and admonition or severe censure, if necessary. But in the case of vicious person a severe remedy is necessary. First he should be imprisoned; if this remedy fails, he should be deprived of his dwelling: if this also does not avail, he should be exiled. If all these fails to improve him, he should be deprived of the instruments of wickedness and lose his sight or his hands or his foot as a last resource. But the king should not go so far as to cut the thread of existence. *Abul Fazal* then explains further, “it is, therefore, necessary for just kings to make themselves first acquainted with the rank and character of men by the light of insight and penetration and then to regulate business accordingly.” This principle of punishment based on a due discrimination according to the character of the offender was followed by Akbar is evidenced by the instructions he issued to his Governor in this connection. Thus it cannot be said that the Mughal emperors in that period strictly adhered to the Islamic principles or even to the Islamic laws of punishment, although in the case of certain crimes such as theft, their punishment were practically same as prescribed by the *Quran*. In other matters, they greatly departed from the *Quaranic* laws and the reason for this departure was that firstly there were many cases which did not

\(^{26}\) *Id.*, at p 358.
come exactly within the ambit of the *Quranic* law. Secondly, in many cases social and political needs and the attendant circumstances demanded a different treatment. Consequently they freely exercised discretion without being mechanically tied down by any set of rules or laws.

An attempt has been made to classify the different kinds of punishments which were given under the Mughal rule, with the offences for which they were given.

1. Fines and confiscations, or forfeiture of rank and title, or dismissal from office, or subjecting to humiliation by other methods.
2. Imprisonment and internment.
4. Whipping and other corporal punishments.
5. Mutilation of the offending limbs.
7. Cases of royal wrath.

The first three classes of punishments were often given to government servants for different kinds of faults but other people also received the same punishments for crimes of similar nature. The public servants who committed the crime in their official capacity can be broadly classified under two heads. Firstly, acts of oppression on the people or direction of duty and secondly, treason, rebellion or effrontery against the sovereign. Crimes of injustice or misrule were punished in proportion to the gravity of crime.
Regarding prisons in the medieval period, it is proposed briefly review the system of punishment of criminals by imprisonment, banishment and internment.

Despite these in the Mughal or medieval period the regular jails for confining convicts were of two classes which for the sake of convenience shall be called as 'A' class and 'B' class jails. The 'A' class jails meant for imprisoning men of high rank, high government officials and princes, that is to say, they were meant for the royalty and aristocracy. Contrary to this, the 'B' class jails were meant for criminals of ordinary status, that is, for criminals of ordinary status that is for the rank and file. For the royalty and nobility several fortresses situated in different parts of the country were used as prisons. Occasionally, however, the same fort was used as prison for both classes of prisoners, although there were separate apartments for them inside the fort.

The forts which were used as prisons were Gwalior, Ranthambor, Rohtas (East), Bhakkar, Junnair (South) and Biana. Probably some other forts were also used for the purpose. It seems that the central prisons of provincial capitals were also used to imprison political convicts of high standing and high government officials. For instance, when Shah Abul Mallil turned treasonous and was arrested, Akbar, spared his life, but sent him to be imprisoned at Lahore under the custody of the Chief Kotwal. On hearing the news of this incident Munim Khann, governor of

27 Finch, 145.
28 Bad. II, 300 and 366, also III, 88.
29 Or. 175, fol. 177a.
30 M. U. (Tr.) I, p134, Muhammad Zamn Mirja, J. Son of Sultan Husein Biqara of Heart and Cousin of Babar, had revolted against Humayun and was imprisoned in the fort of Bianna.
Kabul, put Abul Maali's brother, Muhammad Hashim, Jagirdar of Kahmard into the local prison.\(^{31}\)

Beside the forts and central prisons of the capital towns, there were jails also at the headquarters of the Sarkars and Paraganahs. These public jails were called 'Bandikhanas'. But it seems that besides the public prisons for common criminals there were some better places for keeping under custody prisoners of a higher status in life.\(^{32}\) There were regular 'Bandikhanas' in Midnapore which was the seat of a Sarkar and at the seat of the Shiqdar which was a paraganah.\(^{33}\) A similar reference to these smaller jails is to be found in a communication of Khan-i-Dauran, Governor of Orissa (1600-1667) to his agent Muhammad Jan, when sending him to some fraudulent qanungos and zamindars who had been released from prisons.\(^{34}\)

The most prominent fort which was used mainly as a prison for princes\(^{35}\) and occasionally for nobles and high official was that of Gwalior.\(^{36}\) But part of it seems to have served as prison for ordinary man also.\(^{37}\) Next to Gwalior in importance was the fort of Ranthambhor. This was like was used for both classes of

\(^{31}\) A. N.II, (Tr.) pp. 29-30
\(^{32}\) See Manrique, 1, p. 421
\(^{34}\) Sarkar, Studies in Mughal India, p. 216.
\(^{35}\) Monserorate, Antony, Mongolice Legation in Commentaries (1580-82), Translated by Hoyland & Banerjee (London) 1922, p. 211.
\(^{37}\) Monserorate, Antony, Mongolice Legation in Commentaries (1580-82), Translated by Hoyland & Banerjee (London) 1922, p. 211. Finch, 145; Berneir, 14; Mundy, 61.
prisoners. It is not unlikely that the other forts might also have served both purposes.

The scrutiny of entire period depicts that the period of imprisonment does not seem to have been defined by any definite rules, its determination being left to the discretion of the trying Magistrate. Because at that time there were no criminal or penal codes were in existence. In criminal litigations most of criminals were disposed of by various means and ways. The penalty of imprisonment seems to have been administered in the main to the government servants, high as well as low, who were guilty of breach of trust, fraud, oppression or treason. The common people were consigned to custody in jails pending their trial and judgment. Manrique and his companions were, for instance, put in custody in the prison during the pendency of their trial. Similarly the boy servant who killed his master at Patna was put under arrest and was released when the Governor could not further proceed against him. In the case of Government servants it seems the time and conditions of release depend on the discretion of the Emperor or the local authorities concerned. Three circumstances provided the occasion for the exercise of discretion in regard to the release of prisoners. The relatives or friends of the prisoners themselves made supplications and begged forgiveness which was often granted if the convict was considered to have

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38 Saran, P., The Provincial Governments of the Mughals (1526-1658), (1973), p. 345. In the 11th year of reign, Jahangir, when moving from Ajmer, halted near Ranthambhor and as the neighborhood of the said fort had become a halting place for royal standards, released some of the prisoners who were confined in the fort.


40 Ibid.

41 Ibid.
undergone enough punishment for his crime. But it is in the
discretion of the Emperor or his judicial officers only after their
satisfaction they can release the convict, all it is in their hands or
as per their will. Not often the influence of a Nobel or Minister
came to the rescue of a prisoner. Besides this the Emperor
themselves frequently inspected the prisons, enquired into the
conditions of convicts and released those who had suffered
enough. Similarly, in the provinces and districts it was the duty of
the Governors and qazis regularly to inspect the prisons. They
have to see the conditions of the prisoner and to release the
innocent and those who deserved to be released. Suspects of any
sort of habitual crimes, such as theft, murder, robbery, larceny
were put under arrest to ensure public safety.\textsuperscript{42}

In the Mugal period there were few instances which clearly
indicate that bail was granted to some accused persons from
prisons.\textsuperscript{43} Munucci was accused of theft by Muhammad Amin Khan
the retiring Governor of Lahore and put into jail. But being a
favorite of Fidai Khan, the Governor designate, the latter had sent
orders for his release. But the Kotwal told Munucci that he had to
produce bail according to the law, for his release.\textsuperscript{44} There is one
more instance that of Manrique and his party having been released
on bail produced by a Muslim merchant of Midnapore.\textsuperscript{45}

\textsuperscript{42} All these points are given in full detail in the Farman of the Emperor
\textsuperscript{43} Sara P., The Provincial Government of the Mugals (1526-1658), 1973 at
p 363.
\textsuperscript{44} Mannucci, Nicolo: Storia do Mogor (1653-1708) by Nicolo Mannucci, Edited
and Tr. by W. Irvine London, 1907.
\textsuperscript{45} Taveires, Jean-Baptist at p 198 Travels in India (1640-67) Tr. V Ball 2nd
Moreover there were no clear account of life of convicts and accused in prisons in present available literature. So once again to Manrique a very lucid and full account of the conditions of the life of prisoners in the jails. When Manrique and his party were arrested on suspicion of being the pirates of Chatgoan and sent to the Kotwal’s court at Midnapur certain merchants were called to identify them. One of these merchants was quite intimate with a reversed priest at Banja who was a friend of Manrique’s too. On the strength of this acquaintance Manrique requested his merchant friend to have them sent to some more comfortable place instead of the ordinary jail where he was afraid they might be ill-treated. But as their identity was not yet proved, his request could not be granted. The merchant however, offered to see the jailer and provide for their comfort. Being taken for pirates they were chained and collared with an iron ring. But through the good offices of their merchant friend who stood security for them not only their chains and collars were removed but they were given beds to sleep and supplied with food from the merchant’s home. Moreover, a surgeon was called to treat their wounds and his application worked like magic, curing them completely in a few days to the great administration and wonder of Manrique. Their merchant friend also visited them daily and provides them with all possible comforts.46

The above instance clearly shows that the accused persons, who were not convicted, were provided with facilities. In this case the food was allowed from outside. Beds were also provided to sleep. The surgeon was also allowed to cure them. Moreover, near ones were also allowed to visit the jail. But it could happens only in

46 Id., at p. 424
the cases of persons who are suspects of crimes, not for the convicted persons in the Mughal period the deterrent and retributive theories of punishment were very much in practice.

Overall it was Abul Fazal one of the learned minister of Akbar, who gave an idea of imprisonment to the Mughal rulers. Ultimately Akbar was the first Mughal ruler who introduces imprisonment in his administration of criminal justice was a great departure from the Muslim law. It could be looked upon as the seeds of pen correctional philosophy anywhere in the world at that time. This system of imprisonment found a very favorable climate and flourished under ‘Jahangir’ under the name of justice with high sensitivity to humanness, compassion, kindness and noble qualities of head and heart. Jahangir was followed by Shahjhan who himself spent his last eight years at a captives of his son in Agra Fort. This was ‘A’ class prison. The room where he spent his time of imprisonment was well maintained and now is open for the visitors or tourists. At the time of Shahjhan the offender could not get generosity from the administration and any reform in prison administration. Shahjhan’s rule was usurped by his son Aurangzeb. When crowd gathered near his red fort to protest against inequality and discrimination, the imperial elephants were ordered out to crush them.47

In the medieval period the administration of criminal justice deteriorates “where the offender was deprived from his liberty and is physically forced on the point of pain and torture show obedience to the dictates of the states. Hardly any faith was left in the power of ‘dharma’ or religion to reclaim the offender to social

47 Sagar, Satya Parkash, Crime and Punishment in Mughal India, 1967 p. 159
ways of life." In the late medieval period at the same time with the growth of Mughal Empire on Indian soil, the Portuguese were actively developing their navigational activity which was to be treated as prelude of western powers into India. Portugal was under the sway catholic church with zealous fanacism.

During the late medieval period, the Christian Church had granted asylum or sanctuary to fugitives and criminals. These canon courts were traditionally forbidden to shed blood. Therefore, they adopted the Christian theme of purification through suffering. The wrongdoers were subjected to reclusion and even solitary cellular confinement, not as punishment alone, but a way of providing conditions under which repentants would most likely occur.

In 1600 the Portuguese constructed the Church prison at Goa. They ruled Goa for a long time. It consisted of a complex of buildings each two storied high, containing a total of nearly two hundred separate cells. A corridor ran the length of the buildings with seven or eight cells on each side. The cells were about 10 x 10 ft. with a small, barred, unglazed window in the vaulted ceiling, dark, somewhat lower and smaller.

IV. Development in Prison System during British Period

On December 31st 1600, a company was incorporated in England by a Charter of Queen Elizabeth, known as East India Company. By 1623 the said Company was authorized by the king

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48 Devakar, Re-Socialization of Prisoner, 1989 at p. 36
50 Devakar, Resociolisation of Prisoners, 1989 at p 64.
of England for the purpose of establishing trading in India, and the Company officer had been empowered to exercise legal control over the Company's British Servants, who were to be governed by English rule as prevalent in England. The Company gradually establishes its own policy and judicial system. The King Charter for 1661 extended the company's jurisdiction to include Indians and others living in the settlement and authorized the Governor and Council in each presiding to judge all persons belonging to the said government and company or that shall live under them, in all cases whether civil or criminal. A report submitted by Hamparey Cook in 1665 recorded the following observations, "I have enordered a prison to be made to keep all in quietness, obedience and subjection, this people generally been hereditigious."\(^5\) In this period the jails were much in demand and remained as poorly administered as in Mughal regime.

It was proved that the Company's jurisdiction on a more satisfactory basis in the Charter Act of 1726. For the administration of criminal justice on 15\(^{th}\) August, 1772, the Committee of Circuit, headed by Warren Hastings, drew a plan, which was adopted by the Committee on 21\(^{st}\) August. There was no centralized system of prisons and these existed as adjunct at the Faujdari Thana and the criminal court of the district.

A person was attached to each Fauzdari Thana as well as to the criminal court of the district under the superintendence of the Fauzdar. The Fauzdari prison was intended only for a temporary stay of the prisoners who was to be presented to the court and then put in the criminal jail after his commitment. As

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\(^{51}\) Fawcett, Sir Charles, The First Century of British Justice in India, 1934.
Superintendent of Prisons, the Fauzdar was to maintain regular accounts of prisoner for the running off and supervision of the Daroga or Judge of the Court.\textsuperscript{52} It was evident from the remarks by Mishra\textsuperscript{53} that, at the time there was separation between jails and lock ups. A system was adopted, so as to send a person to the jail. He rightly observed that:

"The jail appears to have been formerly any building in the vicinity of the court of the justice, which would commercially be hired or appropriate for the purpose."\textsuperscript{54}

It is very much clear from the facts that Britishers require only the place for isolation of prisoners, with the condition of place or jail, they has nothing to deal, because at that time, they are establishing their empire in India. It was again clear from the Aspinal's view i.e. "The Fauzdari goals were all sorts of make shift arrangements made with no genuine concern for the life and living of inmates. Sometimes Government found it more convenient to rent them to build a goal. The one at Dacca was hired for Rs. 30 a month and a Diwani gaol at Murshidabad for Rs. Fifteen only."\textsuperscript{55}

The gaol was a place where the prisoners were kept. The condition of such gaols were very much terrible and poor or in bad condition. Again it was observed from the writings of Aspinal:

"Until 1790 the prisons being a part of the Fauzdari Department were under the general management

\footnotesize{\begin{itemize}
\item \textsuperscript{52} Misra, B.B.: The Central Administration of East India Company, Indian Branch, 1959, pp. 315-16.
\item \textsuperscript{53} Ibid
\item \textsuperscript{54} Farminger, W. K., Bengal , Past and Present, Vol. III. Some reports related to origin of the Late presidency jail, quoted in the affairs of the East India Company, Neeraj Publishing House, Delhi reprinted, 1984, p. 86.
\item \textsuperscript{55} Aspinal, A, Cornwallis in Bengal, 1931, p. 31.
\end{itemize}}
Naib-Narzim and his subordinates, the Judges of the Fauzdari Courts.... The judges were in the habit of confining accused persons for long periods before bringing them to trial, their subordinated, the Thanedars, frequently imprisoned people without any show of legality."**56**

When the Judges were of habit of confining the accused persons then it was clear that there was no place for reformation of prisons. The Superintendent the Thanedhars also imprisoned the peoples without any reason. No one can think up of reforms in the prisons, because the prisons were only the punitive home or place for isolation. The higher authorities have no concern regarding the prison reform because they are quite busy with other matters. Either that is related to the war with different empires in India or to go for other works. It was also reported in the Calcutta Gaol which had ever been the charge of the British in June 1785, the rooms in these goals were knee deeper in water, and the floors being on a lower level then the surrounding lands; many of the inmates were naked. Many goals were terribly overcrowded and criminals and debtors, men and women, were often confined in the same building and even in the same room.**57** Keeping in view it is evident that there were no prison reforms.

It was the Regulation of December 3, 1790, transferred the management and control of the jails from Indian hands to European hands and the Magistrate was put in Charge of jails in his district. According to the Cornwallis, regarding jails, he said that humanity cried for a remedy and he told the Court of

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56 *Id., at p 3.*  
57 *Id., at p 4.*
Directors in December 1792 that he had resolved to rebuild all the jails in the province, in such a style that health and morals as well as safety of the prisoners would be secured.⁵⁸ As a consequence, the Regulation IX of 1793 came into being which provided prison as a system and emerged as the first comprehensive codification of rules for the management of jails, which also specified the objective thereof. The prison by that time was well recognized, separately indented institution for the detention of persons awaiting trial before the court and also for keeping persons from guilty and awarded a sentence by the court under the management of the collector and Magistrate of the District.

It is pertinent to mention here that under the East India Company Rule by this time, there were 143, Civil Jails, 75 Criminal Jails and 68 mixed jails with a total accommodation for 75100 persons has been built in Bengal, North West Provinces, Madras and Bombay.⁵⁹

It was the 1835 when Macaulay had adversely commented upon the conditions prevailing in jails in the following words:

“Whatever I hear about the Indian Prison, satisfies me that their discipline is very defective..... Hundreds of the worst and most desperate criminals are assembled there. They are collected in one great body. There are therefore quite able when their passions cure inflamed to an over power any resistance with those who are placed over them can after to their fury. It is only a few months since

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⁵⁸ Devakar, Re- Socialization of Prisoners, 1989, p. 79
⁵⁹ Ibid
they murdered the Superintending Magistrate. At present, no visitor can enter without danger and this evil exists at the very spot at which the greatest quality of European Government, under the very eyes of this Supreme authority... when such is the state of the jail at the presidency, we can hardly suppose that a good system is followed in the Muffusil. And all I can learn on the subject leads me to a believe that the prisons of India generally requires a great improvement... what I would suggest is that a committee should be appointed of the purpose of collecting information as to the state of India Prisons and of preparing an improved plan of Prison disciple.60

Comments of the Lord Macaulay, make the impact on the Governor General as he put almost true picture of jails and on the humanity ground it required very much improvements. So on the recommendation of Lord Macaulay, the Governor General in Council, on January 2, 1836, appointed a Committee of which Macaulay was a member. This Committee submitted its report in 1837, in which it severely criticized the prison system. The Committee deserved the following in describing the horrible conditions of Indian jails at that period which is worth mentioning:-

"On the whole, generally the care that is taken of the physical conditions of the unfortunate men in the great essentials of cleanliness, attention to the sick and the provisions of food and clothing appears to us to be

60 Chandra, Sushil, Sociology of Deviation in India, 1967, pp. 97-98.
highly honourable to the Government of British India....”61

“As it appears to us, that which has elsewhere been deemed the first step of prison reform has now not to be taken in India... what was in England the second stage of prison reform seems to be nearly the present stage of prison discipline in India. The physical condition of the provisions has been looked into but nothing more, and the consequence here, as in England, has been that a prison, without being the less demoralizing, is not a very unpleasant place of residence....”62

“The mixture of debtors with criminals which in some places still exists in England, and which appeared universal in North America, is unknown in any goal in India... The mixture of the two sexes in Indian prisons is unknown and in general, the separation of tried and untried prisoners is at least as complete in India as in other countries.”63

The Committee also expressed that “we are not sanguine in the hope that we shall be able to affect any material reform in the moral character of convicts.”64

The committee further observed:-

“Several officers have recommended the education of prisoners, that is to say that they have instructed them

61 Recommendations of Committee on Prison Discipline 1838, p. 38.  
62 Ibid.  
63 Ibid.  
64 Id., para 275
in reading, writing and ciphering. Such a system would involve very heavy expenses and we must say that there are no other 56,000, in India when we do not think more deserving of education at the public charge, those 56,000 criminals in gaols. That any part of that very small sum which the state has hitherto been able to expand upon the instructions of the people should be consumed teaching the worst class of people in the community, the class would be least likely to turn their instructions to good account and the class who least deserve public favour is a proposition which we cannot approve.\textsuperscript{65}

Commenting upon the jail system of India during the regime of East India Company (1818-1857), R. C. Majumdar and Kalikinker Dutta,\textsuperscript{66} observed that the early Indian Jail system was like English prototype, in sanitary, demoralizing and non-deterrent. The earliest attempt for prison reform was made by the Regulation Act, 1834, at the initiative of Lord Macaulay. No change for the better was introduced until the passing of an Act in 1855, which provided for the appointment of Inspector General of Prisons in each Presidency and the passing of Act VII of 1856 by which the judges of the \textit{Sadar Faujdari Adalat} were relieved of the Charge of Jails.\textsuperscript{67}

Recommendations of the Committee clearly told the true picture or condition of the jails during this regime. As the

\textsuperscript{65} Id., para 271
\textsuperscript{66} Majumdar, R. C. and Dutta, Kalikindar, British Paramountey and Indian Renaissance, 1970, pp. 383-84.
\textsuperscript{67} \textit{Ibid}
Committee experience the bad and unfortunate conditions of jails either it is the matter of food, hygienic conditions or cloths, it is evident that prisoners were not allowed for the reforms from crime to socialization or from bad to good.

Whereas the England was going for second regime of prison reforms in India there is nothing like this. However, the conditions of Indian jails were very bad. Even they do not want to expand money on reforms. It was the Lord Macaulay who first of all thinks of the prison reforms. But it takes a lot of time to materialize the things for prison reforms. Committee submitted its report in 1837 but the Act was passed in the year 1855, almost after 18 years of the recommendations of the Committee. So it was clear that British Government was not interested in the Prison reforms, because their ultimate object was to exploit the Indians and natural Indian resources.

Revolt of 1857 and its impact on Prison Administration

In Indian History it was the year of 1857, which witnessed the most floozy and tragic event. In this year Indians make the first revolt against the British. This revolt has a great impact on the British administration in India; either it is general administration or prison administration. Consequently, it comes to the knowledge of Indians that British were not here any for business or trade purpose and they have something different in their mind.

The gradual evolution of an efficient system of administration is one of the most remarkable phases of the history of British rule at that time. As a result, the administration reached at its highest degree of efficiency in the second half of the
nineteenth century. A highly efficient and effective system of Government was developing at that time for providing an improved law, order and justice including a well defined prison structure and policy. During this period three Law Commissions were appointed towards developing uniform substantive law and legal system in India. In August 1860, Government of India appointed a Commission to investigate into the police administration for increasing its efficiency and reducing its high expenditure. The recommendation of this Commission was embodied in the Police Act of 1861.

Ironically, with regard to administration of jail no improvements were materialized and effected. The position was somewhat changed or reviewed by the Second Prison Committee appointed by Sir Lawrence, on 3rd March 1864. The Governor General in the minutes (dated 3.3.1864), recorded the following observations regarding state of prison administration during the period as under:-

1. The subjects of Jail discipline and the condition of prisoner in India appears to be in question which calls for earnest consideration at the present time.

2. A period of twenty six years has elapsed since the Prison Committee appointed by Lord William Bentinck submitted their report in which the evils of than existing system of jail management as fearlessly exposed and certain reforms recommended and carried out but it is generally admitted that the full measure of improvement contemplated by Lord Bentinck and to which the

68 Id., at p 837
Government was pledged by a legislative enactment (Regulation II of 1834) has never been carried out.

3. Although much good has been effected by the appointment of Inspectors of Prison in the different Presidencies of Provinces, and though doubtless there has been amelioration of the condition of prisoner of all classes in the country, especially as regards food and clothing, yet still little progress has been made either towards the improvement of the prisoners or the prevention of crime, while the loss of life amongst all cases of those confined in jails continues, year after year to be very great, amounting at present to 7 percent.

4. When this death rate is compared with the morality in the jails in England, which is less than one percent, it will be at once seen in how many cases the sentence of imprisonment in India becomes virtually one of capital punishment and it seems on this ground above that the inquiry is forced upon us, as to what steps should be taken to reduce the great morality which for exceeds that amongst other classes of the population.\(^69\)

Death rate of prisoners in prisons in India was 7% as compared to England i.e. one percent and sentence of imprisonment virtually converted to capital punishment than how one can think that the Government of British India was making the efforts for prison reforms and the things remains on the paper only and nothing got materialized. However, it was some sort of beginning at that time.

\(^69\) Minutes of Governor General in Council, 3\(^{rd}\) March 1864.
Subsequently, second All India Jail Committee was appointed to minimize the high death rates in Indian Prisons and for consideration of related other aspects of jail administration. The Committee recorded that during 1854-64 not less than 46,309 deaths had occurred inside prisons. Some of the important recommendations of the 1864 committee report were as follow:-

i) they fixed a minimum space for each prisoner in jail viz. 54 Superficial feet and 640 cubic feet per prisoner;

ii) they recommended improvement in the diet, clothing, bedding and insisted upon regular medical inspection of prisoners;

iii) they recommended employment of medical officers to be in charge of central prisons and district jails;

iv) that every central jail should have cellular accommodation for 15 percent of its population;

v) that juveniles should be kept separate from other prisoner and they should be given education;

vi) that a logical principle be developed in putting to labour prisoners sentenced to rigorous imprisonment as follow:-

“that there should be three descriptions of labour:- (1) Hard; (2) Medium; (3) Light; that proportion of each allotted to a prisoner, should be regulated to the length of his sentence after the following table:-
Table

<table>
<thead>
<tr>
<th>Year</th>
<th>Hard</th>
<th>Medium</th>
<th>Light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 3 yrs</td>
<td>18 months</td>
<td>12 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Up to 4 yrs</td>
<td>2 yrs</td>
<td>18 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Up to 5 yrs</td>
<td>30 months</td>
<td>18 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Up to 6 yrs</td>
<td>30 months</td>
<td>30 months</td>
<td>1 yr</td>
</tr>
<tr>
<td>Up to 7 yrs</td>
<td>3 yrs</td>
<td>3 yrs</td>
<td>1 yr</td>
</tr>
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</table>

vii) That education may be a reward or a punishment according to the character of the prisoner to whom it is accorded and education may be used as a means of prison discipline, but on no account lead to any relaxation of sentence.\(^70\)

Thus, these recommendations of second All India Jail Committee only talks about the basis structure of jails not of reforms of prisoners or prisons. On the humanitarian ground how the prisoners should be placed and how the death rate was to be reduced was discussed. There was nothing in this report for the classification of prisoner's i.e. habitual and other offender. However, there was one recommendation for separation and

\(^70\) Report of the Indian Jail Committee 1864, p. 28.
education of juvenile offenders. But nothing was there for relaxation in the period of imprisonment.

Afterwards a Conference of Experts was held in Calcutta\(^7\) in January 1877, where another inquiry into prison administration was initiated. However, it may be noted that by 1888, five separate enactments had been passed in different states of India governing the management of prisons namely:

1. An Act for the Better Control of Prisons Within the Presidency of Bombay (1856).\(^2\)
2. An Act for the Regulation of Jails in the City and Presidency of Bombay\(^3\) and Enforcement of Discipline therein. (1864).
3. An Act for the Regulation of Jails and Enforcement of Discipline (Bengal 1874).
4. Madras\(^4\) Jails Act (1869) and
5. Prisons Act, 1870 made by the Governor General in Council.

However, these Acts differed \textit{inter se} on various important points regarding prison administration. Therefore, the Calcutta Conference proposed enactment of a Prison Law which could secure uniform prison system throughout the country and as such a draft Bill was prepared. But again the matter of passing on legislation was postponed.\(^5\)

\(^7\) Now known as Kolkata \\
\(^2\) Now known as Mumbai. \\
\(^3\) \textit{Ibid.} \\
\(^4\) Now it is Known as Chennai. \\
\(^5\) Government of India, National Archives of India; Documents connected with Prison Act, 1894, Legislative Development Proceeding Nos. 164-211.
Again it was observed that the Government of India (British India) was paying no heed to the prison reforms. As they materialized nothing in this concern, they were working under one head, but every Presidency was making the rules as per its own desire and will and without uniformity in laws related to prison administration. It was baseless to think about the Prison reforms.

In 1888-89 the Government of India appointed another Committee to examine the jail administration with a view to look into the actual carrying out of those principles and to endeavor to produce greatest uniformity on practices throughout India. On 9th October 1888, the Governor General in Council in a resolution of the administration of jails in British India resolved the following:

"The administration of jails with respect to economy, sanitation and discipline has for many years received the careful attention of the Governor General in Council. Three Commission (in 1834, 1864 and 1877) have under the orders of the Government of India, Considered and reported upon the general principles which ought to be observed in the management of Indian jails. There is on the part of the Governor General in Council, no wish to reconsider the principles so laid down, but an examination of the statistics of jails in the different provinces and even of prisons in the same province shows that great diversity of practice exists in carrying the principles into effect. The Governor General in Council is not to be understood as educating absolute uniformity of administration in all provinces in connection with jail administration. He admits that local
circumstances must always give rise to divergences of practice, but an examination of the provincial reports for some years satisfies him that the divergences in regard to the cost of maintaining prisoners in regard to the cost maintaining prisoners, in regard to their sanitary condition and in regard to discipline, points to the existence of defects which it is desirable to remove. There being no longer any doubt regarding principles and the question being one of practices, it appears to His Excellency in council that improvement can be best effected by means of a careful and through examination by experts on the spot into the causes which operate in certain provinces and certain jails to produce, e.g. a variation in the death rate ranging from 11 to 72 per mile of average strength, a variation in the cost of maintenance of prisoners per head ranging from Rs. 44-11-7 to Rs 91-2-10, and a variation in the ratios percent of punishment for offences against jail discipline ranging from 33 to 328.\textsuperscript{76}

It was the Committee of 1888 which framed elaborate rules for prison administration and recommended separation of undertrial prisoner, classification of prisoners into casual and habitual, building of hospital in each jail and also recommended for proper training of jail officials.

Since from the British regime over India, it was the first committee, who talks about the special and proper training of jail staff and separation of tried and under trial prisoner i.e. guilty and

\textsuperscript{76} Jail Administration in India, Report of 1889 Committee, Government Printing Press Calcutta.
accused. It gave some light towards uniformity of jail laws and prison reforms in India.

On the basis of the recommendation of the Jail Committee of 1888, a consolidated prison bill was prepared. The committee's recommendations were specially examined by another Conference of Experts on Jail Management from all Provinces which was held at Calcutta in 1892. The Draft Prison Bill was circulated to all local governments on March 25, 1893, for their observations and thereafter, it was presented to the Governor Generals Council. This came into being as the Prison Act, 1894, which is still the current law governing administration of prisons in India.

It was the time when Government of British India was going for codification of uniform law which governs the whole India. Keeping this in view Prisons Act, 1894 was first legislation which is especially for prisons administration for whole of India. In the year 1914 Released Prison's Society came into existence with main object of protecting the prisoners who had erred and reclaiming them to virtue.77 This society worked of the rehabilitation for the prisoners after release.78

In 1919 one more all India Jail Committee on Prison Administration was appointed that is Indian Jail Committee, 1919, headed by Sir Alexandar G. Carclew as its Chairman.79 In the context of penology and prison administration, the first concrete effort towards jail reforms was to catch up with the reformatory
methods being tried in West. The Committee assembled in London for its first meeting and visited penal institutions in England, Scotland, U.S.A., Japan, Philippines and Hong Kong and then undertook a thorough tour in India including Andaman and Burma. The main idea behind the appointment of the Committee was to overhaul the jail administration and to introduce the up to date changes in it. It was evident that the prison administration was lagging behind in reformative approach, it was devoid of humanitarian elements and the prisoners were denied the attention for their individual and social rehabilitation. The Committee submitted a valuable report comprising more than 500 pages which contain information on matters both of principle and practice of prison policy, administration and reform. The following extracts of the report may be mentioned here under:

"The Indian Prisons have made notable advances, as we have said, in the material aspects of administration, health, food, labour and the like. Possibly, the influence of the report of 1838 has to this day not been exhausted. Whether this be so or not, it is certain the Indian Prison administration has somewhat lagged behind on the reformative side of prison work. It has failed so far to regard the prisoners as an individual and has conceived of him rather as a unit in the jail administration machinery. It has a little lost sight of the effect which humanizing and civilizing influences might love on the mind of the individual prisoner and has focused its attention on his material

80 Ibid
81 Ibid.
well being, his diet, health and labour. Little attention has been paid to the possibility of moral or intellectual improvement. In consequence, while the results of the Indian Prison treatment are admitted generally to be deterrent, they are not generally regarded as reformatory. Witness after witness, from almost every province in Indian jails do not exercise a good or healthy influence on their inmates, that they tend to harden if not degrade and that most men come out of prison worse than they went in. We do not all endorse this view but in so far as there is truth in it is a result we conceived, not of the men by the system."^{82}

The Committee recommended the establishment of separate institutions like Borstal School for Juvenile Delinquents. The under trials were to be kept separate from the convicted and the adult convicts were to be classified as habitual and casuals.\textsuperscript{83} It also took a serious view of the transportation of convicts to Andaman Island and recommended for the discontinuation of the practice. Solitary confinement was to be abolished and convicts were to share barracks in groups as habitual and casuals. All convicts below 29 years of age were to be cared under Adult Education Programme and libraries were to be established in all jails.\textsuperscript{84}

In more than a 500 pages document, Chapter XI, which deals with ‘Reformative Influences in Prison’, covers only 14 pages and the subject is limited to following five items only viz:-

\begin{itemize}
  \item \textsuperscript{82} Indian Jail Committee Report, 1919-20 pp. 30-32
  \item \textsuperscript{83} Singh, Indra J, Indian Prisons, A Sociological Enquiry, 1979, p. 25.
  \item \textsuperscript{84} \textit{Id.}, at pp. 26-27.
\end{itemize}
i) Remission to Prisoners
ii) Gratuities to Prisoners in Prisons.
iii) Interview and Letters;
iv) Education, Prison Libraries and supply of Books and periodicals and

Remission to prisoners, Interviews with their family members and to write them letters, educational matters and religious matters are allowed to the prisoners before this committee’s recommendations. Except for the system of gratuities to the prisoners, all other items were already existed and the Committee merely suggested partial modifications. Nevertheless, it should be noted that it was the first time in the history of prisons administration in India that, ‘reformation’ and ‘rehabilitation’ of prisoners were identified as the objectives of prison administration.

It is found that Indian Jail Committee 1919-20 makes the end of an era of administration of jails by the Government of India, because under the ‘Government of India Act 1919’, the prison administration fell within the powers of Provincial Government. After Government of India Act, 1919, the Provincial Governments were changed with duties in respect of administration of justice and jails. As to look the state of affairs of prisons in India during 1920-1947, political situation of that time should be noted. The non-cooperation movement gathered momentum in 1921. According to Majumdar, "as there were nearly 30000, political prisoners, the jails lost its terror and imprisonment became a badge honour, and later a passport for a seat in the legislature or parliament, was a
phenomenon, unique in history not seen in any other part of the world."\(^{85}\)

Pandit Nehru who guided the freedom movement in many ways and himself suffered imprisonment for long terms wrote in 1934 from Allahabad, "thus it is obvious that political prisoners must expect progressively bad treatment. In 1930-31, the treatment was worse-off in goal than a non-political convict. Every effort is often made to harass him up to apologizing or at least to make him thoroughly frightened of prison. An Indian prison is after all a replica of the larger India. What counts is the objectives it human welfare or just the working of a machine or preservation of vested interests? Why are punishments given as society's or government's revenge, or with the object of reforming?"\(^{86}\)

After the transfer of the subject of jail to the provincial governments under the 1919 Acts,\(^{87}\) some Committees at the provincial level examined the jail system in the respective province, such as Report of the United Province Jails Inquiry Committee 1929. The Committee examined "reformatory influences inside the jail" and recommended the following for the well behaved convicts:-

- i) Increase in the award of remissions,
- ii) Some cash allowance;
- iii) Better and gur,
- iv) Use of Shoes,
- v) A hand fan during summers and rains,

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\(^{86}\) Nehru, J. L., Prison Land, Appended to Report of All India Committee on Jail Reforms, 1980-83.

\(^{87}\) Government of India Act, 1919
vii) Increased letter facilities for interviews,
viii) Special food of festival days,
ix) Compulsory education to juveniles and adults up to 
the age of 25 yrs.
x) Increase in Library facilities and,
xii) Appointment of paid agency for imparting religious 
and moral instructions.

In United Provinces after the Government of India Act, 1935, 
which provided the provincial autonomy, two other Committees 
were constituted, namely Expert Committee on Jail Reforms, 1938 
and United Provinces Jail.

During the period 1907-1927, steps were initiated to improve 
prison methods by establishment of Borstal Institutions for 
youthful offenders. In the year 1938, the Bombay Government 
granted to the prisoner the facility of writing letters and has 
interviews from friends and relatives. In the same year, the 
Government issued a circular by which the prison medical officers 
invariably had to obtain a second opinion, when a prisoner was 
seriously ill.88 In the year 1948, they were also allowed to have 
treatment from the physician surgeons of their own choice. In 
1948, the Government of Bombay stipulated that each prisoner 
should be paid for his labour inside the jail on the current market 
rate so that he may not feel that he is being under paid. For his 
food & clothing etc., Government could retain 4/5 of his earnings 
and the remaining 1/5 was to be remitted to the family of the 
prisoner.89 In the same year government abolished the system of 
solitary confinement in general and the same could be inflicted in

Provisions of Mental Asylum Act of 1858 were applicable to all prisons.
89 Id., at p 341
cases of violence inside the prison and that too with the approval of highest prison authorities. The prisoners were also allowed the facility of radios.90

In 1938, school masters were appointed in Belganm and Ahmedabad, Central Prisons.91 In the year 1939, the jails at Kattack in Orissa and Krishnanagar in Bengal were electrified.92 In the year 1939, Women’s Social Service Institution of Bengal began to impart instructions in suitable art and cottage industry to the female prisoners. It was a very innovative step.93

Few things have been changed after the implementation of the recommendations by these Committees. But actually as most of the freedom fighters were sent to the prisons, because they were demanding independence for Indian from Britishers as India was governed by the Britishers. Due to this reason they were giving them very deterrent punishment in jails, so that they can stop the revolt against Britishers. There are so many examples of the inhuman treatment to the prisoners and so many freedom fighters and revolter who raised the voice against this. Great Bhagat Singh and other revolutionaries gone for hunger strike until death against the bad condition of jails and after near about fifty days when few of them lost their lives. After the Britishers stop this strike and promised them to provide better facilities in the jail. It is rightly to that conclude much of the work for prison reforms in British period was done only on papers, and less was materialized actually. Bhagat Singh, Sukhdev and Rajguru were hanged before

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90 Id., at pp. 326 and 342.
91 Id., at p 343.
92 Ibid.
93 Barker, F. A., Modern Prison System of India, 1944, p. 345
the time fixed for their hanging and even in the night time. It shows the clear picture of no compliance to the prison reforms before independence.

V. Development in Prison system after Independence

India got the independence on 15th August 1947. Independent India has a lot to do not only in the field of prison reforms, but in every field. It was the state of Uttar Pradesh who first of all looked for prison reforms. With the dawn of independence, prison reforms especially in the state of Uttar Pradesh, was given increased attention. Indian leaders were ready with a blue print for the industrial development of the country, but the jail reforms could not escape their eyes as well of them passed their prime time of life in jails and most of their writings were conceived and accomplished in the prisons.94

Moreover, all the leaders were in the situation placement as for prison reform was concerned many of them were the victims of the jail administration. The Government of Uttar Pradesh appointed a very important committee known as U. P. Jail Reform Committee 1946, and all its recommendations were accepted by the Government.95 The chief objective for the appointment of the committee was to bring the prison administration of the state at par with that of some of the advanced countries of the world. It was this committee which conceived the idea of a model prison for the experiment of its recommendations. The approach of the committee was sociological in nature and it emphasized classification, education, training and self-sufficiently. The

94 Singh Indra, J, Indian Prison : A Sociological Enquiry, 1979, p. 27
95 Ibid.
committee was alike to the difficulties facing prison reforms; the greatest of them was social prejudice against criminals and non-availability of trained personnel's.66

Because of these difficulties which led to the idea of establishing "a model prison where most of the latest principles of penology could be tried and the prison may serve as a pilot project for stimulating reforms in other jails and penitentiaries of the state as well as in the country."97

At present custodial institutions of the state are broadly divided into two categories:-

a) District Jails - where convicts of all sorts of crimes are confined for some time and later lifers and other convicts of heinous crimes are sent to central prisons. At that time there are forty eight district jails in the state.

b) Central Prisons: The Central Prisons are of three kinds:-

i) Central Prison for lifers and for other heinous crimes are five

ii) Open Camps are two in the state where mostly casual prisoners are kept and they earn their wages and

iii) Model Prisons is one in the state where all latest sociological principle of penal reform are incorporated.98

The committee advocated the idea of classification on the basis of habitual and casual criminals and recommended that the best should be segregated from the ward. The casual convicts

96 Ibid.
97 Ibid.
98 Ibid.
varying between 25-40 years, having good health, families ties and industrious by nature should not be left to their lot. But every effort should be made to restore their lost dignity, to reclaim their lost personality, morality and integrity and cultivate such an environment which they could develop a sense of self reliance and insight into the life situation both, inside and outside the prison. The self supporting community of the prison was emphasized to cut expenditure and relieve the society of the burden of growing taxes and infuse a sense of self respect among the inmates.

Therefore the committee, for the realization of these objectives, gave priority to education, training in trades, generous parole and scheme for wage payment. Subsequently, began the experiment of the recommendations of the committee in Fategarh Central Prison, with a batch of twenty four prisoners. It was the pilot project where the applicability of the views of the committee was tested. The success of the experiment at Fategarh led to the conversion of Lucknow Central Prison, which was constructed in 1860, into the Model Prison in 1949\textsuperscript{99} and open prison was also attached to it in the same year,\textsuperscript{100} based on the suggestions of Pakwasa Committee.\textsuperscript{101} Here prisoner were made to work on handloom machines and engaged in other home industries. The first open jail for women was established in Maharashtra at Yarwada in 1955.\textsuperscript{102}

In the year 1951, the Government of India paid heed towards prison reforms and correctional programmer. The Government

\textsuperscript{99} Ibid.
\textsuperscript{100} Panajaye N.V., Criminology and Penology, 2003, pp. 309-310
\textsuperscript{101} Ibid.
\textsuperscript{102} Ibid.
requested the United Nations, under the Technical Assistance Programme, to lend an expert in criminology and correctional administration for training a batch of jail officers and to advise the Government of India for furthering development of correctional administration in India. Dr. Walter C. Reckless, an expert of the U.N.O., arrived in India on October 21, 1951. In his report he recorded the scope of the mission:-

"Although the mission was designed primarily for the training of jail officers in progressive methods of jail administration, a secondary aspect of the mission, namely the stimulation of local and national interests in the newer approaches to the treatment of adult and juvenile offenders has loomed very large."\(^{103}\)

With this view Dr. Reckless Report\(^{104}\) have some valuable recommendations, both national and state level for improving correctional administration in India, particularly of jail administration, as some of which could be summarized as under:-

**National Level**

i) An advisory bureau of correctional administration should be established at the Central Government immediately so that the state could be helped in the development of their correctional programme,\(^{105}\)

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104 Recommendation from the Report submitted by Dr. W. C. Reckless
ii) The Government of India should consider the need for specialized technical assistance in this field.\textsuperscript{106}

iii) Fellowships in the correctional field to prepare competent persons to fill higher positions, e.g. Inspector General of Prisons and his Deputies.\textsuperscript{107}

iv) The Central Government should encourage the development of professional conferences of the superior staff members, and \textsuperscript{108}

v) An all India conference of persons working in the correctional field, both adults and juveniles.\textsuperscript{109}

vi) Solitary confinement as a mode of punishment should abolish.\textsuperscript{110}

State Level:

i) Establishment of whole time revising boards for selection of prisoners for mature release.\textsuperscript{111}

ii) Revision of jail manual with greater responsibility on the superintendent and staff members for constructive programmes for prisoners.\textsuperscript{112}

iii) Superior staff of a jail to have training for their work.\textsuperscript{113}

\textsuperscript{106} Ibid.
\textsuperscript{107} Ibid.
\textsuperscript{108} Ibid.
\textsuperscript{109} Ibid.
\textsuperscript{110} Ibid.
\textsuperscript{111} Ibid.
\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
iv) The larger states should develop integrated departments of correctional administration under on minister, including jails, Borstools, Revising Boards, and Probation and after care.\textsuperscript{114}

v) Professional individualized services and handling of the prisoners by specialists like supervision of education, vocational guide, recreation officer, clinical psychologists, therapeutic psychiatrist etc.\textsuperscript{115}

vi) Special institution for training\textsuperscript{116}

vii) The reformative methods of probation and parole should be used to lessen the burden on prisons.\textsuperscript{117}

viii) Classification of prisoners for the purpose of their treatment were necessary.\textsuperscript{118}

Almost at the same time the Government of India called a Conference (eighth) of the Inspector General of Prisons at Bombay from 11\textsuperscript{th} to 13\textsuperscript{th} March 1952. On the recommendations of that Conference the Government of India asked the Government of Bombay to set up a Committee and take up the revision of Jail Manual and the Central Act relating to prisons. The Committee took its first meeting in June 1957 at Bombay followed by twelve other sittings and visits to twenty eight correctional institutions. The Committee prepared a Model Prison Manual and its report, which was circulated to all the State Governments, but till 1980

\textsuperscript{114} Ibid.
\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid.
\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
only four States, namely Andhra Pradesh, Karnataka, Kerala and Maharashtra had revised then Jail Manual in accordance with the Model Prison Manual. However, the Government of India established a Central Bureau of Correctional Services in 1961. The Chief objective of this institution is to impart training and promote research studies in the area of prevention of crimes and treatment of prisoners.\textsuperscript{119} Even after it the reformative measures listed here, the general condition of prisons in India was still far from satisfaction. The social contempt for prison life kept all sections of society uninformed about what was going on inside the prison cells. From time to time media and press highlights the empirical relations of prison life and public opinion seems little concerned about modernization of prison.\textsuperscript{120}

The Government of India constituted a working group in 1972 to examine measures for streamlining and improving the jail administration and conditions of living in the prisons. The working group observed:–

"The Prison administration in the country is generally in a depressing state, convicts and under trials are lodge in the same institutions throughout the country. Adults, adolescents, juveniles, women and lunatics are also generally confined in common institutions and there is a serious lack of separate institutions for these various categories of prisoners. Partly due to the fact that service of specialists has not been mobilized, we do not find any evidence of any effort for the individualized treatment of offender. Probation and

\textsuperscript{119} Datir, R. N., Prison as Social System, 1978, p. 61.
\textsuperscript{120} Paranjape, N. V., Criminology and Penology, 2003, p. 282.
other correctional services are scarce and ineffective. There is little co-ordination between the prison and correctional services. It is obvious that the entire system calls for a thorough overhaul and many reforms.”  

The group also emphasized the need of a National Policy on Prisons. It also suggested the inclusion of prison administration in the Five year plan and amendment of the Indian Constitution to include the subject of prisons and allied institutions in the concurrent list. The seventh finance commission in its report in 1978 acknowledged the facts that jails had been neglected far too long.

With this background and large scale criticism of the prison administration, due to inhuman treatment of the prison personnel and unsatisfactory living conditions and prolonged detention of under trial prisoner the Government of India appointed an “All India Committee on Jail Reforms in 1980 with Mr. Justice (Retired) A. N. Mulla as Chairman. The Committee in 1983 submitted a 511 pages report to the Government of India, with a strong recommendation of a National Policy in Prisons.

The Committee made the suggestions that the existing dichotomy of prison administration of Union and State level should be removed. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prison. The atrocities and personal assaults on juvenile prisoners

122 Id., p. 29
123 All India Jail Committee Report 1983
which came to the notice of authorities in the notorious Tihar Jail Inmate case and the Agra Protective Home Case have served as an eye opener for the administration\textsuperscript{124}. Consequently, a comprehensive legislation was enacted for the security and protective care of delinquent juveniles.\textsuperscript{125} The Mulla committee also recommended segregation of mentally disturbed prisoners and their placement in mental asylums.

Yet another recommendation of the Jail committee was regarding classification of prisoners and scientific and rational basis. For this purpose, certain advanced countries have appointed Ombudsman for deciding the prisoner’s grievances. Similar procedure may be adopted in India as well. Some other recommendations of the Mulla Jail Committee were as follows:-

1. The condition of prisons should be improved by making adequate arrangements for food, clothing, sanitation, ventilation etc.

2. The prison staff should be properly trained and organized into different cadres. It would be advisable to constitute an All India Service called the Indian Prisons and correctional service for recruitment of Prison officials.

3. Aftercare, rehabilitation and probation should constitute an integral part of prison service. Unfortunately, probation law is not being properly implemented in the country.

\textsuperscript{124} Paranjpae, N. V., Criminology and Penology, 2003, p. 283
\textsuperscript{125} The Juvenile Justice Act, 1986.
4. The media and public men should be allowed to visit prisons and allied institutions periodically so that public may have first hand information about conditions inside prisons and be willing to cooperate with prison officials in rehabilitation work.

5. Lodging of under trial in jail should be reduced to bare minimum and they should be kept separate from the convicted prisoners. Since under trials constitute a sizable portion of prison population, their number can be reduced by speedy trials and liberalization of bail provisions.

6. The Government should make an endeavor to provide adequate resources and funds for prison reforms.

Meanwhile, the eighth finance commission submitted as report in 1984, which recommended support central assistance for improvement of existing infrastructure of the prisons. ¹²⁶

In the year 1988, the National expert committee on women prisoner headed by Justice V. R. Krishna Iyer in its report submitted to the Government in February 1988, recommended induction of more women in the police force in view special rule in tackling women and child offenders. Envisaging a for greater significant and useful rule of women police in context of changing needs of society, 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. Women can be employed in non-combative rules requiring restraint, patience and

¹²⁶ Report of the Eighth Finance Commission, pp 77-78
endurance. The women police should be an integral part of the police set up, with a special role in juvenile crime squads especially in urban areas. They should be specially trained to deal with agitations and mob upsurges in humane and sensitive manner and acquire mastery over tactics of unarmed combat.\textsuperscript{127}

Thereafter, the National Human Rights Commission (N.H.R.C) after acquainted with problem of prisoners in the prisons in India in general took initiation to formulate a national prison law by consolidating the existing prisons law framed during British Period more than two hundred years back. A Draft Bill (Indian Prisons Bill, 1995- proposed) was circulated to all the state governments in India during February 1996 regarding formulation of comprehensive law in prisons.\textsuperscript{128} The N.H.R.C has submitted its recommendation Bill for adoption by the Government of India which is still under consideration of the Law Ministry.

It is notable here that the West Bengal Legislative Assembly already passed “the West Bengal Correctional Service Act, 1992”, the first of its kind in India characterizing prison administration as correctional services accepting reformation of prisoner as the objective of prison law. No other state yet passed such legislation till now.

\textsuperscript{127} Paranjapee, N. V., Criminology and Penology, 2003, pp. 283-84
\textsuperscript{128} National Human Rights Commission, Circulation letter dated 23\textsuperscript{rd} Feb. 1996.