CHAPTER-II

POLICY OF GOVERNMENT ON JAIL REFORMS AND THE LAW

2.1. INTRODUCTION

Crime and punishment are the old concepts which have existed with man from the time society has come into existence. “Crime is eternal, as eternal as society,” and personal crime and justice was in practice in the early days as one can find in the Code of Hammurabi, the Mosaic Code, the Roman tablets of laws, the early Greek laws and the laws of Tacitus. A legal definition of crime of cure is of a later origin. Crime is an intentional act or omission in violation of criminal law committed without justification and defence and sanctioned by the State as a misdemeanor. In the broad sense, crime is violation of rules and regulations as endorsed by the State or society from time to time. Members of the society have to act according to certain written or unwritten norms and laws. Maladjustment of an individual leads to the breach of these norms, resulting ultimately in crime.

Since, the primary object of a State administration is to undertake activities for the control of crime. There can be various kinds of approaches to control the crime in a State such as Prevention of crime by strict enforcement of Law, if a crime is committed, punishment of the offenders and setting up of deterrent measures to prevent others from committing crime. Punishment is a means of social control and it should always serve as a measure of social defence. Imprisonment is the most common and simple form of punishment which is used all around the world.

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4Harry Emler Barnes & Negley King Teeters, “New Horizons in Criminology”, Prentice Hall Inc. New Jersey 1943, p.2. (Forwarded by Frank Tannenbaum)
It is such a punishment which can serve all the three objects of punishment i.e. deterrent, preventive and reforming the character of the offender. The origin of prison is inter-linked with the system of imprisonment which originated in the first quarter of 19th century. Initially, prisons were used as detention houses for under trails. Persons who were guilty of some political offence or war crime or who failed to pay their debts or fines were lodged in prison cells with a view to extracting confession from them or securing the payment of debts or fines. Subsequently, as time goes and advancement of knowledge and civilization, the conditions of prisons also improved considerably. Since the present day penology centers on imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life. The modern techniques of punishment lay greater stress on reformation, correction and rehabilitation of criminals. The principal object of punishment today is protection of society and this is achieved partly by reforming the criminal and partly by deterrence by preventing him and others from committing crime in future. There is also the view that all three elements – Justice, Deterrence and Reformation are essential. By inflicting punishment on the offender the society deters him as well as potential offenders from committing crimes. This is described as deterrence. The aim of criminal law can be achieved by reforming the criminals by way of rehabilitative measures. This is called theory of reformation. Punishment can also act as preventive and in this context; it is called preventive theory of punishment. Other concepts such as expiation,
atonement, just deserts etc. are also mentioned in the discourse on punishment. Depending upon the nature of the crime, time and the approach of the court towards different crimes, the emphasis on these purposes of punishment goes on changing from time to time. The object of punishment in Manu’s words is: Since there cannot be a society without crime and criminals, the institution of prison is indispensible for every country. Personalization symbolizes a system of punishment and also a kind of institutional placement of convicts, under trials and suspects during the period of trial. Punishment governs all mankind; punishment alone preserves them; punishment awakes while their guards are sleep; the wise considers the punishment (danda) as the perfection of justice. Gaol or Jail, a prison, the two forms of the world are due to the parallel dual forms in Old Central and Norman respectively, jailoe or jaole and gaiole or gayoile. The form “gaol” still commonly survives in English and is in official usage, e.g. “gaol delivery”. The spelling “jail” is used in America. Prisons were first used in England for punishment during sixteenth century. The word Prison and Gaol derived from the Latin words which means ‘seize’ and ‘cage’ respectively. Prison traditionally defined as, places in which persons are kept in custody pending trial or in which they are confined to punishment after the conviction.

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According to the Oxford English Dictionary, prison is a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while waiting for trial or for punishment. Prison is that part of the penal system where criminals are held in custody for varying lengths of time determined by the courts as punishment for offences. According to Plato (BC 525) in his famous work “Laws” recommended imprisonment for certain kinds of crime. Confining an individual in a small dark room was also prevalent in the hands of political and religious authorities during that period. According to Carter (1977), a prison is defined as a place where persons kept in confinement and deprived of liberty on the grounds that they are convicted as to have committed a criminal offence.

2.2. THEORIES RELATING TO IMPRISONMENT

In ancient and medieval periods, prisoners were simply confined in the prison for trial. The punishments were given to them outside the prison. In the modern age imprisonment emerged as the primary method of punishment. Due to growth of civilization, changes have taken place in the penal system. The important theories relating to imprisonment are as follows:

2.2.1. THEORY OF VINDICATION

Vindication of law as implied in the imposition of punishment for wrongdoing, simply means the restoration or reassertion of the law protected

\[11\] Mahaworker M.B., Supra note. 6. p.13.
values which the perpetrator has destroyed. It is an abstract emphasis on both the value itself and on the rule embodying it and prohibiting its destruction. In a purely objective manner – the wrong must be rectified by imposition of yet another detriment.\textsuperscript{12} The roots of this theory may have to be found in the sacrifice which primitive and archaic man had to bring in order to appease the Gods who had been outraged by the evil doer. Few philosophers have an espoused vindication as strongly as Kant (A German Philosopher) particularly in the hypothetical example of a political island society that wishes to dissolve with mutual consent.\textsuperscript{13}

2.2.2. THEORY OF RETRIBUTION

The Retribution theory is the oldest. It is often maintained that retaliation for an injury is the result of universal and natural impulse. In case of retributive theory, punishment is justified as an end in itself, quite apart from any deterrent or reformative effect which it may produce upon the offender himself or upon others. When we say that as per this theory, punishment is inflicted because a crime has been committed, we mean the commission of the crime is the ground of punishment. Kant agrees that the punishment must agree in the quality with the offence. Precisely, similar types of imprisonment should be assigned to the similar offences.\textsuperscript{14}

\textsuperscript{13}SatyaPraksahSangar, “\textit{Crime and punishment in Mughal India}”, Sterling, Delhi, 1967, p 34.
2.2.3. THEORY OF PENITENCE

The whole movement namely the penitentiary movement of 19th century Pennsylvania & New York, was dedicated to the proposition that a law breaker needs the opportunity to make peace with himself, to search his soul and to overcome to terms with his creator. The penitence system which become known as the separate, solitary or Pennsylvania system was based on Howard’s cellular system, but went beyond his, in requiring the strict separation of the prisoners by day as well as by night. The reformative virtues of this system were held to lie in complete absence of contamination, in religious instruction and silent contemplation.\[15\]

2.2.4. THEORY OF NEUTRALIZATION

Another justification for imprisonment is sometimes advanced. By putting a man in prison, it is argued; society physically removes him from its bosom and for the period of his incarceration, makes it physically impossible for him to commit further crimes.\[16\]

2.2.5. THEORY OF DETERRENCE

J. Bentham is the chief founder of this theory. He states that, General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be only

\[15\]Ibid.
adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all. That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety. Deterrent is the preventive effect with actual or threat of punishment upon the potential offenders. Salmond (1947) stated that ‘punishment is before all things deterrent and the chief and of the law of crime is to make the evil doer an example and a warning to all who are likeminded with him’. The deterrent effect of a particular type of punishment depends upon various factors like social structure and value system, the population, type of law, the form and magnitude of the prescribed penalty, certainty of apprehension and individual’s knowledge of law and punishment.\textsuperscript{17} This is the idea that the threat of imprisonment discourages criminal behavior and encourages people to abide by the rules of society. For those individuals who are not so influenced, longer, more frequent and harsher prison sentences must be imposed until they decide to give up their life of crime.

2.2.6. THEORY OF REFORMATION

There was a fresh approach to the problem of crime and criminals. Individualized treatment became the cardinal principle for reformation of offenders. This view found expression in the reformatory theory of imprisonment. The reformatory view of penology suggests that punishment is only justifiable if it looks to the future and not to the past. “It should not be regarded as settling an old account but rather as opening a new one”. Thus, the supporters of this view justify prisonisation not solely for the purpose of isolating criminals and eliminating them from society, but to bring about a change in their mental outlook through effective measures of reformation during the term of their sentence. The reformists advocate humanly treatment of inmates inside the prison institutions. It also suggests that the prisoners should be properly trained to adjust themselves to free life in society after their release from the institution18.

2.3. HISTORICAL EVOLUTION OF PRISON SYSTEM UPTO INDIAN INDEPENDENCE

The concept of prison and reformation of the society is time immemorial and it has rich history in India. Since ancient period, adequate care was given to this problem and significant measures had implemented to address the issue of prisoners. The brief history of Indian prison system is as follows:

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2.3.1. PRISON SYSTEMS IN ANCIENT INDIA

The historical account of jails in our country can be traced back to the Epic age. In Ramayana, when Bharata saw Rama at Chitrakuta, the latter, while making detailed inquiry about the state of polity and welfare of people of Ayodhya, did not forget to elicit the situation in jail there. References of jail are also there in the Mahabharata. In those mythological period there were eighteen important state officials and one of them was the bead of the institution of jail (karagriha) designated as “kamyadhyrrkrkcr”. In Manusmritiit is stated that "(the King) should have all the prisons built on the royal highway, where the suffering and mutilated evil doers can be seen". There were also horrific punishments like feeding to animals, mutilations etc. We have locked up people in our country (in dungeons and cellars) to get them out of sight and often to await some other punishment such as banishing, ostracizing and death; this includes the locking up of Krishna's parents in a dungeon in Mathura where Krishna was born.

The Archeological Survey of India has found the jail in which Ajatasatru confined his father, Bimbisara at Rajgriha, the capital of Magadha- the modem Bihar). The pre-Buddhist jails were said to be very cruel. Here, the inmates were kept in chains and under heavy loads. Whipping was a daily routine in these jails. Account of Ashoka'sNaraka (hell) was included in the writings of Huien Tsang and Fa-Hien Polished treatment of prisoners was unknown in this period. During Muslim period, old forts and castles served the purpose of regular prisons. These prisons were not as cruel as the pre Buddhist prisons. In Vedic period, which is
nearly thousand years earlier than the age of Manu, administration of justice did not form a part of the state duties. Offences, like murder, theft and adultery are mentioned, but there is nothing to indicate that the king or an authorized officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapatli of the later Vedic period may have been a judge. But his being as a governor cannot be excluded. Usually the aggrieved party had himself to take such steps which could redress him. Distrait of the defendant or the accused by the plaintiff, his sitting before the latter’s house and not allowing him to move out till his claim was satisfied or wrong righted was a well established practice in Vedic period.  

During Rig Vedic period the idea of the divine cosmic order existed. Riti, the regularity of the universal process, was the main basis of law and it was the Sabha or popular village assembly rather than king would try to arbitrate when it was feasible to do so. This helps us to conjecture that there was no prison in the Vedic period, but the house of the accused served the purpose for jail and he was practically imprisoned in his own house till he managed to compensate the plaintiff. The Dharmasutras and the Dharmashastras (the earliest of which is that of Manu and other important dharmashastras are those of Yajnavalkya, Vishnu and Narada), reveal to us a more or less fully fledged and well developed judiciary. Law or Dharma was not a measure passed by the legislature in ancient India; it was based on Shruthi’s and Smrithi’s. Vedic literature are Shruthi’s, which is heard and which was believed to have been directly revealable to its authors, and therefore, of great sanctity than

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the latter Smrithi. Smrithi (Remembrance) literatures are post Vedic and comprised sutras and shastras whose nature was religious, and were based on custom of universal validity and authority. It was enforced by social approval or the dread of hell and not by the force of the state. It should be remembered that the practice of Dharma changed with the change of social customs and practices. King was at his head and it was his pious duty to punish the wrongdoers. If he failed from discharging it, he would go to hell. In these two kinds of literatures, that is sutras and shastras, we rarely come across the words “Prison”, “Jail” or “Jailer”. 20 In India, the early prisons are only places of detention where an offender was detained until trial and judgment and the execution of the judgment. The structure of society in ancient India was founded on the principles enunciated by Manu and explained by Yajnavalkya, Kautilya and others. 21 Among various types of corporal punishments-branding, hanging, mutilation and death, the imprisonment was the mildest kind of penalty known prominently in ancient Indian penology. The imprisonment occupied an ordinary place and among the penal treatment of the criminal justice system, corporeal punishment was suggested in the Hindu scriptures. The wrong doer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order. 22 These prisons were totally dark dense, cool and damp, unlighted and unwarmed.

There was no proper arrangement for this sanitation and no means of facility for human dwelling. 23

Though Indian law givers had a little description of jail life, even then historical account gave a clear picture after the analysis of the available information. A few Smrithi writers supplied some information concerning jail. Yajnavalkya had narrated that a person who was instrumental for the escape of a prisoner had to undergo capital punishment, that is hanging.24Kautilya prescribed that jail should be constructed in a capital and provide separate accommodation for men and women. He has discussed the problems of prisoner’s life and their welfare. He is of the opinion that every 5th day some prisoners should be made free who pay some money as fine or undergo some other mild corporal punishment or promise to work for social uplift. He has also suggested general amnesty on the birth of a prince or coronation of a royal heir. Kautilya was of the view that social festivals were proper occasion for amnesty as that would draw the attention of others. The third occasion for making prisoners as free citizens was the birthday of the ruling monarch who inspects prison, old prisoners, sick persons in the jail or orphans undergoing imprisonment. They were allowed to go out of the jail boundary and lead a life of free law abiding citizens. Kautilya has further described the duties of the jailer who always keeps eyes on the moment of the prisoners and the proper functioning of the prison authorities. If a prisoner by

24VasudevUpadya, Supra note -19, p. 323.
chance moves out of his cell, he is fined Rs. 24/- and the warden who is in league with the prisoner is fined the double amount. In case the warden disturbs the prison life, the higher authority imposes a fine of Rs. 500/-. Kautilya has gone deep to jail life and opines that the prisoner escaping after breaking the prison walls, must be put to death. This shows that the jail authority called Bandhanagaradhyaksa was always vigilant and alert and no evil action could escape his eyes.  

In the early years of Ashoka, there was an unreformed prison in which most of the traditional fiendish torches were inflicted and from which no prisoner came out alive. However, from his moral edicts which belong to his later period of rule – when he was influenced by Buddhism – It appears that many reformatory measures were taken. Professor Ramachandra Dikhitar in his book entitled Mauryan Polity has suggested that Ashoka was familiar with the Arthashastra, for Ashoka speaks of as much as 25 jail deliveries affected by him in the course of 26 years since his appointment to the throne.  

In the post Ashokan age the Jatakas give a picture of the society and supply information regarding crime and imprisonment. The ancient historical narration is corroborated by archaeological source. In a pamphlet called Rajgir, published by the department of archaeology, India, description of Bimbisara’s jail has been given as: Proceeding south wards along the main road and travelling about three quarters of a mile from Maniyar Mutt, the visitor will find an area, about 200 square feet enclosed by a stone wall, about 6 feet thick with circular bastions at

25 Ibid., pp. 324-325.
27 Ibid, p.20.
The structure has been identified with the prison in which Bimbisara was confined by his son Ajatasatru. It is said that from this prison Bimbisara was able to see Buddha on the Gridharakuta. Partial clearance of the site brought to light stone cells, in one of which were found iron rings with a loop at one of extremity, which might possibly have served the purpose of manacleing prisoners.\textsuperscript{28} The officers of the jail were known as Bandhanagaradhyaksa and Karaka. The former was the superintendent of the jail and the latter was one of his assistants. The jail department was under the charge of sannidhada, who was to select sites for their location and build necessary buildings.\textsuperscript{29} From the above it is quite evident that regular prison system as such was not in existence in ancient and imprisonment as a mode of punishment was not a regular feature when compared to the modern prison system in India.\textsuperscript{30}

\section*{2.3.2. PRISON SYSTEM IN MEDIEVAL INDIA}

The legal system in medieval India resembled that of ancient India and the contemporary Muslim sovereigns seldom, if at all, attempted to temper with the day to day administration of justice. During Mughal period, sources of law and its character essentially remained quranic. The Crimes were divided into three groups, namely; (1) Offences against god, (2) Offences against the state, (3) offences against the private persons. The punishments for these offences were of

\textsuperscript{28}\textit{Ibid}, p. 27-28.

\textsuperscript{29}Indira J. Singh, \textit{Supra note- 17}, p.20-21.

four classes; 1. Hadd, 2. Tazir, 3. Quisas, 4. Tashir. These punishments included fines and confiscation, forfeiture of rank and title, subject into humiliations, banishment, whipping, mutilation of offending limbs, execution and other corporal punishments. Imprisonment was not restored to as a form of punishment in the case of ordinary criminals. It was used mostly as a means of detention only. There were fortresses situated in different parts of the country, in which the criminals were detained pending trial and judgement. There used to be three noble prisons in Mughal India. One was at Gwalior, second at Ranthambore, and the third was at Rohtas. Criminals condemned to death punishments were usually send to the fort of Ranthambore. They met their death two months after their survival there. The Gwalior fort was reserved for the nobles that offend. To Rohtas, were sent those nobles who were condemned to perpetual imprisonment, from where very few return home. Princess of Royal blood were often sent to this place. Occasionally, the prisoners were transferred from one place to another. According to Muslim law, the quazis were supposed to visit the prisons and enquire into the conditions there, and release those who showed signs of repentance. The only redeeming feature for the prisoners was that orders for their release were issued on special occasions. These occasions were birth of crowned prince, recovery of the emperor or any of his sons from long illness or some occasional royal visit to a prison fortress. On the birth of prince Saleem, Emperor Akbar ordered that all the prisoners in the imperial dominions who were confined
in the fortresses for great accounts were to be released. On the occasion of the celebrations of the recovery from illness of the favourite princess Begum Sahid, Shahajahan ordered the release of prisoners in 1638. When the prisoners were taken into the prison, they were usually loaded with iron fetters on their feet and shackles on their necks. During Maratha period also, imprisonment as a form of punishment was not very common. Death, mutilation, fine were common forms of punishments. The form of punishments, as during ancient and Mughal period, continued in Maratha period also. The political prisoners, however, were well treated. Their communications with outside world and even with their own relatives was prohibited. They were supplied with all sorts of comforts and were given 1st class food. The persons of the lower castes and especially adulterous woman, both of higher and lower castes were compelled to do hard labour and building fortress. The ranks of prisoners determine their quantity and quality of ration. Thus neither in ancient nor in medieval India imprisonment was considered to be a form of punishment. The main features of the prisons system as it prevailed in pre British period may be summarized as follows:

1. There were no prisons in the modern sense.
2. There was no description on the internal administration of prisons.
3. No separate prison service existed and courts were feeding sentence for prisons.
4. There were no rules for maintenance of prisons.34

34Mallaih. C. S., Supra note- 27. p. 36.
2.3.3. PRISON SYSTEM IN BRITISH INDIA AND THE MODERN PRISON SYSTEM

With the advent of British rule the administrative structure assumed in a new form. At first little alteration was made in the existing legal system. The regulating act was passed in 1773 which established Supreme Court at Calcutta to exercise all civil, Criminal, admiralty and Ecclesiastical jurisdiction and indicated the intention of the British Government to introduce English rules of laws and English superintendence of law and justice. 35 The English criminal law came to applied to Indians. The Indian Penal code and the criminal procedure code were enacted. The Indian Pena Code defined each and every offence and prescribed punishment for it, while the criminal procedure code laid down the procedure for prosecuting the criminals. The imprisonment as a form of punishment which was first applied in India in 1773 came to be applied on uniform basis throughout India in 1860.36 The jail represents the smallest unit of the prison system. It is the permanent place of detention of those who are condemned to imprisonment by the courts. 37 The Institution of Jail, as understood these days, is of British origin and was introduced in India as a part of British administration. Before the Institution of jail,, the system of punishment did not require any financial burden on the part of the government. The directors of East India Company were reluctant to spend money on jails and although jails were modeled on British lines, there was no

enough accommodation and there was inadequate food, clothing and medical attention for the prisoner. Thus, the conditions in British jails were extremely bad.  

Under East India company rule, 143 civil jails, 75 criminal jails and 68 mixed jails, with a total accommodation for 75, 100 had been built in Bengal, North western provinces, Madras and Bombay.  

Reforms in prisons administration came to occupy public attention more than 150 years ago when the British Parliament passed an enactment in 1824 in regard to the essentials of Prison administration.  

In India the first “Famous committee” on prison reforms was set up in 1836, this committee had Lord Macaulay as its member. It submitted its report in 1838 and criticized the corruption of subordinate establishment and the laxity of discipline.  

The main recommendations of the committee were:

- That central jail should be built to accommodate not more than 1000 prisoners each.
- That inspector general of prisons should be appointed in all provinces.
- That sufficient building should be provided in all jails to accommodate prisoners comfortably.

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38Madan.G.R., Supra note - 33, p. 127.
40Orissa Jail Reforms Committee Report 1981, p.1
42Madan.G.R., Supra note – 35.
Consequently, in 1846 the first central prison was set up in Agra. A second committee on jail reforms was appointed in 1864 to minimize the high death rates in prisons and for considering other aspects of jail management. The committee found that in the presiding 10 years no less than 46,309 deaths occurred inside the prisons. It came to the conclusion that the sickness and morality might be mainly due to Overcrowding, Bad ventilation, Bad Conservancy, Bad Drainage, Insufficient clothing, Sleeping on the floor, Deficiency of personal cleanliness, Bad water, Extraction of labour from unfit prisoners and Insufficient medical inspections. Following its recommendations in 1864, it was directed that all provinces should have civil surgeons as superintendents of district jails. The third jail committee was appointed in 1877. It reviewed jail administration generally. The fourth jail committee was appointed in 1888, which suggested changes in rules of prison administration and classification and segregation of prisoners. It is this committee that recommended suppression of under trial prisoners and classification of prisoner include causal and habitual. Most of the recommendations of the committee were incorporated in the jail manuals of various provinces. The work of the committee was supplemented by all India committee, 1892. It resurveyed the whole jail administration and laid down further detailed rules. The prison act of 1894 was mainly the outcome of the efforts of this committee. Thus, the prison act of 1894 came into being which governs all the prisons in the country. The Act restricted and regulated the use of

43 Devakar, Supra note - 36, p. 13.
44 Chanda Kunkum, Supra note -38, p. 151.
45 Malliah C.S., Supra note - 27, p.38.
whipping, cellular confinement and penal diet. It provided for the classification of different offenders and tried to secure uniformity of treatment of all offenders in jail.\textsuperscript{46} The Year 1897 made a land mark in the history of prison reforms in India. In that year, reformative schools act was passed and according to this Act, the courts were directed to send youthful offenders below 15 years to reformative schools instead of prisons. Then the prisoners Act of 1900 was passed. In the present context of penology and prison administration, the first concrete effort towards jail reforms was the appointment of Alexander Cordew Commission by the Government of India in 1919-1920. In fact, the commission served as the jumping board for jail administration to catch up with the reformatory methods being tried in the western countries. The commission toured many countries including England, America, and also visited jails of India and Andaman’s and Burma. The main idea behind the appointment of the commission was to overhaul the jail administration and introduce up to date changes in it. It was founded that the administration was lagging behind in reformatory approach. It was devoid of humanitarian elements and the prisoner was denied due attention for his individual and social rehabilitation. It was a sorry state of affairs. The commission recommended the establishment of separate institutions like Borstal school for juvenile delinquency. The under trial were to be kept separate from the convicted and the adult convicts were to be classified as habitual and casuals. It also took a serious view of the transportation of convicts to Andaman Islands and recommended for the discontinuation of the practice. Solitary confinement was to

\textsuperscript{46}Madan G. R., \textit{Supra} note – 33, P. 128.
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. The commission advocated the establishment of the system of probation and parole for juvenile and adult offenders. It also recommended that the quality of food was to be improved and the prisoners were to be provided with two sets of clothing. Non official visitors to jails were to be introduced. Prison officials and guards were to be oriented to understand the reformatory approaches. The prisoners were permitted to have interviews with their family members and also write letters to them. The commission underlined the idea of reform of inmates as the ultimate objective of imprisonment and rehabilitation of prisoners as social necessity. In 1921 jail administration came under provincial administration which was initiated by Montague Chelmsford Scheme. The department remains under an executive councilor. In 1929, the United provinces government appointed a committee with Sir Louis Stuart as president and Khan Bahadur Hidayat Husain and Pandit Jagat Narain Mulla as members. The committee pointed out the deferential treatment of English prisoners and recommended better treatment for Educated and “Star class” prisoners. In 1935 the prison administration came under the control of the minister and Mr. Rafi Ahmed Kidwai was the first minister under the popular government of congress 1937-39. During this short period, as many as three committees were appointed for bringing about improvements in the prison administration. In 1938 United Proviance government passed three Acts. The
first Act was United Provinces First Offenders Probation Act under which offender could be released under certain conditions and on the basis of the conduct. It was also provided that the convicts below 24 years of age should be left under the supervision of a probation officer. The second Act related to the release of those prisoners who had not been sentenced under any serious crime and who had undergone 1/3rd of their sentence in jail. The third Act was the Borstal Act which provided for starting Borstal institutions for offenders below 21 years of age.47

2.4. POLICY OF GOVERNMENT ON JAIL REFORMS AND THE LAW

Prisons are an integral part of the Criminal Justice System and function as custodians of prisoners. While the purpose and justification of imprisonment is to protect the society against crime, retribution and punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prison inmates. The concept of Correction, Reformation and Rehabilitation has come to the foreground and the prison administration is now expected to also function as curative and correctional centers. It is our endeavor to make the prisons Correctional Centers. Our thrust, therefore, is on Reformation, Correction and Rehabilitation of the prison inmates and churn out reformed and better citizens from the prisons, who can lead a Hon’ble and dignified life after their release. We firmly believe that often crime is a creation of compelling circumstances, unsuitable environment and emotional

47Indra J. Singh, Supra note – 17, p. 27.
disturbance resulting in impulsive reactions. This chapter is an attempt to look at and study the various policies made by the Government towards the Jail reforms after the independence and also briefly looks at the laws which are enforced towards the jail reformation as well as administration. It is quietly discussed in the first chapter itself, regarding the history of Prison or Jail system and its evolution as well as its day by day reformation made by the various administrators up to the year of Independence. Of the many reforms required for effective functioning of the Indian law and justice system, prison reforms are an important part. Unless measures are initiated to bring the Indian prison management in sync with the times, the law and justice system will never be able to work optimally. The various issues requiring urgent attention include the physical structure of prisons, conditions and treatment of prisoners, training and re-orientation of prison personnel, modernization of prisons, and better correctional administration and management.

2.4.1. PRISON SYSTEM IN KARNATAKA

Karnataka is one of the progressive states where attempts have been made for reforming the Jail administration. We have made considerable strides towards achieving our objectives of Reformation, Correction and Rehabilitation of Prison inmates and transforming the prison into curative centers. The Karnataka state has a total of 102 prisons of various classification with an authorized capacity of 12088 male prisoners and 1012 female prisoners totally 13100 prisoners. Out of 102 prisons, the Central Prison Bijapur is the oldest prison date back to 1593
A.D., constructed during the regime of Adil Shah. The Ramanagara Sub Jail and 25 jails are of 18th and 19th Century respectively.  

Following categories of prisoners are confined in Central Prisons:

- Prisoners Sentenced to Death
- Prisoners sentenced to life imprisonment of all classes
- Prisoners sentenced to a term of imprisonment exceeding 10 years of all classes
- Civil prisoners
- Prisoners awaiting trial in local courts
- Female prisoners
- Military prisoners
- Juvenile prisoners

Following categories of prisoners are confined in District Prisons:

a) Prisoners of all classes sentenced to a term of imprisonment not exceeding or unexpired portion of sentence not exceeding 6 months.

b) Female prisoners.

c) Civil prisoners.

d) Prisoners awaiting trial before local court.

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48 All Prisons situated in Karnataka fall under the following classes; Central Prisons(8), District Prisons(15), District Hq Sub Jails(4), Special Sub Jails(2), Sub Jails(70), Borstal School (1), Juvenile Jail (1), Open Air Jail (1).
e) Military prisoners.

f) Juvenile prisoners.

Following categories of prisoners are confined in District Hq Sub Jails: Special Sub Jails: Taluka Sub Jails:

a) Prisoners sentenced to a term of imprisonment up to 3 months in case of headquarters sub jails and up to 15 days in case of Taluka Sub – jails.

b) Female prisoners.

c) Prisoners awaiting trial before the local courts.

d) Civil prisoners.

Following categories of prisoners confined in Juvenile Jail, Dharwad: All Juvenile prisoners convicted by the Courts in the State whose term of imprisonment exceeds 3 months shall be confined at the Juvenile Jail Dharwad.
2.4.2. PRISON ADMINISTRATION

Prison Department is headed by an Additional Director General of Police and Inspector General of Prisons, assisted by two Deputy Inspector General of Prisons and Gazetted Managers at the Head Quarters. All the Central Prisons, District Prisons, District Head Quarters Sub-jails, Special Sub jails and Taluka Sub Jails are managed by Departmental staff. Out of 70 Taluk sub jails, 30 are under department control and 40 are under Revenue control.

2.4.3. ACTS AND RULES

Legislation pertaining to the management and administration of prisons in Karnataka is scattered in different Acts and Rules as follows:-

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<td>2</td>
<td>Karnataka Prisoners Act,1963</td>
<td>Borstal School Rules,1969</td>
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<td>Borstal School Act,1963</td>
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2.4.4. EVOLUTION OF PRISON ADMINISTRATION AND REFORMS

After the advent of freedom, a new phase of humanitarian prison administration has begun in India. Ideas regarding punishment and functions of prisons have been changing. A new awareness of the problem of crime and proper treatment of offenders has grown so much so that prison administration has off and on been subjected to severe criticism from the press, the parliament and the judiciary. “Overcrowding in prisons, prolonged detention of under trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of critics over the years.49

The changing circumstances on the socio economic sense of the country after independence had also inspired a few conscientious prison administrators of our country to undertake some innovative experiments through their own individual efforts. Since such efforts and innovations were only sporadic and short lived, their total impact on prison administration was not discernible up to any appreciable extent.50 As a matter of fact, no meaningful prison reforms can ever be made without the requisite political will. “As an old and experienced prisoner”, says Mahatma Gandhi, “I believe that Governments have to begin the reform… Humanitarians can but supplement government efforts. As it is, the Humanitarian, if he attempted anything, will first have to undo the mischief done in prisons were

the environment hardens the criminal tendency, and in the case of innocent prisoners they learn how to commit crimes without being detected. I hope that Humanitarian effort cannot cope with the evil wrought in the jails.” In order to have a correct view on the progress of prison reforms in the Independent India it is therefore, extremely necessary to take stock of official efforts at bringing about changes in prison administration during the post Independence period.

2.4.5. PRISON REFORMS CARRIED BY THE CENTRAL GOVERNMENT AFTER INDEPENDENCE

In the Constitution of Republic of India, prison administration has been included in the State List.\textsuperscript{51} As prison rules and regulations vary from one state to another, the much needed coordination is lacking. However, it was realized soon after independence that the Jail Manuals of the States of the Union, based on the Antediluvian Prison Act of 1894, could not cope with the new ideas and awareness of crime, criminals and their treatment that had been growing fast in the country. It was felt very strongly that whatever had prison reforms been made by our alien rules were only sporadic and neither organically conceived nor uniform and hence, some board guidelines should be given from the centre with a view to coordinating the prison-reform programmes of the different State Governments. The decade 1951-60 that followed immediately after independence was a decade of enthusiasm for prison reforms. While local committees were

\textsuperscript{51} 7\textsuperscript{th} Schedule, State list, Item no 4.
being appointed by some State Governments to suggest Prison reforms, the Government of India invited technical assistance in the field from the United Nations. Dr. Walter C. Reckless, a leading American criminologist, visited India as an U.N. expert during the years 1951-52 to suggest ways and means of prison reforms in the country. His report ‘Jail Administration in India’ is another landmark in our history of prison reforms. He made a plea for transforming jails into reformation centres and advocated the establishment of new jails to perform specialized functions. He recommended, inter alia, a number of other important measures viz, the getting out of juvenile delinquents from adult jails, courts and police lock ups, specialized training programmes for correctional personnel of different ranks, the introduction of legal substitutes for short sentences, the development of whole time probation and aftercare services, the setting up of revising boards for the selection of prisoners for premature release, the establishment of an Advisory Bureau of Correctional Administration at the centre to help the State Governments in development of correctional programmes, holding of periodical conferences of the superior staff members of correctional departments and revision of outdated State Jail Manuals. The year 1952 further witnessed a breakthrough in national coordination on correctional work as in that year the Eighth conference of the Inspector General of Prisons was held after the lapse of 17 years. The conference held at Bombay reiterated the need for the revision of State Jail Manuals. The first open prisons were set up about this time in Uttar Pradesh and in some other States and Prison Welfare Officers were
appointed in a number of States in later years. A few new ideas of Prisons were introduced in the country during this decade. The prisoners could now avail of furlough and parole. They were granted wages, albeit nominal for the work done by him. The introduction of Panchayat system led to some improvement in the living conditions of prisoners. Jail Training Schools were set up in some States. Whipping was abolished in 1955 and the Probation of Offenders Act was enacted in 1958.52

2.4.6. PRISON REFORM AT INTERNATIONAL LEVEL

Meanwhile, the United States held its First Congress on Prevention of Crime and Treatment of Offenders at Geneva in 1955. The Congress approved the U.N. Standard Minimum Rules for the treatment of Prisoners and urged the Member Nations to modify their national policies and practices accordingly.

2.4.7. STEPS TAKEN BY THE CENTRAL GOVERNMENT TO IMPLEMENT PRISON REFORMS AS SUGGESTED AT INTERNATIONAL LEVEL

The International Covenant on Civil and Political Rights (ICCPR) remains the core International treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health. Apart from civil and political

rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners. The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of different categories of prisoners. It indicates that men and women be detained in separate institutions. The under-trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that “no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defense”. It recommends that corporal punishment, by placing in a dark cell and all ‘cruel’ in-human or degrading punishments shall be
completely prohibited as a mode of punishment and disciplinary action in the
jails. In 1957, the government of India appointed the all India Jail Manual
committee for the following reasons;

1. Preparing an All India Skeleton Jail Manual,
2. Examining the Prisons Act and other relevant Central Laws and
   suggesting necessary central Legislation, and
3. Making proposals for prison reforms to be adopted uniformly
   throughout the country.

In order to that the problems peculiar to different parts of the country and the
need of coordination by the Centre might be due emphasis, the All India Jail
Manual Committee was constituted, among others, with the then Inspector
General of Prisons of Bombay, Madras, West Bengal, Uttar Pradesh, Punjab and
Kerala. The committee of 1957-59 studied the problems of crime and delinquency
from a very progressive angle and poignantly observed that the solutions to these
problems do not lie only in prisons but in the larger Socio-economic fields as
well. In its view, these problems “can be solved neither by making punishment
more deterrent nor by making the system of punishment too weak and diluted.’
Realizing the significance of Mahatma Gandhi’s dictum that “criminals should be
treated as patients in hospitals and jails should be hospitals admitting such
patients for treatment and cure”,53 the committee wanted prisons should be
transformed into correctional institutions. Its view on the principal purpose of
correctional administration is reflected in one of the assumptions it made while

framing the Manual: “The primary objective of punishment is reclamation and rehabilitation of the offender and this object will be faithfully implemented in the correctional institutions.”\(^5^4\) In consonance with this radical approach to the problems of crime and delinquency and to prime objective of correctional administration, the All India Jail Manual Committee furnished a detailed report containing necessary principles of modernization of prisons together with Model Prison Manual in 1960 as a broad guideline for the States to revise their outdated Prison Manuals.

2.4.8. SETTING UP OF CENTRAL BUREAU OF CORRECTIONAL SERVICES IN 1961

Another major post-independent development in the Indian Prison administration was the setting up of Central Bureau of Correctional Services in 1961 as a central technical advisory body with the broad objectives of evolving modern policies and programmes in social defence filed, collection of factual data and statistics, exchange of information, professional training, empirical research studies and publications. The Bureau functioned under the Government of India’s Ministry of Home Affairs until 1964 when it was transferred to the newly created Department of Social Security, now known as the Ministry of Social Welfare. It was reconstituted in 1975 as the National Institute of Social Defence and its functions were enlarged to indulge preventive, correctional and rehabilitative aspects of social defence, viz., welfare of prisoners, prison reforms/

administration, juvenile vagrancy, probation, beggary, social and moral hygiene, alcoholism, gambling, drug addiction, etc. the Institute continues to work under the Ministry of Social Welfare and has been playing a useful role in its enlarged field of social defence.\textsuperscript{55} However, there are still certain important areas of activity such as compilation of All India statistics on prisons, probation and parole, where the institute has not been able to play its due role for reasons beyond its control, viz, lack of cooperation from some of the State Governments. Unfortunately, some sporadic achievements apart, the spirit and enthusiasm with which the task of prisons reforms was taken up by the Central and State Governments during the decade 1951-60 did not last long. The valuable recommendations of the committees appointed by these Governments were not implemented in an effective manner. Official apathy and bureaucratic bungling continued so much so that even after the end of another decade (1961-70) the general state of Prison administration of the country was described by an official committee as “depressing”.

\textbf{2.4.9. WORKING GROUP ON PRISONS IN 1972}

In 1972, the government of India’s Ministry of Home Affairs appointed a Working Group on prisons for (i) examining the physical and administrative conditions of the jails in the country and suggesting ways and means of their improvement: (ii) laying down standards in respect of different services and facilities in the jails; (iii) laying down an order of priorities for the prison

\textsuperscript{55} Report of All India Committee on Jail Reforms, 1980-83, p. 337.
development schemes and (iv) considering other allied matters concerning prisons and prisoners. A year later, the group submitted its report in which it emphasized the need for a National Policy on Prison and Correctional Administration. Discarding the traditional prison based policy; the report of the Group indentified the main elements of the proposed National Policy, the more important of them being as follows:

1. A suitable system should be established for coordination among the three organs of the criminal Justice system, i.e., the police, the judiciary and the prison and correctional administration, for the effective prevention of crime and treatment of offenders.

2. The supreme aim of the punishment has now to be the protection of society through the rehabilitation of offender. The reassimilation of the offender in society and the prevention of crime are now the principal goals for the criminal justice system. Accordingly, the aim of the prison administration will be the employment of all resources, human and material, to provide scientific treatment to every offender according to his peculiar needs and circumstances.

3. The concepts of deprivation of liberty and segregation from society should be limited mostly to the habitual, the incorrigible and the dangerous criminals and the Government should make fullest possible use of various alternatives to imprisonment as a measure of sentencing.
policy. Non-institutional and semi-institutional forms of treatment should be resorted to as far as possible.

4. There should be close coordination between the prison and probation and other correctional services. It follows that the prison administration should be treated as an integral part of the social defence component of the national planning process.

5. Free legal aid should be provided to all indigent prisoners.

6. Under trail prisoners should be lodged in separate institutions as far as possible and facilities should be provided to them to work on a voluntary basis.

7. The Union and State governments should declare unequivocally that there will be no bar or restriction on the employment of ex-convicts of specified categories in the public services after a due scrutiny of the prison reports certifying to their abilities and qualities.

8. The prison administration should systematically involve enlightened individual citizens, associations, societies, and other community agencies in the treatment, after care and rehabilitation of offenders.  

In order to usher in the desire changes in the Prison Administration as a whole, the group recommended that the highest priority should be given to the adoption of the National Policy on Prisons as suggested by them along with the inclusion of certain aspects of the prison administration in the Five Year Plan, the amendment of constitution to include the subject of Prisons and allied institutions

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in the Concurrent List, the enactment of suitable legislation by the centre as well as the States, and the revision of the State Prison Manuals. While the report of the Working Group was gathering dust, the Government of India requested the Seventh Finance Commission to go into the question of upgrading the standards of jail administration on the basis of comprehensive assessment of the requirement in this regard. The commission in its report of 1978 based on an analysis of the data collected from various sources at national and regional level.

2.5. PRISON REFORMS

The journey, which commenced in 1966, has thus, during the last 30 years, planted many milestones. But it seems there are yet promises to keep and miles to go before one can sleep. We have to be pragmatic also. Constitutional rights of the prisoners shall have to be interpreted in such a way that larger public interest does not suffer while trying to be soft and considerate towards the prisoners. For this, it has to be seen that more injury than is necessary is not caused to a prisoner. At the same time efforts have to be made to reform him so that when he comes out of prison he is a better citizen and not a hardened criminal. It would be useful to note, what is the general position of prisons in our country presently. To bring home this proposition, it would be enough to note what has been mentioned in the 1994-95 Annual Report of National Human Rights Commission in this regard at page 13 in para 4.17. The same is as below: "The situation in the prisons visited

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was varied and complex. Many, such as Tihar Jail in Delhi were over-crowded; yet others, like that open jail in Hyderabad were under-utilized. Often, within a single State, conditions varied from one jail to another in this respect, pointing to the need for a more rational statewide use of facilities. The Commission saw a few jails which were notably clean and where the diet was reasonable such as the Central Jail in Vellore. Unfortunately, it saw many others which are squalid, such as the newly constructed Central Jail in Patna. In yet others, the diet was inferior, and the management was denounced by the inmates as brutal and corrupt. In some, care was being taken to separate juveniles from others, petty offenders from hardened criminals. In others, no such care was being taken and the atmosphere appeared to nurture violence and criminality. In a few, major efforts were being made to reform conditions, to generate employment in a worthwhile and remunerative way, to encourage education and restore dignity. In other, callousness prevailed, prisoners were seen in shackles, mentally disturbed inmates- regardless of whether they were criminal or otherwise- were incarcerated with others, with no real effort being made to rise above the very minimum required for the meanest survival. Where prisoners worked, their remuneration was often a pittance, offering scant hope of savings being generated for future rehabilitation in society. By and large, the positive experiences were the exceptions rather than the rule, dependant more upon the energy and commitment of individual officials rather than upon the capacity of the system to function appropriately on its own." The literature on prison justice and prison reform
shows that there are nine major problems which afflict the system and which need immediate attention. These are: (1) Overcrowding; (2) Delay in trial; (3) Torture and Ill-treatment; (4) Neglect of health and hygiene; (5) Insubstantial food and Inadequate clothing; (6) Prison vices; (7) Deficiency in Communication; (8) Streamlining of Jail Visits; and (9) Management of Open-air Prisons.

2.5.1. OVERCROWDING

That our jails are overcrowded is a known fact. To illustrate, in Tihar Jail as against the housing capacity of 2,500 persons in 1994-95, there were 8,500 prisoners. Overcrowding contributes to a greater risk of disease, higher noise levels, surveillance difficulties, which increase the danger level. Besides, life is more difficult for inmates and works more onerous for staff when prisoners are in over capacity. Overcrowding affects the health of prisoners. The same also very adversely affects hygienic condition. It is, therefore, to be taken care of. The release on bail of certain categories of undertrial prisoners, who constitute the bulk of prison population, has to result in lessening the over capacity. It would be useful to refer here to the Seventy-Eighth Report of the Law Commission of Indian on ‘Congestion of Undertrial Prisoners in Jails’. The Commission has in Chapter 9 of the Report made some recommendations acceptance of which would relieve congestion in jails. These suggestions include liberalization of conditions of release on bail. Overcrowding may also be taken care of by taking recourse to alternatives to incarceration. These being: (1) Fine; (2) Civil commitment; and
(3) Probation. As to release on probation, it may be stated that it really results in suspension of required to execute bond under the provisions of the Probation of Offenders Act, 1958, requiring maintenance of good conduct during the probationary period, the failure to do which finds the concerned person in prison again. That Act has provision of varying conditions of probation and has also set down the procedure to be followed in case of the offenders failing to observe conditions. Overcrowding is reduced by releases on parole as well, which is a conditional release of an individual from prison after he has served part of the sentence imposed upon him. Chapter 20 of the Report of All India Committee on Jail Reforms (1980-83), deals with the system of remission, leave and premature release. The Committee has mentioned about various types of remission and has made some recommendations to streamline the remission system. As to premature release, which is the effect of parole, the Committee has stated that this is an accepted mode of incentive to a prisoner, as it saves him from the extra period of incarceration; it also helps in reformation and rehabilitation. The Committee has made certain suggestions in this regard too. There is yet another baneful effect of overcrowding. The same is that it does not permit segregation among convicts - Those punished for serious offences and for minor. The result may be that hardened criminals spread their influence over others. Then, juvenile offenders kept in jails (because of inadequacy of alternative places where they are required to be confined) get mixed up with others and they are likely to get spoiled further.
So, problem of overcrowding is required to be tackled in right earnest for a better future.

2.5.2. DELAY IN TRIAL

It is apparent that delay in trial finds an undertrial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. The release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard. It has to be remembered that production before the court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Art.21. Speedy trial would encompass within its sweep all the stages including investigation, inquiry, trial, appeal, revision and retrial. In short everything commencing with an accusation and expiring with the final verdict, the two being respectively the “terminus a quo and terminus ad quem” of the journey which an
accused must necessarily undertake once faced with an implication. In *P. Ramachandra Rao Vs State of Karnataka* the court observed that it must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Art.21 and if so, then to terminate the particular proceedings and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted. The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Criminal Procedure Code to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be a better protector of such right than any guidelines. In appropriate cases, inherent power of High Court under Sec.482 can be invoked to make such orders, as may be necessary, to give effect to any order under Cr.P.C or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases the High Courts have exercised their jurisdiction under Sec.482 Cr.P.C for quashing of first information report, investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be

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58 (2002) 4 SCC 578
exercised on a case being made out of breach of Fundamental Right conferred by Art.21 of the Constitution.

2.5.3. TORTURE AND ILL-TREATMENT

Apart from torture, various other physical ill treatments like putting of fetters, iron bars are generally taken recourse to in jails. Some of these are under the colour of provisions in Jail Manuals.

2.5.4. NEGLECT OF HEALTH AND HYGIENE

The Mulla Committee has dealt with this aspect in Chapter 6 and 7 of its Report, a perusal of which shows the pathetic position in which most of the jails are placed insofar as hygienic conditions are concerned. Most of them also lack proper facilities for treatment of prisoners. The recommendations of the Committee in this regard are to be found in Chapter 29. The society has an obligation towards prisoners' health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.
2.5.5. INSUBSTANTIAL FOOD AND INADEQUATE CLOTHING

There is not much to doubt that the rules contained in concerned Jail Manual dealing with food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully he said on this aspect is the persons who are entitled to inspect jails should do so after giving shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other jails also. The complaint received must be fairly inquired and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.

2.5.6. PRISON VICES

It may only be stated that some vices may be taken care of if what is being stated later on the subject of jail visits is given concrete shape. Many of the vices are related to sexual urge, which remains unsatisfied because of snapping of marital life of the prisoner. If something could be done to keep the thread of family life unbroken some vices many take care of themselves, as sexual frustration may become tolerable. The aforesaid seems to be a more rational way to deal with prison vices rather than awarding hard punishment to them. In the situation in which they are placed, a sympathetic approach is also required.
2.5.7. DEFICIENCY IN COMMUNICATION

While in jail, communication with outside world gets snapped with a result that the inmate does not know what is happening even to his near and dear ones. This causes additional trauma. A liberalized view relating to communication with kith and kin specially is desirable. It may be pointed out that though there may be some rationale for restricting visits, but insofar as communication by post is concerned, there does not seem be any plausible reason to deny easy facility to an inmate.

2.5.8. STREAMLINING ON JAIL VISITS

Prison visits fall into three categories: (1) relatives and friends; (2) professionals; and (3) lay persons. In the first category comes the spouse. Visit by him/her has special significance because a research undertaken on Indian prisoners sometime back showed that majority of them were in the age group of 18 to 34, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. Visits by a spouse are, therefore, of great importance. It is, of course, correct that at times visit may become a difficult task for the visitors. This would be so where prisoners are geographically isolated. This apart, in many jails facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasizes their separation
rather than retaining common bonds and interests. There is then urgent need to streamline these visits. The frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other members of the family. As to visits by professionals, i.e. the lawyer, the same has to be guaranteed to the required extent, if the prisoner be a pre-trial detainee, in view of the right conferred by Article 22(1) of the Constitution.

2.5.9. MANAGEMENT OF OPEN AIR PRISONS

Open-air prisons play an important role in the scheme of reformation of a prisoner, which has to be one of the desideratum of prison management. They represent one of the most successful applications of the principle of individualization of penalties with a view to social readjustment. It has been said so because release of offenders on probation, home leave to prisoners, introduction of wage system, release on parole, educational, moral and vocational training of prisoners are some of the features of the open air prison (camp) system. In terms of finances, open institution is far less costly than a closed establishment and the scheme has further advantage that the Government is able to employ in work, for the benefit of the public at large, the jail population, which would have otherwise remained unproductive. The monetary returns are positive, and once put into operation, the camps pay for itself. The whole thrust is to see
that after release the prisoners may not relapse into crimes, for which purpose they are given incentives to live normal life, as they are trained in the fields of agriculture, horticulture etc. Games, sports and other recreational facilities, which form part of the routine life at the open-air camps, inculcate in the prisoners a sense of discipline and social responsibility. The prayers made regularly provide spiritual straight. Open air prison; however, create their own problem, which are basically of management. These problems are not of such sort which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable. So, let more and more open-air prisons be opened. To start with, this may be done at all the District Headquarters of the country.\(^{59}\)

2.6. THE JAIL REFORM COMMITTEE 1980-1983 (MULLAH COMMITTEE)

The Jail Reform Committee, 1980-83 has given the following recommendations in this regard: (1) Departmentalization: There shall be in each State and Union Territory a Department of Prisons and Correctional services dealing with the adult and the young offenders- their institutional care, treatment, aftercare, probation and other non-institutional services. (2) Under trial prisoners (UTPs): The State shall endeavour to evolve proper mechanism to ensure that no under trial prisoner is unnecessary detained. This shall be achieved speeding up

trials, simplification of bail procedures and periodic review of cases of under trial prisoners. Under trial prisoners should, as far as possible, be confined in separate institutions. (3) Alternatives to imprisonment: Since it is recognized that imprisonment is not always the best way to meet the objectives of punishment, the government shall endeavour to provide in law, new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc in addition to the ones already existing, and shall specifically ensure that the Probation of Offenders Act, 1958 is effectively implemented throughout the country. (4) Suitable living conditions: Living condition in every prison and allied institutions shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively. (5) Prison cadre: Prison service shall be developed as a professional career service. The State shall endeavour to develop a well-organised prison cadre based on appropriate job requirements, sound training and proper promotional avenues. (6) Open prisons: Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and public discernment. Selected eminent public men shall be authorized to visit prisons and give independent report on them to appropriate authorities. (7) Essential functions: Probation, aftercare, rehabilitation, and follow up offenders shall form an integral part of the functions of the Department of prisons and correctional services. (8) Planned and systematic development: The
development of prisons shall be planned in a systematic manner keeping in view
the objectives and goals to be achieved. The progress of implementation of such
plans shall be continuously monitored and periodically evaluated. (9) Resource
allocation: The government at the Center and in the States/Union Territories shall
endeavour to provide adequate resources for the development of prisons and other
allied services. (10) National development plan: The government recognizes that
the process of reformation and rehabilitation of offenders is an integral part of the
total process of social reconstructions, and therefore, the development of prison
shall find a place in the national development plans. The Justice Krishna Iyer
Committee: - In 1987, the Government of India appointed the Justice Krishna Iyer
Committee to undertake a study on the situation of women prisoners in India. It
has recommended induction of more women in the police force in view of their
special role in tackling women and child offenders.

2.7. JUDICIAL RESPONSE

In Lingala Vijayakumar & Ors v. Public Prosecutor, Andhra Pradesh\textsuperscript{60} the
Supreme Court observed: “The court has responsibility to see that punishment
serves social defence, which is the validation of deprivation of citizen's liberty.
Correctional treatment, with a rehabilitative orientation, is an imperative of
modern penology. A hospital setting and a humanitarian ethos must pervade our
prisons if the retributive theory, which is but vengeance in disguise, is to

\textsuperscript{60}AIR 1978 SC 1485
disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on prisoners but by reformation and healing whereby the creative potential of the prisoner is unfolded.

These values have their roots in Article 19 of the Constitution of India which sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and security of the State. By cruel treatment within the cell you injure his psyche and injury never improves. It is obvious that it is unreasonable to be torture some, as it recoils on society and it is reasonable to be compassionate, educative and purposeful because it transforms the man and makes him more social. On appropriate motion made to this Court showing violation of the residual rights of a prisoner by unnecessary cruelty and unreasonable impositions and denials and deprivations within the prison-setting, the judicial process will call to order the prison authorities and make them respect the fundamental rights of the appellants. Prisoners are not non-persons. Our prisons are not laudably different even in the matter of homosexuality. The point of no return in social defence arrives if imprisonment is not geared to therapeutic goals. On release such an offender is 'caught in a "revolving door"'-leading from arrest on the street through a brief unprofitable sojourn in jail back to the street and eventually another arrest. The jails overcrowded and put to use for which they are not suitable have a destructive effect upon.... inmates”. In Dharambir v. State of Uttar Pradesh61 the Supreme Court gave the rationale for the use of open

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61AIR 1979 SC 1595
prison system for reformation and rehabilitation of the offenders. The court observed: “One of the principal purposes of punitive deprivation of liberty, constitutionally sanctioned, is decriminalization of the criminal and restoration of his dignity, self-esteem and good citizenship; so that when the man emerges from the forbidden gates he becomes a socially useful individual. The long prison terms do not humanise or habilitate but debase and promote recidivism. Life imprisonment means languishing in prison for years and years. Such indurations of the soul induced by indefinite incarceration harden the inmates, not softens their responses”. Therefore, the Court issued the following directions designed to make the life of the sentence inside jail restorative of his crippled psyche: dispatching the two prisoners to one of the open prisons in Uttar Pradesh if they substantially fulfill the required conditions; being agriculturists by profession they be put to use as or them small wages; by keeping the prisoners in contact with their family by allowing members of the family to visit them and by permitting the prisoners under guarded conditions at least once a year, to visit their families and the prisoners to be released on parole for two weeks, once a year, which will be repeated throughout their period of incarceration provided their conduct, while at large, is found to be satisfactory. In Rama Murthy v State of Karnataka62 the Supreme Court issued the following guidelines to various authorities for the streamlining of prison reforms in India: (1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of Congestion of undertrial prisoners in jail' as contained in Chapter IX.

621997Cri.L.J.1508.
(2) To apply mind to the suggestions of the Mullah Committee as contained in Chapter XX of Volume I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful. (3) To consider the question of entrusting the duty of producing under trial prisoners on remand dates to the prison staff. (4) To deliberate about enacting of new Prison Act to replace century old Indian Prison Act, 1894. (5) To examine the question of framing of a model new All India Jail Manual. (6) To reflect on the recommendations of Mullah Committee made in Chapter XXIX on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps. (7) To ponder about the need of complaint box in all the jails. (8) To think about introduction of liberalization of communication facilities. (9) To take needful steps for streamlining of jail visits. (10) To ruminate on the question of introduction of open-air prisons at least in the District Headquarters of the country. The Supreme Court has also given directions from time to time in various cases for the amelioration of prison conditions. These are: (1) Separation of the young offenders: The young inmates must be separated and freedom from exploitation by adults. (2) Companionship: Subject to discipline and other security criteria, the right of the society of fellow men, parents and other family members cannot be denied in the light of Article 19 and its sweep. (3) Legal consultancy: Lawyers nominated by courts be given all facilities for interview, visits, and confidential communication with prisoners, subject to discipline and security considerations. (4) Judicial surveillance: District
Magistrates and Sessions Judges shall personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances of the prisoners. (5) Standard Minimum Rules: The State shall take steps to keep up to the Standard Minimum Rules for treatment of prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategy. (6) Just and rationale Prison Act and Manual: The Prisons Act needs modification and the Prison Manual total overhaul. A correctional cum orientation course has become necessitous for the prison staff indicating the constitutional values, therapeutic approaches and tension free management. (7) Legal protection of prisoner’s rights: The court shall protect the prisoner’s right by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoners shall be promoted through recognized legal aid programmers.

2.8. CONCLUSION

Punishment, in civilized societies must not degrade human dignity of flesh and spirit. The rule of law has recognized in a number of instances on poor undertrial prisoner’s right that they must be treated like human beings and their treatment must conform to the basic standards of humanity and fairness. Recognition of the inherent dignity and of the equal and in alienation right of all members of the society is the foundation of freedom, justice and peace in the
world.\textsuperscript{63} The utility of prisons as an institution for rehabilitation of offenders and preparing them for normal life has always been a controversial issue. Dr. Paripurnanand Verma observed that a prison symbolizes evil and, therefore evil doers find themselves in perfect harmony inside the house of evils\textsuperscript{64}. This assertion however, seems to be an over simplification of facts as this does not hold good for all categories of criminals. There are quite a large number of offenders who are otherwise well behaved and are persons of respectable class of society but they fall a prey to criminality on account of momentary impulsiveness, provocation or due to situational circumstances. There is yet another class of prisoners who are otherwise innocent but have to bear the rigors of prison life due to miscarriage of justice. Obviously, such persons find difficult to adjust themselves to the prison surroundings and find life inside the prison most painful and disgusting. The real purpose of sending criminals to prison is to transform them into honest and law abiding citizens by inculcating in them a dictate for crime and criminality. But in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods consequently, the change in inmates is momentary and lasts only till the period they are in prison and as soon as they are released, they quite often return to the criminal world. It is for this reason that modern trend is to lay greater emphasis on psychiatric conditions of the prisoners so that they can be rehabilitated to normal life in the community. This objective can be successfully achieved through the techniques of


probation and parole. The sincerity, devotion and tactfulness of the prison officials also help considerably in the process of offender’s rehabilitation. If the problem of overcrowding in western prisons is due to permissiveness, loose marriage ties and adorable values of violence and sex taboos of that society, the Indian prisons are no better for the reason that economic conditions do not permit to evolve better modes of prison management, therefore, restructuring of prisons in India needs prime attention. The problem of prison has always been engaging the attention of penologist’s throughout the world. The main object of prisonisation is undoubtedly negative in so far as it aims at generating a feeling of dislike for prison life among the members of society, the object being dissuade people from doing acts which may lend them into prison. Expressing his view about prison, Donald Taft commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from general society. A prison according to Taft, characterizes rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. Both Central and State Governments have not been successful in implementing the prison reforms suggested by the both International and National Institutions as well as by the various committees appointed by the both at Central and State Governments. There are 102 prisons in the State, including the Eight Central Jails, 15 District Prisons, 4 District Headquarter Sub-Jails, 2 Special Sub-Jails, and 70 Taluka Sub-Jails. While the Bangalore prison accommodates 3890 prisoners, other jails

William Howard Taft was the 27th President of the United States and later the 10th Chief Justice of the United States.
elsewhere have 9235 inmates as on 15.10.2012. “Funding has always been a problem, and but for the resources crunch, prison reforms could have been taken up long ago,” sources said. An example is the jail staff to prisoners' ratio. While 1:4 is considered ideal, it is almost 1:9 now in the State. While living conditions may be better than in Uttar Pradesh or Bihar, they could be considerably improved. "We are talking about providing all basic necessities, not five-star luxuries, to make living behind bars more humane," sources explained. The shortage of jail staff has serious implications for the Bangalore Central Prison, where a significant number of major criminals and members of gangs such as the dreaded Dandupalya gang connected with multiple murders for gain are under detention.

Segregation of convicts and undertrials will also require more space and jailers. Despite the constraints, the new penitentiary here is getting a closed circuit Television for monitoring prisoners and a jamming device to prevent misuse of mobile phones. Changes in the Prison Manual are required before problems such as misuse of parole can be rectified. Craft units such as carpentry, weaving and printing, which provide employment and skill training to prisoners, have now been shifted to the new jail. Besides classes in yoga and meditation, vocational courses are being introduced so that when released, the former prisoners can rebuild their lives. Scooter repair and maintenance of appliances and computer hardware will be other classes offered. The Rotary has come forward to hold computer skill classes for the jail inmates. The 120-
An acre prison near Koramangala has its “open air jail” section where life convicts considered trustworthy are housed. They work in the orchard, rice and ragi fields and the dairy during the day and are confined at night. The farm produce and milk are used in the jail. There is also a library with 25,000 books. Top officials in the department are concerned about the need to provide “emotional support” to the jail staff. “They are often worse off than prisoners who can get out after their sentence is over; the jailers are there for life and are generally looked down upon by others,” they pointed out. Improved working conditions and morale boosting exercises are planned. The State's move to bring in prison reforms could have a nationwide impact. The proposals will result in a shift in thinking from prisons being regarded as “punishment centers” to becoming “correctional institutions”. The aim is to see that prisoners are rehabilitated to become law-abiding citizens, away from a life of crime, after their release. Some of the major reforms suggested in the past were never followed up at the national level. These include the recommendations made by the Mullah Commission in 1963, the Kapoor Commission and the Rustomji Commission in the 1970s.