CHAPTER II

PRISON ADMINISTRATION: A HISTORICAL RESUME

(A) PRISON ADMINISTRATION IN ANCIENT INDIA.

(B) PRISON ADMINISTRATION IN MEDIEVAL INDIA.

(C) PRISON ADMINISTRATION IN PRE-INDEPENDENT PERIOD.

(D) PRISON ADMINISTRATION IN POST-INDEPENDENT PERIOD.
Prisons in the shape of dungeons had existed from time immemorial in all the old countries of the world. In his book 'The Future of Imprisonment' Norval Morris refers to punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe.(1) But prison sentence, as a specific punishment, is of relatively recent origin. The prison as we know it now came into existence largely 'as an interim house of detention of an offender pending his trial and as punishment. But when it comes to be realised that the process of imprisonment, involving detention in isolation from family and community, under not so pleasant conditions, could itself be considered as a convenient mode of punishment to replace the old corporal punishment, most countries readily took it. The prison sentence also satisfied the then twin purposes i.e. of inflicting pain on the offender in fair measure and protecting society by incarcerating him and deterring him, and others like him, from similar conduct. As regards the set up, the earlier prisons were not very different from the ill-ventilated and ill-provided dungeons of old.(2) These prisons were managed by private persons trying to make profits which resulted in corruption and cruelty. Gradually, influenced by the writings of social workers highlighting the pathetic conditions in prisons, governments took over their management and control. It was believed that rigorous isolation and custodial measures would reform the offenders. Experience, however, belied this expectation and often imprisonment had the opposite effect. With the development of behavioural science, it began to be
realised that reformation of offenders was not possible by detention alone. The traditional approach of retribution and deterrence is being gradually replaced by the modern concept of social defence which means protection of society and prevention of crime.(3)

Till the end of 18th century prison in England of those days came to be described as, places from which the prisoners came out 'to become pests in society, if they did not die earlier.' Due to the dedicated labours of John Howard, the British Parliament laid down in 1824 the first essentials of a decent prison administration. Since then the work of prison improvement has steadily forged ahead in the U.K. and to a greater or less extent in most countries of Europe and in the United States.(4)

**Prison Administration in Ancient India:**

In India, the early prisons were only places of detention where an offender was detained until trial and judgement and the execution of the latter. The structure of society in Ancient India was founded on the principles enunciated by Manu and explained by Yajna Valkya, Kautilya and others.(5) Among various types of corporal punishments—branding, hanging, mutilation and death, the imprisonment was the most mild kind of penalty known prominently in ancient Indian penology. Imprisonment occupied an ordinary place among the penal treatment and this type of corporal punishment was suggested in the Hindu scriptures. The evildoer was put into prison to segregate him from the society. The main aim of imprisonment was to keep away the
wrongdoers, so that they might not defy the members of social order. (6) These prisons were totally dark dens, cool and damp, unlighted and unwarmed. There was no proper arrangement for the sanitation and no means or facility for human dwelling. (7)

Though the Indian law-givers had a little description of Jail life, even then historical account gave a clear picture after the analysis of the available data. A few Srauti writers supplied some information concerning jail. Yajna Valkya had narrated that a person who was instrumental for the escape of a prisoner had to undergo capital punishment (hanging). Vishnu suggested the penalty of imprisonment to a person who hurt the eyes of a man. (8)

Kautilya 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 fifth 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 birth day 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 jailor who always keeps eyes on the movement of the prisoners and the proper functioning of the prison authorities. If a prisoner by chance moves out of his cell, he is fined twenty four rupees and the warder who is in league with the prisoner is fined the double amount. In case the warder disturbs the prison life, the higher authority imposes a fine of five hundred rupees. Sometimes the prisoner is put to death by the warder so the penalty in this case is the highest, i.e., one thousand rupees. 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. (9)

In the early years of Ashoka, there was an unreformed prison in which most of the traditional flendish tortures were inflicted and from which no prisoner came out alive. (10) But 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 Ram Chandra Dikhitar in his book entitled 'Mauryan Polity' has suggested that Ashoka was familiar with the
Arthashastra, for Ashoka speaks of as much as twentyfive jail deliveries effected by him in the course of twentysix years since his appointment to the throne. (11)

In the post-Ashokan age the Jatakas give a picture of the society and supply information regarding crime and imprisonment. Seyya Jataka (no. 283) relates that, king having fettered an officer put him in jail. But when the king was informed of his guiltless action, the king released the officer from prison. The other Jataka (No. 201) narrates about the fattered prisoner while another Jataka (No. 427) describes the release of the political prisoners at the time of war and commissioned them in the army. The release of prisoners was a common feature in ancient India. (12)

From Harshacharita it appears that the condition of the prisoners was far from satisfactory. The life of Hiuen-Tsang records that prisoners generally received harsh treatment. They were not allowed to shave. They had hairy faces and matted beards. There were, however, occasions when prisoners were released. Kalidasa records when the constellation on which a king was born in evil aspect, astrologers advised release of all the prisoners. At the time of Royal Coronation all prisoners were released. The BrhatSamhita adds that release of prisoners could even be ordered when the king took the pусyasnana (an auspicious bath). (13)
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 southwards along the main road and travelling about three-quarters of a mile from Maniyar Math, the visitor will find an area, about 200 square feet enclosed by a stone wall, about 6 feet thick with circular bastions at the corners. 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 Budha on the Gridhrakuta. Partial clearance of the site brought to light stone cells, in one of which was found iron rings with a loop at one of extremity, which might possibly have served the purpose of manacling prisoners. (14)

The officers of the jail were known as Bandhanagaradhyaksa and Karaka. The former was the Superintendent of jail and the latter was one of his assistants. The jail department was under the charge of sannidhata, who was to select sites for their location and build necessary buildings. (15)

From the above discussion it is quite evident that regular prison system as such was not in existence in ancient India and imprisonment as a mode of punishment was not a regular feature when compared to the modern prison system in India. (16)
Prison Administration 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. Crimes were divided into three groups, namely (a) offences against God. (b) offences against the State, (c) offences against private persons. The punishments for these offences were of four classes: (1) hadd, (2) tazir, (3) quisas, (4) tashir. (17) These punishments included fines and confiscation, forfeiture of rank and title, subjecting to humiliations, banishment, whipping, mutilation of offending limbs, execution and other corporal punishments. Imprisonment was not resorted 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 judgment. (18) There used to be three 'noble prisons or castles', in Mughal India, One was at Gwaliar, second at Ranthambore and the third was at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their survival there.

The Gwaliar Fort was reserved for the 'nobles that offend'. To Rohats were sent those nobles who were condemned
to perpetual imprisonment, from where very few return home. Princes of Royal Blood were often sent to this place. (19)

Occasionally, the prisoners were transferred from one place to another. According to Muslim law, the quazis were supposed to visit the prisons and inquire into the conditions there, and release those who showed signs of repentence. Usually however, they neglected their duty. 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 Salim, 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 recovery from illness of the favourite princess, Begum Sahib, Shahajahan ordered the release of prisoners in 1638.

When the prisoners were taken to the prison, they were usually loaded with iron fetters on their feet and shackles on their necks. (20)

During Maratha period also, imprisonment as a form of punishment was not very common. Death, mutilation, fine were common forms of punishment. The form of punishments, as during Ancient and Mughal period, continued in Maratha period also. (21)
Some rooms in forts popularly known as the Bandhikhanas or Adab-khanas were reserved for prisoners, and the culprits who had committed serious crimes, were sent to such forts from different places. (22) They were treated according to their status in life, and the nature of crime they had committed. Persons of the lower castes and especially adulterous women, both of higher and lower castes were compelled to do hard labour on building fortress. The ranks of prisoners determined their quantity and quality of ration. They were given leave for visiting their homes for attending religious rites like Sradha. Peshwa as the religious head of the state was giving them money to perform their rites and rituals inside the jail. On health ground the prisoners were released.

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 first class food. (23)

Thus, neither in Ancient nor in Mediaeval India imprisonment was considered to be a form of punishment. The main features of the prison system as it prevailed in pre-British period may be summarised as follows:

(a) There were no prisons in the modern sense.
(b) There was no description of the internal administration of prisons.
(c) No separate prison service existed and courts were not feeding centres for prisons.
(d) There were no rules for maintenance of prisons. (24)
Prison Administration in pre-independent Period:

During early days of British rule the condition of prisons in India remained unchanged and no reformatory steps were taken. The prisoners used to be herded together in overcrowded and insanitary jails. Hardened offenders and undertrials used to share the same wards. There was no separation of male from female prisoners. The present institution of jails in India is based on British conceptions and "our contemporary prison administration is a legacy of the British rule." (26)

The history of prison reforms in modern India dates back to the year 1836. At that time, there were 43 civil, 75 criminal and 68 mixed jails run by District Magistrates. (27) The jails lacked all basic amenities like food, clothing, medical facilities etc. Lord Macaulay drew the attention of the Government of India to the terrible conditions in Indian Jails. Consequently Lord Willam Bantick appointed a committee on 2nd January 1836 to study the conditions in Indian jails and report thereupon. This committee, known as Prison Discipline Committee, submitted its report in 1838 in which it criticised "the corruption of subordinate establishment, the laxity of discipline and the system of employing prisoners or extra-mural labour on public roads." (28) This report failed to bring out the present conception of jail reforms because the committee rejected reformatory influences. Perhaps the committee was influenced by the
contemporary English idea of punishment, i.e., deterring both to the actual perpetrator of crime and the potential offenders from committing crimes. However, it may be added that the appointment of this committee was the first attempt on prison reforms in India as its advocacy of provision of proper buildings, i.e., construction of central prisons and intra-mural employment laid the foundations for further progress.

In pursuance of recommendations of Macaulay Committee, three central prisons, one each at Agra (1846), Bareilly (1848), and Allahabad (1848) in the then United Province and one central prison at Lahore (1852). In accordance with the recommendations of the Macaulay Committee, the First Inspector General of Prisons was appointed in 1844 in the then North Western Province. In 1850, the Government of India suggested to the provincial governments that each province should appoint an Inspector General of Prisons. In 1862 the North Western province took the initiative of appointing civil surgeons as superin-tendents of district jails. The Government of India, encouraged by the appreciating outcome of the experiment, ordered in 1864 that all provinces should appoint Civil Surgeons as Superintendents of district jails.

There was, however, little improvement in prisons. After the lapse of a quarter of a century, that is, in 1864, the Government of India (Lord Dalhousie) appointed a second commission of Enquiry to enquire into the Jail Management
and Discipline. The Commission recommended the provision of regular medical facilities for prisoners and better diet, clothing and bedding. The commission made some specific recommendations regarding accommodation for prisoners and strongly advocated the separation of prisoners—males from females, children from adults and juveniles from other prisoners. The commission also recommended that every central prison should have cellular accommodation for fifteen percent of its population. But due to financial stringency, these recommendations could not be implemented.

The Government of India passed Prisons Act in 1870. This Act laid down that there should be a superintendent, a medical officer, a jailor and such subordinate officers as the Local Government thinks necessary. The Act provided for the separation of male prisoners from female prisoners, children from adults and criminals from civil prisoners. The act was aimed at giving effect to some of the recommendations of the Commission of 1864. It put the question of prison reform in the forefront, but as the British regime was interested in the prisons only from the point of view of administration and discipline, reforms could not be introduced. In fact, the sociological ideas of reformation or welfare of inmates had not crystallised until then.

To enquire into prison administration a conference of experts met in Calcutta in January 1877. It was termed
as the third All India Jail Committee. The report of the committee is a valuable document and is regarded as a mine of information of the conditions of the then Indian jails.\(^{36}\) The Committee recommended uniformity of system at least on some basic issues, as there were five enactments in force in the country governing the management of prisons in various states.\(^{37}\) The committee reviewed the jail management in detail rather than the general aims and principles of administration.\(^{38}\)

In 1888, the Government of India appointed the Fourth Jail Committee, consisting of Dr. Walker and Dr. Lethbridge, two experienced jail officials, on all India basis.\(^{39}\) The main function of the committee was to probe into the routine working of the jails. The committee visited various provinces and made an exhaustive enquiry into all matters connected with jail administration and submitted its report in 1889. The committee was of the view that uniformity could not be achieved without the enactment of a single Prisons Act. The committee recommended the separation of undertrials from convicts and classification of prisoners into two classes, that is, casual and habitual.

The Government convened a conference of Experts on Jail Management from all provinces in 1892 at Calcutta to examine the recommendations of the committee of 1888 in regard to jail offences and punishment. This All India
Committee further supplemented the work of the Fourth Jail Committee and drew up proposals on the subject of prison offences and punishments which were subsequently incorporated in the Prisons Act of 1894, which is the current law governing management and administration of prisons in India.\(^{(40)}\) This Act is the outcome of the recommendations of the committee of 1888 and efforts of the committee of 1892. The Act of 1894 reflected the contemporary English idea of considering punishment only as deterrent one. However, this Act had some good points too. It sought to streamline prison administration and put it on uniform pattern throughout the country.\(^{(41)}\) As a measure of administrative reform, the Act provided that prisoners confined to prisons under the age of twenty-one and had arrived at the age of puberty should be separated from those 'who have not.' It also provided for the separation of civil prisoners from criminal prisoners and of unconvicted criminal prisoners from those convicted.\(^{(42)}\)

The close of the nineteenth century witnessed a landmark in the history of prison reform movement in India. The Reformatory schools Act was passed in 1897 which modified the prior legislation on the subject and directed the courts to send a 'youthful offender' below the age of fifteen to a Reformatory School instead of a prison.\(^{(43)}\) According to the provisions of the Act, when any youthful offender is sentenced to transportation or imprisonment by
the court, he should be sent to a Reformatory School and be detained there for a period not less than three or more than seven years. Uttar Pradesh was the first province to establish a Reformatory School. During this period the British penal policy underwent a great reform as it changed from punishment to reformation. This change also affected the prison administration in India and the old concept of prison administration, that is, punishment as deterrent was being discarded under the influence of the new concept, that is, reformation and rehabilitation.

Prior to the enactment of the Prisons Act of 1894, prisoners sentenced to penal servitude were also used to be awarded the sentence of transportation and sent to Andaman and Nicobar Islands. The Act restricted and regulated the use of 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.

Even though different Commissions were appointed the Indian Prison System lagged behind on the reformative side of the prison work. It failed to regard the prisoner as an individual and conceived of him rather as a unit in jail administrative machinery. It lost sight of the effect which humanising and civilizing influences had on the mind of the individual prisoner and failed to focus attention on his
material wellbeing and problems of diet, health and labour. Thus it was mainly the idea of deterrence which influenced prison policy till the year 1919.

In order to bring about an over all change in Indian Jails, the last pre-independence Jail Committee was set up in 1919 in which Sir Alexander G Cadrew was the Chairman. It submitted its report in 1920. This Committee went into the question in-depth and examined the prevailing conditions in the prisons not only in India but also in countries like U.K., U.S.A., Japan, Phillipines, and Hongkong. The Committee for the first time suggested two conceptual pivots "prevention" and "reformation" for a more effective base for prison administration in India. The aim of Prison Administration is the prevention of further crime and the restoration of the criminal to society as a reformed character," stated the committee. The report contained a number of recommendations dealing among others with such subjects as prison staff, separation and classification of prisoners, prison labour and manufactures, discipline and punishment, reformatory influences in prison, prison hygiene, medical administration, aid to prisoners on release, probation and Borstal treatment.

Soon after on the introduction of the Montegu Chelmsford Reforms, jails and other alike services became State subjects. The provincial governments showed great
enthusiasm for jail reform and started appointing a series of jail Reform Committees with a view to improving prisoner's lot in the jails under their jurisdiction. The committees appointed in different States were Punjab Jail Reforms Committee (1919 and 1948), Uttar Pradesh Jail Committees (1929, 1938 and 1946), Bombay (1939 and 1946), Mysore (1941) Bihar (1948), Madras (1950), Orissa (1952) and Travancore Cochin (now Kerela) (1953).

Prison Administration in Post Independent Period:

In the Post-independence period the Government of India took some interest in the matters of changes in the prison system and had requested the United Nations to send an expert under its Technical Assistance Programme to study the Prison Administration in India and to make suggestions for improvement therein. Dr. W.C. Reckless was deputed by the United Nations in 1951 to study the prison administration in India and to make suggestions for improvement therein. Dr. Reckless in his report suggested many valuable changes, most of which were not, in essence, radically different from the recommendations of the Indian Jails Committee of 1919. Dr. Reckless specifically wanted the development of whole time probation and after care services, the establishment of new jails to perform specialised functions, legal substitutes or short sentences of imprisonment: reduction in the number of under trial prisoners, separation of juvenile delinquents from the
adults and the revision of Jail manuals. Reckless's services were also utilized in training a batch of 47 senior jail officers drawn from different states in modern methods of jail administration.

The All India Conference of Inspector Generals of Prisons was held in Bombay in 1952. This conference recommended for setting up of a committee to draft a Model Prison Manual. Accordingly an All India Jail Committee was appointed in 1957. This Committee submitted its report and finalised a Model Prison Manual in 1959. As a result of the recommendations of this committee the Government of India set up a Central Bureau of Correctional Services in 1961.

The establishment of a Central Bureau of Correctional Services at the Central level (renamed as the National Institute of Social Defence in 1975) was yet another important development. This was the first Central Agency to undertake research, training, documentation, etc., in social defence and assist and advise the States on the matter relating to Social Defence.

Again the Government of India constituted "Working Group on Prisons" in 1972 which submitted its report in 1973. The Committee made a number of recommendations and the State Governments were asked by Central Government to implement such recommendations. It recommended for the
establishment of a Research Unit at the headquarters of the Inspector General of Prisons in each State. The setting up of a training institute in each State as well as of Regional Training Institute, diversification of the Institutions, accommodation and other connected matters, etc., formed the contents of its report. The most remarkable recommendation of this Working Group was that it recommended the inclusion of prisons in the Five-Year Plan and a provision of ₹100 crores. It thought that a prison administration could not be streamlined unless the Government of India and the State Governments made available more resources for developing every aspect of the existing system. As a follow-up of this report, the Ministry of Home Affairs initiated efforts for the improvement and modernization of jail administration by making a grant of ₹2 crores in the budget for 1977-78 and of ₹4 crores in the budget of 1978-79.

In 1979, a conference of Chief Secretaries made a number of recommendations to reduce the overcrowding in jails. This included the establishment of an effective system of regular review of cases of under-trials, appointment of part-time or whole-time law officers in jails to enable the under-trials to contest their cases in courts, setting up on new Courts and amendment of the law relating to the transfer of prisoners. The other recommendations made by this conference were: creation of separate facilities for the
care, treatment and rehabilitation of women offenders, segregation of juveniles, improving the system of inspection and supervision in jails so as to avoid indiscipline and malpractices, strengthening of training facilities for jail staff, work programme for all able bodied persons, setting up of State and national boards of visitors and revision of State Jail Manuals on the lines of the Model Prison Manual.

To help the State Government in their efforts to undertake jail reforms, the Central Government formulated a scheme in 1977 to give financial assistance for prison reforms. Accordingly the Seventh Finance Commission has recommended allocation of Rs. 48.31 crores to 11 States in the form of grants-in-aid for five years (1979-1984) for upgradation of standards of jail administration including upkeep of prisoners. Priority has been accorded by the Commission to ensure adequate direct expenditure on food, clothing and medicines for prisoners, to improve basic amenities like water supply, sanitary facilities, electrification, etc, and to develop additional jail capacity in States.

Several reports and articles appeared in the press about the conditions in jails, particularly in Tihar jail, Delhi and most of the jails in Uttar Pradesh and Bihar where a number of under-trial prisoners were confined without trial for over 10 years. The Government of India, therefore, appointed a committee on Jail Reforms headed by

This report contained 659 valuable recommendations on various aspects of prison development for the consideration of Central and State Government. Among the important suggestions made by the Committee were:


(b) The subject of Prisons and allied institutions should be included in the concurrent list of Seventh Schedule of the Constitution of India.

(c) Provision of a uniform framework for correctional administration by a consolidated, new and uniform comprehensive legislation to be enacted by the Parliament for the entire country.

(d) Revision of Jail Manuals should be given top priority.

(e) Suitable amendment of Indian Penal Code.

The follow up action on the report had been initiated by the Ministry of Home Affairs in consultation with concerned ministries and department of the Central and State Governments.
The Government of India further constituted a Committee on Women Prisoners in May 1986 with retired justice of Supreme Court V.K. Krishna Ayer as the Chairman. The Committee submitted its report on 1.6.1987. The major recommendations of this committee were:

(a) Provision of a national policy relating to the women prisoners in India.

(b) Formation of new rules and regulations relating to their punishment and conduct.

(c) Maintenance of proper co-ordination among the Police, Law and Prison for providing due justice to women Prisoners.

(d) Provision of legal-aid for them.

(e) Construction of separate prisons for women prisoners

(f) Proper care of the baby born in jail to a woman prisoner and provision of nutritious diet for the mother and the child.