CHAPTER VI

Alternatives to imprisonment

Alternatives to imprisonment cover a range of sanctions that aim to restore the relationship between the offender, the victim and the wider community by taking into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victims.

The UN Standard Minimum Rules for Non-custodial Measures provide a set of basic principles to promote the use of non-custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment. Directions for sentencing depositions and post sentencing deposition were also made in this report.

1 States are requested to prescribe the introduction, definition and application of non-custodial measures in the law and ensure that such measures are available to all persons at all stages of criminal justice process. Rule 5 provide that if possible pre-trial dispositions should be made. Rule 6 emphatically says that pre-trial detention should be used only as a means of last resort in criminal proceedings. The imposition of alternative measures should be based on a social enquiry report which contains an assessment of the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims. United National Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) adopted by General Assembly Resolution 45/110 of 14 December 1990.

2 Ibid., Rule 8: Sentencing depositions: The judicial authority, having at its disposal a range of non-custodial measures should be taken into consideration whenever appropriate. The sentencing authorities may dispose of cases in the following ways: (a) verbal sanctions, such as admonition, reprimand and warning; (b) conditional discharge; (c) status penalties; (d) economic sanctions and monetary penalties, such as fines and day-fines; (e) confiscation or an expropriation order; (f) restitution to the victim or a compensation order; (g) suspended or deferred sentence; (h) probation and judicial supervision; (i) a community service order; (j) referral to an attendance centre; (k) house arrest; (l) any other mode of non-institutional treatment; (m) some combination of the measures listed above.

3 Ibid., Rule 9: Post sentencing depositions: The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society. Post-sentencing dispositions may include: (a) furlough and half-way houses; (b) work or education release; (c) various forms of parole; (d) remission; (e) pardon. The decision on post-sentencing dispositions, except in the case of pardon shall be subject to review by a judicial or other competent authority, upon application of the offender. Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.
The wider use of alternatives reflect a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long-term a better protection for society.

This chapter lists some of the alternatives\(^4\) to imprisonment. The list is not exhaustive. These alternatives are not applicable to under trials, persons under preventive detention, persons arrested under section 89 of the Criminal Procedure Code, 1973\(^5\) and to persons arrested under Chapter VIII\(^6\), IX\(^7\), X\(^8\) and XI\(^9\) of the Criminal Procedure Code, 1973.

1. Probation

Probation has been the most frequently used alternative to imprisonment and also as a rehabilitative method\(^10\). During probation, constant, judicious and helpful supervision not amounting to undue annoyance is imperative. Probation seeks to reconcile the conflicting theories of 'punitive reaction' and 'treatment reaction' to crime. The suspension of sentence under probation serves a dual

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\(^4\) (1) admonition, (2) pardon, (3) forfeiture of property, (4) probation, (5) suspended sentence; (6) fine, (7) compensation to the victim, (8) externment from a locality, (9) commutation of sentence, (10) parole, (11) assignment to a detention centre; and (12) open prison and (13) Public censure.


\(^6\) Ibid., Chapter VIII Security for keeping the peace and for good behaviour.

\(^7\) Ibid., Chapter IX order for maintence of wives, children and parents.

\(^8\) Ibid., Chapter X Maintence of public order and tranquility.

\(^9\) Ibid., Chapter XI Preventive action of the police.

\(^10\) Probation is a judicial system by which an offender, instead of being punished by a sentence, is given an opportunity to reform himself under supervision, and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed, no penalty for his offence will be imposed.
purpose of deterrence as well as reformation. It helps in the reformation of the offender by extending every possible assistance and guidance to him, while at the same time the threat of being subjected to unexecuted sentence keeps him deterred from indulging in delinquent acts. The system is useful to the society in general and the offender in particular. At the same time, it enables the probation officers to get a deep insight into the problems of criminals.

The object of probation is the protection of society by preventing the crime through rehabilitation of the offender without curbing his freedom. It shifts the focus of criminal justice from crime to the criminal by replacing punitive approach with reformatory one. It is the result of the recognition of the principle that the purpose of criminal law is more to reform the criminal than to punish him.

The provisions relating to probation are contained in sub section (1) of section 360 of the Code of Criminal Procedure, 1973 and Section 4 of Probation of Offenders Act, 1958.

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13 Section 360 (1) of the Code of Criminal Procedure, 1973: "When any person not under twenty one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty one years of age or any women is convicted for an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed that it is expedient that the offender should be released on probation of good conduct, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence, when called upon during such period (not exceeding three years) as the court may direct and in the mean time to keep the peace and be of good behaviour.

14 Section 4(1) of the Probation of Offenders Act, 1958: "When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct then not with standing anything contained in any other law for time being in force, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years as the court may direct and in the mean time to keep the peace and be of good behaviour."
Probation is applicable to all first offenders and to any person who has committed an offence not punishable with death or imprisonment for life. The power to release the offender on probation of good conduct is one of discretionary in nature, after taking into consideration, the character of the offender and the nature of the offence. The accused should execute a bond to keep peace and good behaviour for a period not exceeding three years with or without sureties. The benefit of probation cannot be claimed as a matter of right. But there is also a limitation to the discretionary power to the court. This section clearly shows that when a person is not released on admonition or probation, the court has to state reasons for imposing a sentence. A person below twenty-one years of age should not be sentenced to imprisonment unless the court states its reason for doing so.

The object of section 6 of the Act is to ensure that the young offenders are not sent to jail for the commission of less serious offences because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. It is for this reason that the mandatory injection against imposition of sentence of imprisonment has been embodied in section 6 of the Act. Disqualification attaching to a conviction of an offence is taken away with by section 12 of the Probation of Offenders Act, 1958.

16 Section 6 of the Probation of Offenders Act, 1958.
17 Rajeeve Sandhu v. State of Union Territory Chandigarh, 2004 Cri.L.J.4038. In the instant case at the time of conviction the petitioner was under 21 years of age, has five brothers and sisters, is son of a poor agriculturist and that the stolen article recovered from him was not valuable, therefore the sentence of imprisonment is set aside and the petitioner is directed to be released on probation of good conduct for a period of six months. The object is to prevent the conversion of the youthful offender’s into obdurate criminals as a result of their association with the hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. See also Masurullah v. State of Tamilnadu, 1983 S C C (Cri) 84. The accused was convicted for offences under section 397 and 452 I P C and was sentenced to five and seven year’s imprisonment respectively. It was held that in case of the offender under the age of 21 years on the date of commission of the offences and belonging to a lower middle class. The court is expected ordinarily to give benefit of section 6 of the Act. While deciding whether the offender should be granted the benefit, it is necessary for the court to keep in view three relevant aspects. (fn. cont. in page -228)
Advantages of Probation

Probation protects a person from launching into a career of crime, thus becoming a recidivist. If he is set at liberty without protection or surveillance, he will be inclined to erroneously feel that his wrongful conduct is acceptable to normal society and thus he keeps on repeating the same conduct without any notion to improve it by good behaviour.

The psychological fear of punishment in case of violation of the law, keeps the offender deterred from law breaking during the period of his probation and thus indirectly prevent him from adopting a revengeful attitude towards the society.

The intention of the legislature in passing probation laws is to give offenders a chance of reformation which they would not get if sent to prison. Probation avoids the shattering impact of imprisonment or incarceration on the personality of offenders. Also it avoids stimulation of hatred for law-abiding society due to imprisonment; it seeks to obviate the evils of institutional experience and thus prevent the offender from contamination and conforming to a criminal career. Moreover, sentencing an offender to imprisonment casts a stigma on his career which makes it difficult for him to live in a free society after his release. The probation obviously saves the offender from such stigmatization and prepares him for an upright blotless life.

The liberty to the offender during the period of probation enables him to pick up those life habits which are necessary for him as a member of the normal society. Another advantage of the system of probation is that it makes the domestic relationships of the offender easy and substantially helps him in supporting his family financially by taking up work according to his capability. Through the system of probation the offender is being rehabilitated by his own efforts. This inculcates into the mind of the person a sense of self-sufficiency, self-control and self-confidence which are the essential attributes of a free-life. It

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i.e., nature of the offences, character of the offender and the attendant and surrounding circumstances. In this case, the honorable Supreme Court granted benefits of probation to the accused.
is well known that the interests of society are best served when all its members play a positive role by seeking their self-rehabilitation. It is a good method of preserving social solidarity by keeping the lawbreakers under control.

During the term of probation, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him to secure work after his final release and lead an honest and upright life.

From the financial point of view, probation can be regarded as the best correctional measure. The state is relieved of the expense of feeding and protecting prisoners in jails. Whatever works an offender is doing as a probationer he is contributing to our national economy and he no more remains a burden to the public exchequer.

It helps to avoid over crowding in prisons and consequently all administrative problems connected with it. As far as juveniles, young offenders, first offenders, and female offenders who are no risk to the society are concerned, probation is the best method so far devised by society for treating the offenders.

Custodial treatment removes the offender from his family and community and suspends his social and economic obligations to them. He becomes indeed a burden upon society. The probation exacts from the offender a contribution within the limits of his capacity to the well being of others whether it is through his useful employment in the community or through his participation in the life of the family or other social group

Even though probation has all these advantages, it is sad to find from the studies the researcher conducted among the recidivists only 0.96% were given probation.

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19 See table No.1.
From the table above we can see that only 1 (number) recidivist was given probation. The rest of the recidivists were not provided with this facility. From this we can see that the sentencing authority is not looking upon the alternative of making an offender into a good citizen without imposing incarceration or branding him a convict, and thus saving the exchequer a lot of money as well as making use of him in the society in a useful and beneficial way by not breaking the family units. The courts should make use of this alternative in all possible instances.

From this study it can be clearly seen that if probation had been granted to these recidivists and if it had been properly executed the number of recidivists could definitely be reduced.

The person who was given the probation said that he was not provided with any rehabilitative facilities. He was left to take care of his life in the same circumstances in which he had already committed the crime. This does not substantiate or fulfill the objective of Probation of Offenders Act. It is highly necessary that these persons are to be taken care of during their probation. It is a transition period in which they should be guided by giving proper direction in their life, by providing an opportunity to earn a living, by surrounding him with family love, affection and responsibility. Threat of punishment hanging around his neck as Democle's sword alone is not enough for them not to commit another crime.

<table>
<thead>
<tr>
<th>Recidivists</th>
<th>Probation</th>
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<tbody>
<tr>
<td>Number</td>
<td>Given</td>
<td>1</td>
</tr>
<tr>
<td>Percentage</td>
<td>0.96</td>
<td>99.04</td>
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2. **Admonition**

Admonition is a warning given to the accused that he should not repeat the offence again. It is applicable only to first offenders after conviction and without passing a sentence. The significance of this mode of dealing with the offender is that: (a) It gives the accused a chance to change his mode of thinking, living and behaviour patterns and to rehabilitate him and; (b) It prevents the association of the first offender with hardened criminals.

Admonition cannot be claimed as a matter of right. Admonition is very useful and pragmatic. It is granted after taking into account the trial nature of the offence, the circumstances of the case, and the age, character, physical and mental condition of the offender or any other extenuating circumstances under which the offence was committed.

The provisions relating to the release of the offender after admonition is contained in section 360(3)\(^{20}\) of the Criminal Procedure Code, 1973 and in Section 3\(^{21}\) of the Probation Offenders Act, 1958. Section 3 of the Probation of Offenders Act 1958 is wider in its scope than sub section (3) of 360 of Code of Criminal Procedure.

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\(^{20}\) Section 360 (3) of the Code of Criminal Procedure, 1973: " in any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him the court before which he is so convicted may, if it thinks fit, having regard to the age, character antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed instead of sentencing him to any punishment, release him after due admonition".

\(^{21}\) Section 3 of the Probation Of Offenders Act, 1958: " when any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years or with fine or with both, under the Indian Penal Code or any other law, no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the offender, it is expedient so to do, then, not withstanding any thing contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition."
Under section 12 of the probation of offenders Act 1958, a person found guilty of an offence and released on due admonition shall not suffer disqualification attached to a conviction of an offence. By this section, the stigma attached to the offence is taken away and the rehabilitation and resocialisation of the offender is given importance.

The empirical study conducted revealed that no recidivist has been given admonition during their first conviction. 51% of the recidivists said to the researcher that they have done only petty offences punishable for a term less than one year for the first time. If they have not been incarcerated for that then they would not have become recidivists. After the initial conviction they were branded as criminals, they have no other option other than going back to a criminal way of life. From this we can see that at least in some instances if the sentencing system has used the admonition instead of imprisonment, the number of recidivists can be reduced.

3. Fine

Fine is indeed forfeiture of a sum of money by way of penalty. For certain offences in the Indian Penal Code, fine is the sole punishment prescribed. For others, it is an alternative. It has both limited and unlimited applications. But fine should not be unreasonable and excessive\(^\text{22}\). It must correspond to the paying capacity of the offender.

The fine is attractive to the sentencers because it is flexible and it seems to combine elements of both reparation and deterrence. In terms of reconviction rate it compares well with other sentences and is also economical even when the costs of enforcement and imprisonment for default are taken into account. It is this general satisfaction with the fine which is its greatest strength.

Fine as an alternative to short term imprisonment is a treatment measure. A fine is a pecuniary penalty imposed upon a person convicted of a crime. The imposition of financial penalty in the form of a fine or forfeiture of property has

\(^{22}\) Section 63 of the Indian Penal Code.
been a common method of punishment since a long time in western as well as eastern civilization\textsuperscript{23}.

The fine is most easily and thoroughly remissible of any of the penalties. Capital punishment, whipping or imprisonment once administered cannot be remitted effectively, but a fine that has been paid can be refunded. It is the most economical penalty as it costs the state practically nothing. It does not carry with it the stigma and disgrace that imprisonment does and therefore, does not hamper readjustment of the offender. This method does not expose the individual to the corrupting influence of hardened criminals. Since it puts a check on the pocket of the offender, it also puts a check on the routine of his life. When he does not possess enough money at his disposal he realizes his folly and feels that he should keep himself away from crime\textsuperscript{24}.

If fine has been imposed on a person depriving of his major income, he may feel more severely punished. He will try hard to amend himself. On the other hand if he is kept with anti-social people or in an atmosphere where attachments and loyalties with criminals are developed then there is every possibility of his becoming a confirmed and trained criminal and thereby a permanent menace to the society in days to come.

Fine does not break the relationship of an offender with his family. Nor does it disrupt the occupational career of the convict like that of prison sentence. This positive effect of crime may act as an incentive to the convict to pursue his occupational career and this may help him to maintain and strengthen his relationship with the legitimate ways of life.

Fine is very useful in dispensing with a volume of trivial cases, traffic offences etc. As regards the imposition of fine as a sentence the penal code may be divided into four parts. They are (a) offences in which the fine is the sole


punishment and its amount is limited (b) offences in which fine is an alternative punishment, but its amount is limited. (c) Offences in which it is an additional imperative punishment and its amount is unlimited (d) offences in which it is both an imperative punishment and its amount are unlimited.

It may be noted that the judge while awarding a punishment, whether of imprisonment or a fine, to two or more prisoners, must specify clearly to what term of imprisonment or to what amount of fine each of them is liable. Therefore, a sentence of fine of a specific sum on a number of prisoners individually and collectively would be illegal.

In Adamji Umar Dalal v. State\textsuperscript{25} the Supreme Court has held that in imposing fine it was necessary to have as much regard to the pecuniary circumstances of the accused as to the character and magnitude of the offence. In another case\textsuperscript{26} the Court laid down that where a law permits a sentence of fine as an alternative, there is no need for a sentence of imprisonment at all if it is thought that the offence do not meet it. It is quite unnecessary to impose fines on persons who have been sentenced to death or substantial terms of imprisonment.

The law under which a fine may be levied is contained in the code of Criminal Procedure. The provisions lay down when fine could be recovered\textsuperscript{27}. The period during which such a warrant for realization of fine could be executed is six years under section 70 of the Penal Code or during imprisonment. The section lays down that the death of the offender does not discharge from the liability, any property which would after his death be legally liable for his debts. Section 69 of the Penal Code lays down the proportion to which payment of fine causes a proportionate reduction in the terms of the imprisonment.

\textsuperscript{25} A.I.R. 1952 SC. 14.

\textsuperscript{26} In Re Shankarappa, A.I.R. 1958 AP. 380.

\textsuperscript{27} Section 421 and 422 of the Criminal Procedure, 1973.
As far as the majority of the recidivists were concerned they had committed petty offences for the first time. See table 2.

Most of the recidivists were punished for a term below one year. Instead of that punishment if they were given fine there is a better chance of reformation. They would not have lost their job if only fine has been imposed. As their income is restricted they would have to lead a very simple life and they would be with their family. They would not feel excluded from the society.

To the few to whom fine was imposed the amount was huge which they were not in a position to pay. That should not be the way to impose fine. If any result is to be made by imposing fine it should be one which the offender is in a position to pay but with some difficulty. Also it should not be a lump sum amount.
It should only be in installment. For others fine had been imposed along with imprisonment. That also had not made much effect as the ill effect of imprisonment was also there.

4. Parole

The origin of a parole system is traced back to the British system of transporting offenders to penal colonies – particularly to America. Once the offenders are sold to the highest bidder in America, the British Government pardoned them for the offence they committed. The offenders then acquire a new status- 'indentured servants', and not criminals. This system is almost identical with the modern system of parole. The transported convicts would agree to certain conditions in order to receive the change of their 'statuses'\(^2\).

The unsatisfactory results of the British System of Penal transportation led to the abolition of transportation of prisoners as a penal sentence, and there was an overcrowding of prisoners in British prisons. Consequently, a new method known as 'Ticket of Leave' was adopted in the later decades of the 18\(^{th}\) century as a measure to reduce the prison population. But unfortunately the measure proved to be still worse because the prisoners were discharged from the prisons merely on surety to behave properly, without being prepared for a disciplined life in the society at large. The obvious result was that they frequently resorted to recidivistic tendencies thus rendering public life more insecure and unsafe. Therefore, as the time advanced necessary changes were made in the method of release under ‘Ticket of Leave’ system and finally modern system of conditional release on parole was substituted by 1820’s.

The significance of parole lies in the fact that it enables the prisoner a free-social life, yet retaining some effective control over him. Every prisoner is kept under careful examination and one who reacts favourably to the disciplined life of

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\(^2\) George G. Killinger and Paul F. Cromwell Jr., *Corrections in the community: Alternatives to imprisonment selected readings* (1974).
the institution and shows potentiality for correction in his attitudes is allowed considerable latitude and finally released to join free society conditionally. Thus, parole is essentially an individualized method of treatment and envisages a final stage of adjustment of the incarcerated prisoner to the community.

Sutherland considers parole as the liberation of an inmate from prison or a correctional institution on conditions with restoration of the original penalty if those conditions of liberation are violated\textsuperscript{29}. The conditional release from prison, under parole may begin any time after the inmate has completed at least one-third of the total term of his sentence, but before his final discharge. The idea is that by offering ample opportunity to the inmates to associate themselves with the outside world, their adjustability to normal society is adjudged.

Parole is a grant of partial liberty of lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoners. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody\textsuperscript{30}.

In State of Haryana v. Mahander Singh\textsuperscript{31} the Supreme Court held that parole is the release of a very long-term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the state and under conditions that permit his incarceration in the event of misbehaviour.

Parole is closely linked with the system of indeterminate sentence where instead of being compelled to serve a definite term of sentence the offender is sentenced to a minimum and maximum period of sentence and after he has finished the minimum term (usually 1/3\textsuperscript{rd} of the maximum prescribed) he is set at liberty with or without conditions.

\textsuperscript{29} Sutherland and Cressey, Principles of Criminology (6\textsuperscript{th} ed.), p.575.


\textsuperscript{31} (2000) 3 SCC 394.
Parole ameliorates punishment by permitting the convict to serve sentence outside the prison walls but parole does not interrupt sentence. Parole does not vacate sentence imposed, but is merely a conditional supervision of sentence.

Parole is not a suspension of the sentence. The convict continues to be serving the sentence despite granting of parole under the statute, rules, jail manual or the government orders. A parole does not suspend or curtail the sentence originally imposed by the court as contrasted with a 'commutation of sentence' which actually modifies it. Parole relates to executive action taken after the door has been closed on a convict.

The purpose of parole is not leniency towards the criminal, but protection of society. Therefore, an ideal parole system must combine within it the two elements, viz. (1) watchful control over the parolee so that he could be brought back to the prison or the institution from which he was paroled out, if the interests of the public security so demanded, and (2) Constructive help and advise to the parolee by securing him suitable work, inculcating confidence in him and finally guarding against exploitation.

The system of parole serves to meet the ends of justice in two ways viz.; firstly it serves as an effective punishment by itself in as much as the parolee is deterred from repeating crimes due to the threat of his return to prison or a similar institution if they violated the parole conditions. Secondly, it serves as an efficient measure of safety and treatment reaction to crime by affording a series of opportunities for the parolee to prepare himself for the normal life in society.

Grant of parole is essentially an executive function to be exercised with in the limits prescribed on that behalf. It would not be open to the court to reduce the period of detention by admitting a detenu or convict on parole. The court

32 People ex rel Rainon v. Murphy, 135 NE 2d 567.
33 Woodden v. Goheen, KY, 225 SW 2d 1000.
cannot substitute the period of detention either by abridging or enlarging it\(^{35}\). The grant of parole is a quasi-judicial function performed by the Parole Boards. Before allowing an inmate to be released on parole the parole officer has to ensure that the parolee has a suitable home to live in and a satisfactory job to do. These parole officers also have to undertake a pre-parole orientation programme for the inmate and make sure that the inmate is well prepared to adjust himself to normal life and at the same time the condition outside the institution are conducive to the development of his personality.

The correctional philosophy in parole recognises that the basic purpose of the inmate’s release in parole is, ultimately for the protection of the society and for the correction of prisoners. Necessarily, parole demands a meaningful diagnosis and a prognosis which guarantee sufficient internal strength for the parolees to return to society where essentially the same physical, social and psychological factors operate and under whose influence they committed the offences. Hence to make an adequate adjustment in the society is not that easy as it appears to be\(^{36}\).

In order to assist the parolees to adjust to the community’s demands the parole officer has to implement all the three treatment process which probation officers used to adopt in the case of probationers under their care and supervision namely, the investigation, the diagnosis, and the treatment. In the treatment supervision, the law attaches certain restrictions and conditions upon the parolees. On violations of any of these conditions, the person is returned to the prison. On violation, the decision of the supervising authority is final. The civil rights, which are lost on conviction, are restored automatically when parole is granted.

Out of the offenders interviewed only 63.33% of the prisoners were given parole. 36.67% were not given parole. Most of these prisoners said that they were not aware that they would be allowed to go on parole. Out of the 63% who


were allowed to go on parole majority said that they were given only one week at the maximum. Most of the prisoners said that this parole facility was being mistreated by persons who had money and influence. The political prisoners were granted parole indiscriminately\(^\text{37}\).

When more than 300 prisoners who were not given even ordinary parole for more than two to eight years in the central prisons of Poojapura and Kannur, for murder prisoners recommendations for parole were sent from the minister's office without the usual proceedings to DGP's office to take immediate action. The certificates given along with the many requests for parole were found to be faked by the DGP even then the Government had given parole to them\(^\text{38}\).

The Division Bench consisting of Justice J.B.Koshy, Justice K.Padmanabhan Nair in a suo moto action said that in many instances the request for parole was given not by the prisoners or their relatives but from the party office. Then the officers had no option other than granting the parole. Parole had been extended for many prisoners even three or four times. According to the existing laws, Jail Superintendents can grant seven days, DGP ten days, Home Secretary fifteen days, Minister forty-five days of parole at the

\(^{37}\) When each ministry comes to power their persons who were in the jail were allowed to go out on parole without going through the procedures. The latest in this was the granting of parole to a Marxist man who was granted parole stating that his father was in hospital. On enquiry it was found that no such situation existed. The Home Secretary made direction to cancel his parole. Instead of that he was granted parole for further period of three months. Not bothering about the objections raised by the jail officials and without the knowledge of the Home Secretary another CPI (M) person was granted parole. See Report of Malayala Manorama July 3, 2006.

\(^{38}\) In Kannur Central Jail there are 168 prisoners and in Poojapura Central Jail about 150 prisoners who have not even got ordinary parole and staying in prison for more than two to eight years. A request from a prisoner in Kannur Central Jail for extending the parole of seven days to thirty days as his mother was in a critical stage. He was given life imprisonment in Panniyoor Chandren murder case. His request was recommended by an M.L.A. It was found by the Jail DGP that as stated in the request his mother was not in treatment in the Hospital. So the DGP requested that the parole shall not be extended without taking into consideration of this. But the Government extended his parole. In another instance a Minister has recommended for the extension of parole for thirty days to two prisoners who have been punished in Valayam murder case. Here also it was found by the DGP that the facts in the request were incorrect. But the Government has extended their parole. There are many such instances were ruling ministers, MLA, political leaders who have given recommendations for extending or giving parole without obeying any procedure for giving parole and had granted it. But unfortunately ordinary prisoners who have no political influence and no money are still languishing in the jails without granting the parole. G.Vinod, Malayala Manorama, 7\(^{th}\) August 2006, p.11.
maximum. The High Court in its interim order has stated that if parole has been granted in the first stage, then when the period of parole is extended the true fact must be found out\textsuperscript{39}.

Though provisions for releasing the prisoners on parole are liberally made, the concerned officials get themselves bogged up in red tape and they look at the prisoner with suspicion before granting parole. The result is that prisoners are not that easily released on parole. This in fact negates the very purpose for which parole has been introduced. Giving an opportunity to a prisoner to visit his near and dear ones once in a while will soften the hardened feelings of the prisoners\textsuperscript{40}. This problem should be viewed from a humanitarian angle by the concerned officials and grand the parole to the deserved prisoners more liberally instead of getting caught in the bureaucratic web.

If you have got the influence the norms and conditions that are to be satisfied before granting parole will be overlooked. Some of the prisoners said that their coworkers in the field of crime helped them to get parole. Instead of leading a good life, as soon as they are released they go to their old criminal way of life.

The study sought to know from the lawyers, Judges, Police Officers, Prison Officers, Academicians and Prisoners as to whether they agreed that the temporary release on parole, helped in the resocialisation of the ex-prisoners. Their responses are shown in table 4.

\textsuperscript{39} See report in Malayala Manorama 27\textsuperscript{th} July 2006, p.1

TABLE 4
TEMPORARY RELEASE ON PAROLE HELPS IN THE EARLY RESOCIALISATION OF EX-PRISONERS.

<table>
<thead>
<tr>
<th>No</th>
<th>Respondents</th>
<th>Yes</th>
<th>No</th>
<th>Average</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>%</td>
<td>No</td>
<td>%</td>
</tr>
<tr>
<td>1</td>
<td>Lawyers</td>
<td>32</td>
<td>64</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>2</td>
<td>Judges</td>
<td>14</td>
<td>70</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>3</td>
<td>Police Officers</td>
<td>3</td>
<td>15</td>
<td>13</td>
<td>65</td>
</tr>
<tr>
<td>4</td>
<td>Prison Officers</td>
<td>8</td>
<td>40</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>Academicians</td>
<td>11</td>
<td>44</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>Prisoners</td>
<td>87</td>
<td>58</td>
<td>24</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>155</td>
<td>291</td>
<td>52</td>
<td>136</td>
</tr>
<tr>
<td></td>
<td>Mean value</td>
<td>48.51</td>
<td>-</td>
<td>22.66</td>
<td>28.83</td>
</tr>
</tbody>
</table>

Majority response reveals that temporary release on parole helps in the resocialisation of the offenders. But 65% of police officers expressed their opinion otherwise.

5. Suspended Sentences

The term 'suspended sentence' as ordinarily used, denotes a suspension of the execution of a sentence imposed. The penalty for the offence in respect of which it is imposed is fixed and will normally become operative on the commission of a fresh offence within the prescribed period.

A court may suspend a prison sentence of short-term duration. The prison sentence will not be activated unless the offender commits another imprisonable offence within this period. However, if a further offence is committed then the suspended sentence should take effect unless the court thinks that this would be unfair in view of all the circumstances. It is important that a court shall not pass a suspended sentence unless it is satisfied that imprisonment is the appropriate way of dealing with the offender before going on to consider the question of suspension. In other words, the suspended sentence is not intended as an
alternative to non-custodial measures, such as fine or probation. It is a sentence of imprisonment suspended in its effect. Although the suspended sentence is supposed to be a sentence of imprisonment, it operates in effect as non-custodial penalty. It is only potentially custodial in nature.41

In England section 7 of the Criminal Justice Act, 1948, made provision for all criminal courts to pass a sentence of absolute discharge or conditional discharge where the court was of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that approbation order is not appropriate. The conditional discharge could last for a period to be specified by the court, but not exceeding 12 months (later increased by the Criminal Justice Act 1967 to three years) the sole condition was that the offender should commit no further offence within that period. Breach of the conditional discharge would result in the offender becoming liable to be sentenced for the original offence as well as for the new offence.42

In O'Keefe, it was observed that “before arriving at a suspended sentence, the court must go through the process of eliminating other possible courses such as absolute discharge, conditional discharge, probation order, fines and then say to itself: this is a case of imprisonment, and final question, it being a case for imprisonment, is immediate imprisonment required, or can I give a suspended sentence.”

The suspended sentence differs from probation in the absence of supervision. A suspended sentence being punishment cannot be combined with a probation order for the same offence. A suspended sentence may be combined with a fine for the same offence in cases where the permitted penalty is both a fine and imprisonment.

41 Christopher Harding, Lawerence Koffman, op.cit, at p.201.
Partly suspended sentence is something of a compromise between the fully custodial and the wholly suspended sentence. It enables the judges to give the offender a short taste of imprisonment, with the remaining of the sentence held in suspense. However, the partly suspended sentence is a sentence of imprisonment. It should be used only as an alternative to immediate imprisonment and not in place of a wholly suspended sentence.

In India also we can adopt this type of sentence to reduce recidivism. If the court thinks that to give imprisonment is a must but at the same time it is inexpedient that its execution should not begin at the same time, then its execution can be suspended to be executed if any new crime is committed by him along with the punishment for the new offence. By this method a person can be awarded imprisonment but its execution can be left with him itself. So if he does not want to be imprisoned he should lead a non-criminal decent life. So his destiny is placed in his own hands, thereby, giving him a chance to become a good citizen, without any further burden to the government or exchequer.

6. Forfeiture of Property

The object is to make the offender forfeit all the properties he has made through crimes. No one should be beneficiary of his own criminal act. There are three cases\(^4^4\) in which specific property of the offender is liable to forfeiture. This type of punishment is imposed in cases of smuggling, drug peddling, holding black money, tools used for offences, and also on the offenders under Prevention of Corruption Act, Narcotic Drugs and Psychotropic Substances Act, 1985.

It can be seen among the recidivists that mainly they have committed the offence to get money very easily and also very fast. 85.58% of recidivists said that it is the only way they can think of, to become rich. If the crime detecting and

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\(^{4^4}\) (1) Where depredation is committed on territories of any power at peace with the Government of India, such property as is used or intended to be used in committing such depredation is liable to forfeiture in addition to sentence of imprisonment and fine (section 126 I P C). (2) Where the property is received knowing the same to have been taken in the commission of depredation on the territories of any power at peace with Government of India or in waging war against any Asiatic power at peace with the Government of India, the property so received is liable to forfeiture (section 125 I P C). (3) A public servant unlawfully buying or bidding for property forfeits the property so purchased (section 169 I P C).
preventing agency had been efficient and they had confiscated the ill gotten gain this would not have happened. Some of the recidivists said that they made money through crime. It had been safely deposited. With that money their family could lead luxurious life and they could also take benefit of that by getting extra benefits in the prison. They could even get the facility of good lawyers and thereby reduce their period of imprisonment.

From this attitude of the recidivists we can see that it is imperative to make the offenders forfeit the properties they accumulated through dishonest means. Section 452 of the Criminal Procedure Code, 1973 empowers the court to make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or document produced before it or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

This is mainly to prevent persons from committing crime with a view to get easy money. If it is confiscated it will show to the offenders as well as other like minded persons that crime does not pay. The only thing they get out of crime is punishment and bad name.

7. Compensation to Victim

In the primitive societies the responsibility of protecting oneself against crime and of punishing the offenders rested with the individuals. As the societies got organised in the form of states, the responsibility of protecting the members against criminals and punishing the violators of crime shifted to the political authority. The remedies continued to be compensation by the wrong-doer to the victim or his family members. It is based on the restitutive justice which can be seen in the old Germonic Law, code of Hamurabi, Law of Moses and ancient Hindu Law

The concept of compensation to the victim is predominantly of a civil origin and is covered under tort. Though the concept is very old it has a new garb under

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45 It reflected the idea of Retributive Justice.
section 357 of the Criminal Procedure Code. It empowers the court to direct the convicted person to pay compensation and costs and thereby combines the function of the civil court to pay compensation for wrong with that of the criminal court. This section empowers the court to order the payment of the whole or any part of the fine recovered from the accused, first in defraying expenses properly incurred in the prosecution and secondly as compensation for any loss or injury caused by the offence.

The concept of restitution is emphasized by the fact that crime constitutes a relation not only between the criminal and society, but also between the criminal and his victim. The principles of restitution have been accepted in recent times under the probation of offenders Act, 1958.

In Sarawan Singh v. State of Punjab it was said by the Supreme Court that in awarding compensation, the court should not just consider what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation. The court laid down that the amount of fine should be determined on the basis of various factors including nature of crime, number of injuries and the paying capacity of the offender.

In Guru Swami v. State of Tamil Nadu, it was held that in case of murder it is only fair that proper compensation should be provided for the dependents of the deceased.

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46 The court has a very limited discretion under section 357(i) as it can give compensation only out of the fine if imposed on the offender. So sub section(3) of section 357 was added as recommended by the Law Commission in its 31st report in the code of criminal procedure, 1973 and it provides: "When court impose a sentence of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reasons of the act for which the accused person has been sentenced".
47 Sir Henry Maine, Ancient Law (1901), p.370
48 Section 5 of the Probation of Offenders Act,1958.
49 (1978) 4 SCC 111.
50 (1979) 3 SCC 799. It was a case where the appellant had murdered his father and brother as a result of some family feud and was sentenced to death. On appeal, the Supreme Court reduced the punishment to life imprisonment and imposed a fine of Rs.10,000/- on the offender to be paid to the heirs of the deceased.
In case of death caused by rash or negligent act, punishable under section 304-A of the Penal Code, the courts have reduced the period of imprisonment to the one already undergone, but imposed a severe fine in order to provide substantial relief to the dependents of the deceased\textsuperscript{51}.

By directing the offender to pay regularly a part of his earnings to the victim or the victim's family, two purposes can be served, - (1) the offender's freedom is not restricted. He is allowed to lead his normal life with his near and dear and thus any evil impact of the prison is warded off; (2) the victim or victim's family can be compensated for the suffering they have undergone\textsuperscript{52}.

Justice Chettor Sankaran Nair held that part of the earnings by the prisoners during their imprisonment from the wages for the work done in prison could be ear-marked for the victims, or a fund for victim compensation that the state may maintain\textsuperscript{53}.

By making them pay to the victim's family is the best method to make them aware of the conditions and hardships the victim and family has to go through. It is best to make him contribute some thing to reduce their hardship. It will make him a reformed person. 48.67% of the offenders said that they did not even know who their victims were.

\textbf{TABLE 5}

\begin{tabular}{|c|c|c|c|c|c|}
\hline
Recidivists & Known about victims & Don't know about victims & Don't care & Paying compensation & Total \\
\hline
Number & 45 & 73 & 32 & 0 & 150 \\
percentage & 30 & 48.67 & 21.32 & 0 & 100 \\
\hline
\end{tabular}


\textsuperscript{52} A.S.Ramachandra Rao, \textit{op.cit}, at p.157.

\textsuperscript{53} \textit{In Re Prisoner}, 1993 (2) KLT 10.
Only 30% of the offenders said that they knew about the victims. Even among them they said that they knew the victims only peripherally. 14 persons said that they not only knew about the victim but also they were very happy to see the hardships of the victim and his family. This only happens in case of offences committed through earlier feud or as revenge. But in this case the chance of becoming a recidivist is very less. 21.33% of the offenders said that they did not care about the conditions of the victims. Their only motto was getting the money, by committing the offence. If any person stood in their way they got hurt. It was only a by-product of the crime and they were not concerned about that.

None of the offenders interviewed have paid the compensation. Making the offender to compensate the victim can reform the offender; make him aware of the victims, as well as the consequences of the wrongful act made by him to the victims and the society. Making aware of the result of the offence makes his reformation half way, by compensating willingly and making him feel remorse for his crime then three fourth reformation can be achieved and not committing another crime completes his reformation. By not making the offender pay the compensation the sentencing agency is not making use of the method to reform the offenders thereby preventing recidivism.

8. Externment from a Locality

The rationale of this punishment is that disassociation of the offender from his surroundings may reduce his capacity to commit crimes of some particular nature. The law commission of India did not favour such punishment due to the possibility of its repercussions on the offender, his family and the likely exploration of externment by the politically motivated violators\(^{54}\).

Police or other Acts of different States\(^{55}\) with a view to maintain public peace or to prevent anti-social activities by a person provide for his externment.

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The Delhi Police Act. 1978 divides the persons who could be externed into three categories: (a) gangs and bodies of persons causing or are calculated to cause danger to person or property or reasonable suspicion of their unlawful designs, (b) persons who are about to commit certain specified offence though there is no record of past conviction in their case, (c) persons convicted of certain offences (in some cases more than once) if they are likely to commit the same offence of which they were convicted earlier.

Under section 7 of the Punjab security of the State Act, 1953, the movement of persons can be restricted. The government can make the order of removal of any person from one place to another within the state; whereas the district magistrate may make such order or removal of any person from one place to another within the limits of his own district only. The restriction order, if issued by the government, may remain in force for a period of one year unless revoked, whereas an order made by a District Magistrate can remain in force for only one month.

In all these externment laws there are provisions for reasonable opportunity of being heard and an appeal lies to the administrator. Externment of a person from his place of abode to another area is a stringent measure affecting the individual, depriving him of his livelihood, company of his relatives and friends, access to his home and so on. So in order to avoid the abuse of power by the authorities' procedural safeguards should be taken.

In N. B. Khare v. The State of Delhi the Supreme Court widened the scope of these safeguards. The Supreme Court going through the Bombay Police Act, 1902, held the procedure to be reasonable even though the person suspected had no right to cross-examine the witness deposing against him. The provision was made to protect the public against dangerous and bad characters.


AIR 1950 SC 211. It was held that the person had a right to receive the grounds of his externment, and if the externment was for more than three months, he could make a representation to an advisory board.

In *Prem Chand v. Union of India*\(^5^8\) the Supreme Court emphasized that an order of externment should not be passed without observing natural justice and opined that vague allegations and secret hearings were violative of articles 14, 19 and 21 of the Constitution. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence is hazardous to the community and its safety.

The order of externment is mainly for the protection of the society and also there is another benefit that the chance of occurrence of a crime can be averted and prevent the concerned person from committing another crime. Mainly the recidivists are the persons who are being externed from the locality. Even though the order of externment is for the benefit of the entire society, a person cannot be externed without sufficient reason. The court would scrutinize the material carefully and find out whether there was a justification for externment or not.

78% of the offenders said that they had committed the crime due to the circumstances. If measures are taken to relocate them it will be beneficial to the recidivists by making them not to commit the crime and also for the state by preventing the commission of the crime. So, by making use of this provision, recidivism by some of the offenders can be prevented.

9. **Assignment to a Detention Centre**

This form of punishment, though not available in the Indian Penal Code, it is found in the Russian Penal Code, under the basic measures\(^5^9\). There they call it as, 'assignment to a disciplinary battalion'. Rigorous training, work programme and other disciplinary behaviour like that found in an army battalion are the basic

\(^5^8\) AIR 1981 SC. 613.

features of the detention center. This is a coercive method of correcting the offender to conform to a certain type of behaviour pattern.

In Germany, the offender is confined in a workhouse under measures of safety and rehabilitation. The work in the center can take the form of cleaning the roads, road laying, railway track laying, boring tunnels, construction of towers, mining operations, stone crushing by hands, drilling operation etc, which need a lot of muscle power and which are hazardous in nature.

Under section 14 of the Kerala Habitual Offenders Act, 1960, for the reformation of the registered offender and the prevention of crime, he can be placed in a corrective institution to receive training during the period of registration, or for a term not less than two and not more than five years. It is better to send the offender to detention centers which can provide them with work and supervision than sending them to prisons thereby making them mingle with hard core criminals and cultivate a criminal culture and study different ways to commit crimes, thereby becoming recidivists themselves.

Bhattacharyya J. has advocated that default offenders should be put on compulsory work outside the prison, e.g. on public projects like dam, roads or rural construction etc. He further suggested that this forced labour should be during the leisure hours of the convict which will not impair his regular employment. Another benefit of such forced employment, which may be of small duration at a time but spread over a larger period, will be that the offender will be kept busy and conscious and will not easily lean towards crime.

10. Pardon

A pardon completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence. The power to grant pardon is in essence an

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60 See Supra, Chapter IV, n.106 and 107.
executive function to be exercised by the head of the state after taking into consideration various matters which may not be taken into consideration before a court of law enquiring into the offence.

Article 72 of the Constitution empowers the President to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. (1) By court martial; (2) an offence against any law relating to a matter to which the executive power of the union extends; (3) in all cases in which the sentence is one of death.

Article 161 says that the Governor shall have the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to matters to which the executive power of the state extends.

Pardon helps (1) to correct possible judicial errors, for no human system of judicial administration can be free from imperfections. (2) A sentence already imposed in which later investigation has shown error in the extent of the sentence. (3) Possibilities of reformation appearing after commitment, including good behaviour during confinement.

A pardon is an act of grace and therefore it cannot be demanded as a matter of right. The effect of pardon is that it not only removes the punishment in the eye of the law, but also places the offender in the same position as if he never committed the offence. The executive can exercise the pardoning power at any time after commission of an offence, either before legal proceedings are taken or during their pendency or either before or after conviction.

Prof. Gillin observed, "If the pardons are administered with care and solely to correct injustice, they certainly do not diminish respect for law. They, on the other hand, will infuse confidence in the machinery of justice." 

63 In Re. Channugadu, A.I.R 1954 Madras 911 at p.917.
Out of the recidivists in the sample 64% said that they committed their first offence in a moment of weakness. If they had been granted pardon for that offence they would not have been in this position. As they were given the brand of ex-convict the society ostracised them. They cannot live in a vaccum. The only persons who do not avoid them are those persons who are in similar situations. In those circumstances they cannot lead a decent life and gradually they drift to the category of recidivists.

So while granting pardon, it should be taken into consideration whether certain individuals could be prevented from becoming full time criminals, instead of giving pardons to the politically and economically well endowed person, to those who can be put back to the society effectively. All the recidivists interviewed said that they have not been granted pardon.

11. Commutation of sentence

Apart from pardon, commutation of sentence and reprieve or respite are other methods by which prison sentence can be reduced. Commutation of sentence implies reduction in the term of imprisonment but it does not wipe out the guilt of the accused. So it can be said as a substitute of a lesser punishment for a longer one. It means exchange of one thing for another, substitution of one form of punishment for another of a lighter character, e.g. from rigorous imprisonment to simple imprisonment.

Remission means reduction of the amount of sentence, without changing its character. An order of remission does not, in any way, interfere with the order of the court. It merely affects the execution of the sentence passed by the court and frees the convict from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands. A remission of sentence therefore does not mean acquittal.\(^65\)

In *Laxman Naskar v. Union of India*\(^{66}\) the Supreme Court ruled that life sentence was nothing less than life long imprisonment and by earning remissions a life convict did not acquire the right to be released prematurely. If the government has framed any rule or made a scheme for early release of a life convict, and if he has already undergone the sentence for the period mentioned in the policy instructions, the only right, which he can be said to have acquired is the right to have his case put up by the prison authorities before the authorities concerned for considering exercise of power under Article 161, which will have to be done by the authorities consistently with the legal position and the policy instructions prevalent at that time.

Respite means awarding a lesser punishment on some special grounds. Reprieve means temporary suspension of death sentence. The interviewed recidivists were of the opinion that only those prisoners who had money and influence would get their sentence reduced. Even if they were eligible for that they would not be given the chance. At the same time ineligible persons who had influence at the proper place could get it. This has created a sort of enmity against the society in their mind, in certain cases a desire to harm the society.

12. **Open prison**

Like parole, open prisons also does not strictly come under the alternatives to imprisonment available to the offender. Open prisons are designed to eliminate tensions created by the restrictions and physical restraints upon the inmates of the jail, and by providing an opportunity for interaction with community\(^{67}\).

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\(^{66}\) A.I.R. 2000 SC. 986.

\(^{67}\) An 'Open Prison', according to the First United Nations Congress on 'prevention of crime and the treatment of offenders' is characterized by the absence of material and physical precautions against escapes (such as walls, locks, bars, armed or other special security guards) and by a system based on self-discipline and inmates sense of responsibility towards the group in which he lives. United Nations, Resolution and Recommendation adopted by the 1\(^{st}\) United Nations Congress on the Prevention of Crimes and Treatment of Offenders, (August 29,1955) , p.76
The study group on 'open Prison in India' set up by the then Bureau of correctional services generally agreed with the above definition except the work 'absence' qualifying the material and physical precautions against escapes. The characteristic features of a good open prison, according to the study group, should resemble the patterns of life and living in small Indian rural communities.

For the rehabilitation and prerelease preparation the All India Jail Manual Committee has suggested the system of open campus. According to its considered view, "training of inmates in freedom, while in prison is a peculiar problem in correctional work". In closed institutions the long-term prisoners stand the risk of getting prisonised. If properly organised, semi open and open training institutions and open colonies should furnish some solution in this respect. In the treatment of offenders, emphasis has to be put not on their exclusion from society but on their continuing to be a part of it.

In "Declaration of principles of crime and punishment" of the Cincinnati OHIO (USA) meeting of the First Prison Congress in 1870, it was observed "the Supreme aim of prison discipline is the reformation of criminals not the infliction of vindictive suffering". The XIIth Penal and Penitentiary congress on the Prevention of Crime and the Treatment of Offenders, Geneva (1955) gave a scientific thinking to it and attempted to find a definition of open peno correctional institutions.

In the progressive treatment and rehabilitation of incarcerated offenders open peno-correctional institution has emerged as a major innovation. The main features of an open prison are the absence of the traditionally operated custodial and confinement devices and an organizational structure that inculcates a sense

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68 Central Bureau of Correctional Services, Open Prison in India (1973), p.4
70 An open prison is characterized by the absence of material or physical precautions against escape (walls, locks, and bars, armed or spread security guards) and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives. The U. P. Jail enquiry Committee (1955-56) observed, "The ultimate objective of punishment is to make the anti-social person a good citizen. A sense of co-operative social living can be better installed into inmates under semi open or open training institutions than in closed prisons."
of self-discipline and self-improvement among the inmates. Open prison act as a transit point between the prison and the community. It is a half-way-house for the prisoners to smoothly get into and to reintegrate them into the social mainstream.

An open peno correctional institution is characterized by the absence of material or physical precaution against escape and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives. This system encourages the inmates to use the freedom accorded to him without abusing it. It serves as means to inculcate among inmates the value of self-help, constructive work and social usefulness. It aims at generating a sense of dignity and a positive change in their attitudes and behaviour.

The Supreme aim of correction is the reformation of criminals, not the infliction of vindictive suffering. The prisoner's destiny should be placed measurably in his own hands. He must be put into circumstances where he will be able through his own exertion, to continually better his own condition. A regulated self-interest must be brought into play, and made constantly operative. The prisoner's self-respect should be cultivated to the utmost, and every effort made to give back to him his manhood71.

The open peno correctional institutions are more favourable to the social readjustments of the prisoners and at the same time more conducive to their physical and mental health. The adjustment levels of the prisoners are supposed to be better because of the facilities provided to develop a healthy interpersonal relationship and the free environment. There may be also some therapeutic approach in the open camps to rectify the maladjusted behaviour of the inmates. The work programmes in a rather free atmosphere according to their tastes, educational and recreational facilities and the attempt of reorientation help the prisoners to develop a higher adjustment level72.

Most of the open-air prisons are agricultural colonies, where the inmates are made to work in farms. The inmates are paid for the day’s work. Some of them are also engaged in cottage industries like spinning, weaving, etc.

Open-air prisons look to the reformation and rehabilitation of their inmates, considering punishment as an elevating influence, the old idea of degrading punishments having been abandoned. A sense of cooperative living in a social manner is being inculcated in the inmates of such open-air prisons, where trust begets trust. A person who may have been an anti social being can be won over in a friendly manner and thus led to co-operate in all good activities in prison, training him for good activities after release and ensuring rehabilitation and freedom from recidivism.

Prisoner’s sentences to the life imprisonment or for more than 14 years imprisonment in aggregate that are usually selected for confinement in the institution, get remission of 30 days per year. Further if they spend two years satisfactorily in the open prison, they are eligible for being selected to the ‘open colony’, where they can live with their family members who may be supplied with the same work as that of the prisoners. The inmates of the open colony who are in charge of a liaison officer are entitled for comparatively more remission and the prevailing wages. They unlike the inmates of the open prison are entitled to receive and appropriate the entire amount of remuneration. The government is not required to incur any expenditure towards the maintenance of the inmates and they have to maintain themselves and their family members out of their earnings. Good behaviour for a fairly good time leads to good habits and to transformation of character of all that is good and noble within the human being.73

In Dharambir v. State of Uttar Pradesh74 the Supreme Court supported the institution of open prisons since such prisons, the court felt, had certain advantages in the context of young offenders who could be protected from some of the well known vices to which young inmates were subjected to in the ordinary jails.

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74 (1979) 3 SCC 645.
The best thing about the open prisons is that the system counters what is known as 'prisonisation' of the convict, institutionalization and criminalisation denoting the two components of 'prisonalisation'. Here he was allowed to stand on his own feet. Because of more extensive terrain and freer movements, the inmates may be more relaxed and tension free, a condition conducive to the administration and reception of rehabilitative sense of discretion and responsibility. As there is no heavy guarding the chances to escape is very great. The fact that he rejects this possibility indicates he has taken a great moral step, a great social step. By accepting this responsibility, he has admitted to himself that he wishes to be a social rather than an asocial animal. Thus the state's burden of dealing with recidivism decreases.

13. Public Censure

Public censure plays a dual role as it deters the potential offenders in committing the crime and also makes the general public aware of the criminal there by takes precaution against him. By not wanting to go through the public censure the offender may stop committing crime and also as the people become aware of his activities he may not get opportunity to commit crime. Thus the chances of recidivism can be reduced.

Where fine as a mode of punishment has an eroding effect on the effectiveness of the criminal justice system, 'public censure' plays an important role in deterring the offender from committing the crime. Public censure was recognised as a mode of punishment in ancient times. It includes shaving the criminal's head, banishing him from the town, branding him on the forehead with a mark and parading him on an ass, or making him wear chappal garland etc. Some foreign penal codes employ public censure as a substitute for

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76 In Bulgarian Criminal Code 2004 But today these practices will violate article 7 of the International Covenant on civil and political rights. But in the above-mentioned practices, the common element is to bring to the society's knowledge and to impress upon the convict in a forceful manner, the guilt which led to his conviction.
imprisonment. In India, public censure is provided for a second or subsequent
offence by resorting to publication at the expense of the convict.\textsuperscript{77}

When applying alternative form of punishment it is important to make sure
that (1) the Individual understands that he or she has received criminal
punishment, (2) the individual has a great desire to avoid repeated punishment,
(3) other members of the society understands that the offender has received an
appropriate criminal punishment. This means that our criminal justice system
must resolve a fairly complicated problem while humanising the criminal
punishment system, it must also ensure effective prevention of crime.

\textsuperscript{77} Section 16(2) of Prevention of Food Adulteration Act, 1954; Section 287 of Income Tax Act,
1961; Section 71 of Gold Control Act, 1968; Section 120 of Custom Act, 1962; Section 40 of
Narcotic Drugs and Psychotropic substance Act, 1985.
CHAPTER VII