CHAPTER - I

INTRODUCTION

For a while imagine that someone locked you in a room, then what kind of mental status you will carry? You will get disturb, you will try to come out, you will find a reason for locking you, you may harm yourself due to unanswered questions or loneliness. This kind of feeling may carry by you for while till you locked behind the doors. But this kind of feeling carries by prisoners for years and years during their imprisonment.

Prisoners are knowing the reason for which they are detained. Prisonization leads to regimentation deprivation and depersonalisation. Life goes on in an absolutely unchanging routine. There is a mind destroying idleness. The prisoners are tortured by a feeling of uncertainty and indefiniteness. To the prisoners it is an experience which slows up time, which wounds them together, sets them about the changes in the course of their lives. The prisoner suffers silently. He is surrounded by persons but he is solitary and alone in his mental suffering in this constant company. Incarceration leads to the progressive poverty of the body, mind and spirit. The prisoners are in the prison because the society wants protection from criminals. Society also wants to reduce crime rates.

The overcrowding prison has bothered me ever since researcher started practicing law. When researcher was at mid-career of her profession she decided to do research on prison. Whenever researcher visited the prison for her legal work, she found numerous problems present in prison, which includes
conditions of prisoners, situation of their family members, circumstances of staff etc. All these problems are centralized in one question that whether the aim of reformation of prisoners is achieved in these prison circumstances? Therefore researcher decided to find the answer to this question.

Ten men may commit ten similar thefts, but the motives or the circumstances in each case may be quite different. Why should all the ten expiate the crime in the same way? Why should not each of them be given a chance to turn over a new leaf, and those of them who prove themselves fit be allowed once again to become useful members of society? An honest man with a family to support, unemployed through no fault of his own and driven by hunger to steal a hundred rupees, and a petty gambler resorting to the theft of a like amount, have only technically committed the same offence. But the State treats them exactly alike in dealing with them as offenders. Two men suffering different ailments are dosed with the same medicine.

1.1 : Criminal Science :

According to Donald Taft (1958)¹ - “Criminology is the Scientific analysis and observation of Crimes and Criminals; whereas Penology is concerned with the punishments and treatment of offenders. In his view, the development of
criminology has been much later than that of penology because in early periods
the emphasis was on treatment of Criminals rather than scientific investigation
into the causation of Crime."

No one would dream of attempting to treat ailments of the human body
without having some considerable knowledge as to the nature of various
diseases. It is necessary to classify and examine crime in the same systematic
manner, if the whole question of crime and the criminal is to be dealt with a
rational and logical fashion. Anybody who tries to prescribe one kind of
treatment for every human ailment would be considered demented, and it ought
to be held equally foolish to have the same point of view about every criminal
case. Unfortunately this point of view still exists, and it is nothing short of tragic
that for the thousand and one sins and sorrows that are dealt with in law courts,
civilized human intelligence is, in so many cases, able to prescribe but one
stereotyped remedy – the remedy of punishment.

The simplest classification of crime may be based upon two distinct
natures of origins. There are crimes caused by circumstances, and there are
crimes of impulse, and both portions of the dichotomy require different
treatment. Crimes of circumstances include offences that are the result of stress
and pressure of environment, while crimes of impulse are in the main the result
of some defect or abnormality in the mental make-up of the offender. In a few
cases a person possessing a normal degree of self-control loses his mental
equilibrium under some extraordinary provocation. It is as well to remember in
dealing with crimes of circumstances that the majority of people would probably
fall beneath a similar or equal amount of environmental pressure. With crimes of
impulse it is often the case that personal – that is to the commission of acts which, to the ordinary person, would appear impossible. This rough classification indicates that the cut and dried methods of punishment are neither useful nor just; even the most cursory analysis shows that what might be called 'sensible' treatment of crime is bound to vary even with individuals who have committed the same offence.

The simple and practical classification, as given by Parmelee(1949), consists of the following classes:

1. The occasional criminal
2. The professional criminal
3. The feeble – minded criminal
4. The insane criminal
5. The evolutive or political criminal

The occasional criminal, as the term implies, commits one or two crimes through force of circumstances. However, some of these will ultimately become habitual criminals. This class includes the criminal arose by passion, who is not feeble minded, but who possesses a somewhat excitable temperament. Such persons commit offences against the person, on what appears to the normal individual to be the slightest provocation. They could not be induces to commit an offence under any other circumstances, and are not criminals in the true sense of the term.

The second class comprises all those who make crime their profession, such as the criminal tribes of India – the poisoners, dacoits, and thugs – and most habitual of different classifications. Some of this class may be normal and highly intelligent persons, others may be feeble-minded. Some make huge profits by their criminal career, others go on committing petty thefts,
eking out a precarious existence thereby. This class comprises the masterminds who have chosen a criminal life, as also those who have drifted into it by force of circumstances.

There is no such thing as a physical criminal type, nor is there such a person as a 'born criminal'. But amongst criminal persons are found those who are congenitally feeble-minded. Though all feeble-minded persons do not take to a life of crime, some unfortunate persons contribute a good deal to the criminal statistics of every country. It is necessary to recognize this type, for it is often blamed for actions over which it has no control.

The fourth type needs no elaboration. A person who is insane at the time of the commission of the offence is rightly not held responsible for the act and is treated in a mental hospital.

It has already been seen that the criminals usually the product of a combination of factors. The two main divisions of these operating influences are those that are present in the man himself, such as weak will-power or crude incomplete ideas of right and wrong and those that are mainly contained in his surroundings, such as bad conditions of living and evil companions. These factors, moreover are interlocked.

When environmental factors contribute, largely to the making of a criminal, it becomes obligatory on the part of society to ensure that another set of environmental factors should also contribute to the decriminalization and resocialisation process.
1.2. : The Present Research Concern

“The process of prisoner's reformation in Maharashtra, (A socio-legal Study)” is a title research. Researcher aimed to explain the process adopted in Maharashtra state prisons to reformed the detained one. I specifically tried to explain the role of the system and ideologies in the process that lead prisoners to live better life after release. The thesis belongs to the wide field of Descriptive research and would be of interest to people wanting to understand the system of prison and life of prisoner and his reformation process.

1.3. : Operational definitions:

1.3.1. : ADOLESCENT PRISONER :

Definition given by Law of Lexicon (2009) :

Any person

a) as who have been convicted of any offence punishable with imprisonment, or who having been ordered to give security under Section 117, Code of Criminal Procedure, 1973 has failed to do so and who at the time of such conviction or failure to give security, is not less than 18 years, but not more than 21 years of age.

b) who has been committed to prison custody during the pendency of his trial and who at the time of commitment, is not less than 18 years, but not more than 21 years of age.

1.3.2. : ADULT PRISONER :
Definition given by Law of Lexicon (2009):

Any prisoner who is more than 21 years of age.

1.3.3. : CASUAL PRISONER :

Definition given by Law of Lexicon (2009):

A convicted criminal prisoner other than a habitual offender.

1.3.4. : CIVIL PRISONER :


Any prisoner who is not committed to custody under a writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of a court martial and who is not a detenue.

1.3.5. : CONVICT :

Definition given by Law of Lexicon (2009):

Any prisoner under sentence of court exercising criminal jurisdiction or court martial and includes a person detained in prison under the provisions of chapter VIII of the Code of Criminal Procedure of 1973 and the Prisoners Act of 1900.

1.3.6. : CORRECTIONAL ADMINISTRATION :

Definition given by Law of Halsbury (2008):
The administration of services aimed at the reformation and rehabilitation of the offender

1.3.7. : CORRECTIONAL PERSONNEL :

Definition given by Law of Lexicon (2009):

Personnel employed by the correctional administration.

1.3.8. : COURT :

Definition by Oxford Dictionary (2007)

A coroner and any officer lawfully exercising civil, criminal or revenue jurisdiction.

1.3.9. : DETENUE :

Definition by Oxford Dictionary (2007)

Any person detained in prison at the order of the competent authority under the relevant preventive laws.

1.3.10. : HABITUAL OFFENDER :

Definition given by Law of Lexicon (2009):

A prisoner classified as such in accordance with the provisions of the law or rules.

1.3.11. : IMPRISONMENT :
As meant in the Indian Penal Code, 1872

Punishment for breaching of law.

1.3.12. : INMATE :

As defined in Oxford Dictionary (2007)

Any person kept in an institution.

1.3.13. : INSPECTOR GENERAL :

As defined in Prison Manual for Maharashtra (1978)

The Head of Directorate of Prisons.

1.3.14. : INSTITUTION :

Definition given in Oxford Dictionary (2007)

A place where prisoners are kept.

1.3.15. : OFFENCE :

Any act or omission made punishable by any law for the time being in force.

1.3.16 : PRISON :

The word 'Prison' and 'Gaol' derive from the Latin words which mean respectively to 'seize' and 'cage'.

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The Oxford English Dictionary (2007) defines prison as, “A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment.”

1.3.17. : PRISONER :

The Oxford English Dictionary (2007) defines,

Any person confined in prison under the order of a competent authority.

1.3.18. : PROCESS :

Definition given in Oxford Dictionary (2007)

Process or processing typically describes the act of taking something through an established and usually routine set of procedures or steps to convert it from one form to another.

1.3.19. : REFORMATION :

"Reform" here refers to reform of the individual, not the reform of the penal system. The goal is to "repair" the deficiencies in the individual and return them as productive members of society.

1.3.20. : REHABILITATION

The Law of Lexicon (2009) defines : The act of bringing back a criminal to such a sense of justice, so that he may live in society without any detriment to it.

1.3.21. : UNDERTRIAL PRISONERS :
As defined in Prison Manual for Maharashtra (1978)

A person who has been committed to prison custody with pending investigation or trial by a competent authority.

1.4. : History

1.4.1 : PRISON SYSTEM 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. 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 defile the members of social order. These prison were totally dark dens, cool and damp, unlighted and unwarmed. There was not proper arrangements for the sanitation and no means of facility for human dwelling.

A few *smriti* writers supplied some information concerning jail. *Yajnavalkya* had narrated that a person who was instrumental for the escape of a prisoner had to undergo capital punishment, (hanging). *Vishnu* suggested the
penalty of imprisonment to a person who hurted the eyes of a man.

*Kautilya* prescribed that jail should be constructed in a capital and provide separate accommodation for men and women. He has discussed the problems of prisoners 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 for undergo some other mild corporal punishment or *prom se* 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 jailer 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 prisoners 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 scare his eyes.
In the early years of *Ashoka*, there was an unreformed prison in which most of the traditional punishment method tortures were inflicted and from which no prisoner came out alive. 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. Prof. Ram Chandra Dikhitar (1970) in his book entitled 'Mauryan Polity', has suggested that *Ashoka* was familiar with the *Arthashastra*, for *Ashoka* speaks of as much as twenty-five jail deliveries effected by him in the course of twenty-six years since his appointment to the throne.

In the post-Ashokan age the *Jakakas* give a picture of the society and supply information regarding crime and imprisonment. *Seyya Jataka* (No. 283) relates that, King having fettered and officer put his 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 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.

From *Harshacharita* it appears 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 *Brhat-Samhita* adds that release of
prisoners could even be ordered when the king took the *pusyasnana* (as auspicious bath)

The ancient historical narration is corroborated by archaeological source. In a pamphlet called *Rajgir*, published by the Department of Archeology, India, description of *Bimbisara’s* Jail has been given as: Proceeding southwards along the main road and traveling about three-quarters of a mile from *Maniya* 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.

The officers of the jail were known as *Bandhanagar adhyaksa* 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. 3

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.

1.4.2. : PRISON SYSTEM IN MEDIAEVAL 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 Quanic. 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: (I) *hadd*, (ii) *tazir*, (iii) *quisas*, (iv) *tashir*. 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 judgement. 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.

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
repentance. 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 occasion 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 favorite 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.

During Maratha period also imprisonment as a form of punishment was not very common. Death, mutilation, fine were common forms of punishments. The form of punishments, as during ancient and Mughal period, continued in Maratha period also.

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. They were treated according to their station in life, and the nature of crime they had committed. Persons of the 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.⁴

Thus, neither in Ancient not in Medieval 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 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.

1.4.3. : PRISON SYSTEM IN BRITISH INDIA AND THE BIRTH OF MODERN PRISON SYSTEM.

With the advent of the British Rule the administrative structure assumed a new form. At first little alteration was made in the existing legal system. The Regulating Act was passed in 1773 which established the Supreme Court at Calcutta to exercise all civil, criminal, admiralty and ecclesiastical jurisdiction and indicated the intention of the British government to introduce English Rules of laws and English superintendence of law and justice. The English criminal law came to be applied to Indians. The Indian Penal Code and the Criminal Procedure Code which had long been in preparation were enacted in 1859 and 1860 respectively. The Indian Penal Code defined each and every offence and
prescribed punishment (or the modern prison system) which was first applied in India in 1773 came to be applied on uniform basis throughout India in 1860.

The Jail represents the smallest unit of the prison system. It is the permanent place of detention of those who are condemned to imprisonment by the courts. The institution of Jail, as understood these days, is of British origin and was introduced in India as a part of British Administration. Before the institution of jail, the system of punishment did not require any financial burden on the part of the Government. The Directors of East India Company were modeled on British lines, there was not enough accommodation and there was inadequate food, clothing and medical attention for the prisoners. Thus, the conditions in jails were extremely bad.

Under East India Company Rule, 143 civil jails, 75 criminal jails and 68 mixed jails, with a total accommodation for 75,100 had been built in Bengal, North-Western Provinces, Madras and Bombay.

Reforms in prison administration came to occupy public attention more than 150 years ago when the British Parliament passed an enactment in 1824 in regard to the essentials of prison administration.\(^5\)

In India the first “famous committee” on prison reforms was set up in 1836; this committee had Lord Macaulay as its member. It submitted its report in 1838 and “criticised the corruption of subordinate establishment and the laxity of discipline.” The main recommendations of the Committee were:

(a) that Central Jails should be built to accommodate not more than 1000 prisoners each.
that Inspector General of Prisons should be appointed in all provinces.

that sufficient buildings should be provided in all jails to accommodate prisoners comfortably.6

Consequently, in 1846 the first Central Prison was set up in Agra. The erstwhile United Provinces, Punjab, Madras, Bombay and Bengal followed suit. In 1844, the first Inspector General of prisons was appointed in the then North-Western Province. By 1852 other provincial governments also started appointing Inspector General of Prisons in their respective provinces. The appointment of Civil Surgeons as Superintendents of District Jails was initiated in 1862 in the then North-Western Province.

A second committee on Jail Reforms was appointed in 1864 to minimize the high death rates in prisons and for considering other aspects of Jail Management. The Committee found that in the preceding ten years no less than 46,309 deaths occurred inside the prisons. It came to the conclusions that the sickness and mortality might be mainly due to (a) over crowding, (b) bad ventilation, (c) bad conservancy, (d) bad drainage, (e) insufficient clothing, (f) sleeping on the floor, (g) deficiency of personal cleanliness, (h) bad water, (I) extraction of labour from unfit prisoners and (j) insufficient medical inspection. Following its recommendation in 1864, it was directed that all provinces should have Civil Surgeons as Superintendents of District Jails.7

The third Jail Committee was appointed in 1877. It reviewed “jail administration generally;” the fourth Jail Committee, appointed in 1888, suggested changes in rules of prison administration and classification and
segregation of prisoners. It is this committee that recommended separation of under trial prisoners and classification of prisoners into casual and habituals. Most of the recommendation of the committee were incorporated in the Jail Manuals of various provinces.

The work of the committee was supplemented by All India Committee, 1892. It resurveyed the whole jail administration and laid down further detailed rules. The Prison Act of 1894 was mainly the outcome of the efforts of this Committee. Thus, the Prison Act of 1894 came into being which governs all the prisons in the country. The Act restricted and regulated the use of 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.

The year 1897 made a landmark in the history of prison reforms in India. In that year, Reformative Schools Act was passed and according to this Act Courts were directed to send youthful offenders below 15 years to Reformative schools instead of prisons. Then the Prisoners Act of 1900 was passed. 8

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
In order to bring about an overall 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 prison not only in India but also in countries like U.K., U.S.A., Japan, Philippines 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 recommendation 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 Chemsford 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 prisoners 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).
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 and expert under its Technical Assistance Programme to study the Prison Administration in India and to make suggestions for improvement therein. Dr. Reckless in this 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 for short sentences of imprisonment, reduction the number of under trial prisoners, separation of juvenile delinquents from the adults and the revision of Jail manuals. Reckless's services were also utilised in training a bath of 47 senior jail officers drawn from different States in modern methods of jail administration.

The All India conference of Inspector General of Prison 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 State 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 recommendation 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 Rs. 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 Rs. 2 crores in the budget for 1977-73 and of Rs. 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 of 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 bodies 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 prisoner 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 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-rial prisoners were confined without trial for over 10 years. The Government of India, therefore, appointed a Committee on Jail Reforms headed by Mr. Justice A. N. Mulla (Retired) in April 1980. The Committee submitted its first report on Central Jail Tihar, Delhi in December 1980 and its final report in March 1983.
This report contained 659 valuable recommendations on various aspects of Prison development for consideration of Central and State Governments. 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 and 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 development 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 the national policy relating to the women prisoners in
1.4.4. : PRISON MANUAL

A Jail Manual is a digest of the rules and regulations governing prisons and prisoners. Nearly every State has a jail manual of its own. Every jail is governed by it every prisoner is bound it.

Not surprisingly, Jail Manuals are shockingly antiquated. The Prison Act of 1894 still governs the prisons in India. Since their concepts have changed. The theory of punishment has been replaced by one of reformation.

The jail manuals, meanwhile still provide for whipping as a form of punishment. But for a few amendments and corrections here and there, the manuals have remained unchanged. The new vocabulary of prison administrator and the archaic concept of a 110 years old Act creates a cornucopia of prison maladministration.

Prisons in India are not governed uniformly, every State applying a
different set of rules and regulations. In 1959 a Model Prison Manual was prepared by the Government of India for the purpose of updating and revising the State manuals. It was also meant to lend uniformity to rules and regulations as also to the procedure and punishment. Twenty years later, Inter-State conference admitted that the Model Prison Manual had yet to be implemented in most of the States. Even today the situation remains unchanged. Except in the States of Karnataka, Andhra Pradesh and Maharashtra, the Jail Manuals have remained archival documents. The States are still “processing”—“considering” or “examining” the proposals.

Strangely enough Union Territories do not have a jail manual of their own. They follow the outdated and unrevised prison manuals of their adjoining State.

The discretionary powers of the Superintendent of a jail, according to Jail Manual, are vast. Consequently it widens the scope for harassment, favouritism and even corruption. This is specially true in the case of jail offences and remissions.

With the transfer of the work relating to prisons by the Ministry of Home Affairs vide their O.M. No. VII 11018/14/92-GPA. IV dtd.16.11.1995, the Bureau of Police Research and Development has been seriously concerned about the modernization of the prison system in the country in the light of the directives issued by the Supreme Court in a number of judgments pronounced from time to time. More recently, the apex Court in Ramamurthy V. State Of Karnataka (1996) brought to the fore an urgent need for bringing uniformity in laws relating to the prisons and has directed the Central and State Governments to formulate
a new Model Prison Manual. Earlier, the All India Committee on Jail Reforms (1980-83) had also emphasized the need for a consolidated law on prisons.

Accordingly, with the approval of Ministry of Home Affairs, the BPR &D constituted a Model Prison Manual Committee at the national level for the formulation of a Model Prison Manual.

1.4.5. : CONSTITUTIONAL PROVISIONS

Indian Constitution is federal in character. Accordingly, there is division of powers between the center and the states. Prisons, reformatories, Borstal of institution and the other institution of the like nature and persons detained in them, as per item 4 of List II of the Lists mentioned in article 246 of the Constitution, are in the sphere of the States. Some experts have suggested that the prisons and inmates of prisons should be brought under Concurrent List (List III) so that Parliament can legislate on matters relating to prison and prisoners and thereby accelerate the pace of prison reforms. The others consider the proposed change a drastic step, not in consonance with prevailing thinking on the union-state relations. Sarkaria Commission did not agree for inclusion of prisons in the Concurrent List.

Prison administration in India is a State and not a Central subject. Rules and regulations vary from one part of the country to the other. Co-ordination is lacking. In the absence of pooling of experience of different States and exchange of ideas through staff meetings and conferences and liaison officers
and a systematic study of criminology and penology on an All India basis, penal reforms were found to halting and unsatisfactory. To remedy this partially, Inspectors General of States met from time to time. In 1957 a nine-man expert committee was formed by the Centre to prepare an All India Jail Manual. The part played by the newly instituted General Bureau for Correctional Services in rehabilitating offenders will be watched with interest.  

The present political leaders had been inside jails on several occasions during British rule in India. Shri Jawahar Lal Nehru the Prime Minister is a keen reformer. Many political leaders, like Sri Govinda Ballav Pant, Sri Morarji Desai and Sri Sampuranand, are ardent prison reformers. They have seen the tragedy of prison life and felt its miseries and humiliation. They will not forget their own experiences. Imprisonment, it will be remembered, shattered the health of eminent patriots like Subhash Chandra Bose and G.R. Das. In recent years the States seem to vie with one another in introducing jail reforms of the most enlightened kind.

But there is an initial question that confronts us at the outset. One may ask ‘why worry about the criminal at all? Why worry about the prison population? We have an existing machinery; that machinery has been employed for the purpose of testing their liability and they have been found guilty. To prison they must go and in prison they must remain for expiating their sins for making amends for the offenses committed. The matter ends there. Nothing need be said about reform or correction. Punishment is the object and that has been secured. This is a view held from the very earliest times.

If the something which impels individuals to break laws is to be altered,
changed, or removed that something must be clearly identified.

This thesis is a contribution to correctional practice theory in that one of its aims is to identify some important areas of sociological theory and research which ought to be incorporated into the correctional treatment.

If two men have committed the same wrong to society, their punishments must be equal. If one man is made to suffer in one way, there is no reason why another individual who has committed the same offence, and has *prima facie* done the same harm to the community, should be called upon to suffer a lesser term of imprisonment or a less severe punishment. All are equal in the eyes of Justice and therefore they must be subjected to the same punishment for the same offence. Combining the principle of objectivity and self-protection with the sense of justice we come to the conclusion that the offence is to be taken in its objective, physical, outwardly manifest form and there must be a definite punishment for a definite offence. We must not inquire into the personality of the offender, the antecedents of the delinquent, his family, his early associations, his trials, his temptations, his needs, his employment or the economic trial through which he may have passed. It does seem an abstract, unnatural, artificial standard.

The views expressed in this thesis are in the capacity of research student not in the capacity of judicial officer of Maharashtra state.

Researcher hopes that this final report will rightly address the issue of prisoners reformation more effectively, efficiently and practically.
1.5. : The Conceptual Framework

1.5.1. : Prison :

The word 'Prison' and 'Gaol' derive from the Latin words which mean respectively to 'seize' and 'cage'.

The Oxford English Dictionary (2009) defines prison as, “A place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment.”

Prison, traditionally defined, is a place in which persons are kept in custody pending trial, or in which they are confined as punishment after conviction. Penal institutions are places where persons whose liberty has been curtailed by law are confined to assure the successful administration of justice or the application of penal treatment. There epochs may be distinguished in their history. During the first, which lasted until the middle of sixteenth century, penal institutions were chiefly dungeons of detention rooms in secure parts of castles or city towers which were used to detain prisoners awaiting trial or execution of sentences. The second epoch was one of experimentation with imprisonment as a form of punishment for certain types of offenders, mostly juveniles, “sturdy beggars”, vagabonds and prostitutes.

From the point of view of the role they play in the judicial administration, four classes of institution can be distinguished; a) those for temporary confinement of persons arrested; b) those for persons awaiting trial all or execution of sentence; c) those in which sentences of penal treatment are liquidated; d) and these for the internment of socially dangerous offenders.
Whatever may be the official designation of prison as jail, work-house, reformatory, penitentiary, State prison, house of correction or whatever else, it is a place where the punishment of imprisonment is executed.

According to prevailing usage in India, the term “Jail” is a generic term which applies to penal institutions housing both prisoners awaiting trial and prisoners committed to sentences. Consequently, the jails perform the function of remand institutions and prisons.

The word prison means different things to different people. To the law-abiding it is the place where Criminals end up. To the criminal it may be a vague hazard or unavoidable indignity often experienced. To the social inadequate it may be a shelter. To some isolated individuals it may be the only place where they can find some resemblance of companionship. To the prison officer it is his place of work. To the administrator it is a unit that costs so much to run, needs so many staff, can hold number of inmates. To the politician it may be a headache. Some one who should be inside gets out or some one who should be outside has been mistakenly locked up.

Prison can mean a reality, something ultimately unknown, with special but familiar sights, sounds and smells. It can be a fantasy, something, one roads or hears about, never sees-terrifying, mysterious, perhaps, even exciting. To the planner, a difficult part of development. To the architect, a neat solution to a complex housing problem. To the psychologist, a career in studying behavior. But to a hundreds of thousands of people, an experience which slows up time, which crowds them together, sets them apart and changes the course of their lives..........Prison, thus is not a single concept. What you see depends on
where you stand. The academic criminologist, the judge in his court, the child whose father has been sent to jail, the Home Office Officials – all have different views. But no one can see the whole.

In India the states have classified their prisons differently. But classification of prisons on the basis of numbers to be accommodated is the common feature in all the states. Thus there are larger prisons called central jails and smaller prisons called District Jails. In some states like Madras, Kerala the district jails are called subsidiary jails. There are special subsidiary and sub-jails also. In Uttar Pradesh, Punjab, Maryanna, Maharashtra and Gujarat, etc., the jails are classified as central jails and district jails. In addition to these mixed jails there are also special jails meant for young offenders or women prisoners.

The treatment given to prisoners in all the central prisons is more or less uniform. Individualized treatment is miserably lacking in these institutions. The daily routine is practically the same.

District jails are used as places of detention for persons accused of crime who cannot, or who are not permitted by law or by judicial determination to furnish bail for appearance at trial, as places of detention for those who are ordered to pay a debt or fine but who cannot or will not do so, as places of punishment for criminals with sentences below fine years, and as places of security for those detained for security reasons.

1.5.1.2: Characteristics of Prison

1. The chief characteristic of prison system is, it has a unique position in the society in which organizations compete either for economic resources or for the loyalty and support of group members. It is non-
competitive in the sense that no other organization challenges it directly.

2. Another characteristic of prison system is, it is relatively an isolated social system. It is a structure composes of a ruling caste and a subordinate caste. The term caste is more appropriate here, however, since there is no possibility of vertical mobility across caste lines in the prison and unlike organizations of a bureaucratic type, the two castes do not share any over-all primary goal through co-operative participation in production.

3. Another special feature of prison system is that it is a closed or protected system. Members of the larger society (except for the relatives of the inmates and official and non-official visitors) have no direct stake in the prison in terms of ownership, goods, services or reciprocal relations of any kind. Thus, the prison is relatively protected from outside scrutiny.

4. The use of force is another characteristic of prison system. This does not mean that the inmates are systematically flogged or physically tortured. The force used is not the dynamic energy of the whip: it is the static power of tool-proof steel cells. The inflexible restraint of a square of steel is a directly felt prison experience. As time turns the thumbscrew of that square down closer on the mind, the pain may express itself in a physical sensation. When, as often happens, the isolated inmate beats his own head and hands against the walls, the bloody results cannot be easily distinguished from brutality.

5. Another characteristic of this authoritarian system is regimentation and de-personalization. Life goes on in an absolutely unchanging routine.

6. An additional characteristic of the incorrigible unit (prison) is the ever present eye of authority.

7. An equally important characteristic is the unresponsiveness of the governing authority.

8. A final authoritarian characteristic of the prison system is uncertainty and indefiniteness.

1.5.1.3. Prison and Imprisonment

Incidentally it may be mentioned that the terms prison and imprisonment receive wider connotations. Prison includes any place notified as such for detention purpose. Stone walls and iron bars do no make a prison. Also stone walls and iron bars are not a sine qua non to make a jail. Open jails are
capital instances. Any life under the control of State, whether within high walls or not, may be a prison if the law regards it as such. Restraint on freedom under the prison law is the test. Licensed release where instant recapture is sanctioned by the law and likewise parole, where parolee is not a free agent, and other categories under the invisible fetters of prison law may legitimately be regarded as imprisonment.

1.5.2. : **Prisoner** : 'Prisoner' means any person duly committed to prisons custody by a court or authority exercising civil, criminal or revenue jurisdiction, or by a Court-martial and includes a person detained in prison.

**Criminal Prisoner** : According to S. 3 (2) of the Prison Act, 1894 'Criminal Prisoner' means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of court-martial.

**Convicted Prisoner** : According to S. 3 (3) of the Prison Act, 1894 'Convicted Prisoner' means any criminal prisoner under sentence of a court or court-martial, and includes a person detained in prison under the provisions of the of the Code of Criminal Procedure or under the Prisoners Act, 1900.

**Civil Prisoner** : According to S. 3 (4) of the Prison Act, 1894 'Civil Prisoner' means any prisoner who is not criminal prisoner.

**Under-trial Prisoner** : A person who has been committed to prison custody with pending investigation or trial by a competent authority.

In the present research convict prisoners are chosen as respondent. The
reformation process of convict prisoner has been studied. Because there are no reformative or rehabilitative measures adopted on undertrial prisoners or civil prisoners. They are the part of recreational activities but no separate method for their reformation is adopted by prison administration.

1.5.3. :  **Reformation**:  
Reformation, in criminal law the act of bringing back a criminal to such a sense of justice, so that he may live in society without any detriment to it. The object of the criminal law ought to be to reform the criminal, while it protects society by his punishment. One of the best attempts at reformation is the plan of solitary confinement in a penitentiary. While the convict has time to reflect he cannot be injured by evil example or corrupt communication.

**Rehabilitation, reform and correction** :
"Reform" here refers to reform of the individual, not the reform of the penal system. The goal is to "repair" the deficiencies in the individual and return them as productive members of society. Education, work skills, treating others with respect, and self-discipline are stressed. Younger criminals who have committed fewer and less severe crimes are most likely to be successfully reformed. One criticism of reformation is that criminals are rewarded with training and other items which would not have been available to them had they not committed a crime. However, it must be noted that criminals or potential criminals who do not have access to such educational resources are only acting in their best interests by gaining access to these prisons; if a prison is successful at providing resources to individuals who were unable to get these resources through "acceptable" channels, then perhaps what would be next needed, in the
implementation of this model, is societal reform.

1.5.4. : The Process :

The process that one follows is as important as the results that are produced by the process. Without understanding the underlying process, it is difficult to know how a certain set of results were achieved, or why they were good or bad. So, if results are viewed as the "destination", then process can be viewed as the "vehicle" that gets you there (and ideally, you should be able to use the same "vehicle" for many trips...with a few modifications based on the desired destination!)

Figure 1.1

Traveling of Offender

Researcher has herself prepared above said figure to express the traveling of offender.

The life of any prisoner not only limited inside the prisoner. His life starts from the day when he breaches the law, he commits the crime. After his arrest, he termed as undertrial prisoner. If he found guilty then he convicted, and sentenced for punishment. Then his life as convicted prisoner begins. In prison all reformative treatment administered on him. But reformation procedure does not ends here, it continued till his rehabilitation in society.

The present research made about the prisoner's life begins from the
offence he made and continued till his rehabilitation in society. The process of reformation begins from the circumstances of offences, his attitude towards the correctional treatment and his chances of rehabilitation in society.

1.5.5. The state of Maharashtra:

The state of Maharashtra emerged as a result of the bifurcation of the bilingual state of Bombay of May 1, 1966. When India achieved Independence in 1947, and till the reorganizations of states in 1966, there was the state of Bombay comprising 23 districts.

The Indian National Congress was pledged to linguistic state, but the states re-organisation Committee recommended a bi-lingual state Maharashtra-Gujarat with Bombay as its capital. Thus, a bi-lingual state came into existence on 6th Feb, 1956. Finally, after much agitation, the separate state of Maharashtra was born on 1st May 1960.

Territorial boundaries of the erstwhile State of Bombay were changed on account of the reorganisation of State under the States Reorganisation Act of 1956. Consequently, the prison and other institutions from the Karnataka region comprising the districts of Belgaum, Bijapur, Dharwar and Karwar, were permanently transferred to the new State of Mysore with effect form 1st November 1956. Similarly, the prisons and subsidiary jails (which were known as magisterial lock-up in the Vidarbha area and “Judicial Lock-up” in the Marathwada area and taluka sub-jails in other areas) were transferred on that day to the Bombay State.
from the areas of Marathwada, Vidhargha, Saurashtra and Kutch.\(^{10}\)

A Conference of senior prison officers was convened in May 1957 to study these five different patterns of prison administration prevalent in Bombay, with a view to prescribe a uniform pattern of administration after adopting the best from each of the existing systems.

The Prison Act 1X of 1894 and the Prisoners Act III of 1900 are Government of India Acts. But after the power of making rules were delegated to the States, the erstwhile States of Bombay and Madhya Pradesh had amended certain provisions of these Acts. The erstwhile States of Acts and rules in force in the prison in these States as on 1 November 1956. Uniformity in the divergent provisions was brought about from 1 June 1969 by the Prison and Civil Jails (Bombay Extension, Unification and Amendment) Act of 1958 (i.e. Bombay Act XV of 1959). These unified Acts were adopted by the Government of Maharashtra by the Maharashtra Adoption of Laws (State and Concurrent Subjects) Order, 1960.

In furtherance of the implementation of the recommendations of the All India Jail Manual Committee, the State Advisory Board for Correctional Services, consisting of Social Workers, Social Scientists, Correctional Administration and representatives of the other concerned Government Departments was set up in the year 1969. The functions of the Board included advising the government on all matters pertaining to prevention, control and treatment of delinquency and crime; to suggest ways and means for improving the levels of coordination between administration of justice, the police, the prison and the social welfare department and to suggest measures for creating
social consciousness for rehabilitation of offenders. A Steering Committee of the State Advisory Board for Correctional Services was constituted in May 1971 to ensure that the recommendations of the Board are implemented.

In Maharashtra, correctional work is viewed in an integrated manner, commencing from prevention control, training and treatment and ending in after care. Through a phased programme, the mass approach in prisons is being replaced by an individual approach through a system of diversified institutions, classification of prisoners on scientific basis and development of work training, educational and cultural programmes which are all endeavors toward developing a wholesome atmosphere of opportunities in prisons for the self improvement of prisoners. Attempts are also being made to develop a system of positive and constructive discipline in prisons so that through the combination of such discipline and the various educational and training opportunities, prisoners can imbibe useful social values for their rehabilitation in the free community as law abiding citizens.¹¹

PRISONS IN MAHARSHTRA

There are at present 36 prisons in Maharashtra. They are constituted under Section 3 (1) of the Prisons Act IX of 1894 and they have been classified as under:

1. Central Prisons
2. District Prisons
3. Special Prisons
4. Open Prisons
5. Subsidiary Jails (Greater Bombay)

6. Civil Jails (Greater Bombay)

Table 1.1

Regionwise Prisons in Maharashtra State

<table>
<thead>
<tr>
<th>Types of Prisons</th>
<th>Types of region</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Eastern</td>
</tr>
<tr>
<td>Central Prisons</td>
<td></td>
</tr>
<tr>
<td>District Prisons Class-I</td>
<td></td>
</tr>
<tr>
<td>2. Bhandara</td>
<td>Yerawada</td>
</tr>
<tr>
<td>5. Wardha</td>
<td>Ratnagiri</td>
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<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>District Prisons Class-II</td>
<td></td>
</tr>
<tr>
<td>2. Solapur</td>
<td>2. sawantwadi</td>
</tr>
<tr>
<td>5. Ahmednagar</td>
<td>Women</td>
</tr>
<tr>
<td>6. Open Colony</td>
<td>Prison</td>
</tr>
</tbody>
</table>

55
Atpadi

<table>
<thead>
<tr>
<th>District</th>
<th>--</th>
<th>1. Kolhapur (city)</th>
<th>1. J. J. Hospital Prison</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prisons</td>
<td>--</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Class-III</td>
<td>--</td>
<td>8</td>
<td>10</td>
</tr>
</tbody>
</table>


The first Open Institution was started as an annex to Yervada Central Prison in the year 1956 and the second at Paithan in Auragabad District in the year 1968. The starting of the Open Central Prison at Paithan is an important landmark in the history of prison administration of Maharashtra, as this institution laid the foundation for the development of a new correctional approach. The object was to save lifers and long term prisoners from the ill-effects of prisonisation and continuous exposure to criminal culture of closed prisons.

There is also a prison colony at Atpadi in Sangli District, where huts have been constructed in a farm without any enclosure or fencing. Prisoners, who have shown good progress in the open prison and who can be trusted in conditions of more freedom, are conditionally released on parole and sent to this colony which is called Swatantrpur Colony for temporarily released prisoners. This is a unique and pioneering experiment as it implies trust. Moreover, prisoners stay and work here with their families. On 16 March 1972, another open colony was set up at Kanhargaon in Chandrapur District to keep alive the interest of prisoners sentenced to imprisonment for life and long term prisoners after they derive maximum benefits from the various prison programmes in the closed prisons. Such prisoners are released on parole for a period of two to
three years and are allowed to stay in the colony. They are permitted to bring their family members to stay with them in the colony.

There is also a special prison in Ratnagiri for hardened criminals and also a Borstal School at Nashik. Hardened criminals are those who have been convicted more than once. The Districts of Gandchiroli, Latur, Vashim and Nandurbag do not have prisons.

1.5.6. A socio-legal study:

Sociology also includes the study of a part of law to some extent. For example, criminology is one of the inter-disciplinary studies related to both sociology and law. That is the practical functioning of law in the society. Further, sociology as well as the study of jurisprudence are concerned with regulation of human conduct in society. Therefore, the two are intimately connected. It must, however, be noted in this context that lawyer's approach to law is different from that of a sociologist's attitude towards law. The former looks it from point of view enforceability and obedience by the people while the latter concentrates on studying how these rules actually govern the behavior of individual in the society.

More recently, there is greater thrust on sociological approach to law and legal problems. The modern prison reforms and correctional services for the treatment of offenders have been devised keeping in view the sociological factors of the offenders. Even the judges have accepted the role of sociology and its relationship with law and it is often reflected in their decisions. Law as
conceived today, is to ensure social justices.

The relationship between law and sociology has been supported by G. W. Pation (1938) for three obvious reasons, namely.¹²

(1) it enables better understanding of the evolution and development of law,

(2) it provides greater substratum for identity of law commensurate with human needs and societal interests, and

(3) it provides objectivity to legal interpretation which is the need of the hour.

Without social interaction, law would remain a mere theoretical perception devoid of any practical utility.

There is an obvious and logical interdependence between what is done about crime (Penal practice) and what is assumed to be the reason for or explanation of criminality (criminological theory). But penal practice cannot wait on theory. Organized society must do something about crime; it must deal with the criminal. Theory therefore often may be little more than subsequent rationalization of and justification for the practices established as a consequences of what at the time was deemed a practical necessity, and not as the result of rational deliberation and knowledge of cause and effect.

Rehabilitative penology, both in theory and in practice, ignores this social conflict aspect of criminality entirely and seeks to 'do something' to change the orientation and the behavior of the individuals under its control. The prison cannot change the society of which it is a part; it cannot modify the forces in conflict
outside the institution; but it hopes that it can do something with the individuals under confinement. Hence it ignores what it cannot manipulate, and constructs its penological theory to provide suitable rationalization for what the institution hopes it may be able to do. This may well be the principal reason for the popularity of environmental theories of crime causation among penal administrators and for the frequent emphasis on the significance of traumatic experience in accounting for the psychological idiosyncrasies of those who commit crime.

Law is not for law sake. Law is an instrument of social control. It originates and functions in a society and for society. The need for a new law, a change in existing law and the difficulties that surround its implementation cannot be studied in a better manner without the sociological enquiry.

Law is an important variable in any social investigation. Researchers cannot do anything in sociological research if they do not know at least the basis of law, legal system and law institutions. Similarly a legal researcher cannot do justice to the legal inquiry if he does not know about the mechanics of social research methods.

In a dynamic society, a legal research must switch over to multi or inter-disciplinary approach as the legal problems are connected with social, political, economical, psychological issues. At present, law is considered as a social science category by ICSSR. The Indian Law Institute and the Bar Council of India play a vital role in designing and conducting socio-legal research. Socio-legal research is considered as fact research by the academic legal experts in American Universities.
Societies have become complex and complex problems are arising in it. To solve complex problems the law must be up to the mark. It must have the capability to tackle the problem. This capability can be acquired by it only through research.

Legal research means research in that branch of knowledge which deals with the principles of law and legal institution. Prison is a legal institution. If there is an area for which there is no law at all the objective of legal research would be to suggest suitable legislation for that area; but if there is a law for that area but due to one reason or the other, it does not work, its aim would be to suggest reform in the existing law so as to make it workable.

Utility of socio-legal Research

1. Socio-legal research can be useful in formulating new theories;
2. Socio-legal research gives clue to the decision making;
3. Socio-legal research gives a lead and moulds public opinion;
4. Socio-legal research is useful in framing new laws;
5. Socio-legal research is useful in finding root causes of crimes and differential behaviour among different tribes and races;
6. Socio-legal research provides the knowledge which widens the outlook of legislators, executives and judiciary;
7. Socio-legal research paves the way for broad based social reforms.

Theoretical perceptive on reformation and socio-legal study

It must be abundantly clear from the preceding discussion that explanations of why crime occurs are both varied and contradictory. It has
appeared that crime is a varied phenomenon that may be approached from many points of view. The 'theories' of crime causation that have been discussed reflect this basic condition. Each particular 'theory' represents primarily a possible approach, and then in turn reflects some special point of view rather than any full-blown, unitary accounting for all crime in all societies at all times. Even as there is no generally satisfactory or completely adequate theory of human behavior in general, so there is no entirely adequate or generally accepted theory of criminal behavior. Some of the lines of discussion and disagreement in this area of thinking are worth restating. This reformulation then in effect becomes a brief summary of the field.

1.6.1. : Demonism versus Naturalism

Paranjpe N. V. in his book Studies in Jurisprudence & Legal theory : (2009) explains as to study the criminal science (penology) the basic theory is naturalism and its demonism. Therefore the difference between these two conditions have explained prior to considering the various theories influenced on concept. Because this study is of individual and its social behavior.

Naturalistic theories of causation are of three general types :

(a) Those with principal emphasis on the nature of the individual;

(b) those with principal emphasis on the group and on inter-group relations;
and

(c) those basically eclectic, tending to include all kinds of factors as possibly
important. Corresponding to those theoretical positions are the normally expected and logically required research or methodological approaches which characteristically seek the following kinds of information:

(a) a pile-up of factual data about the individuals involved in crime which can be subjected to quantitative analysis and comparisons;

(b) the assembly of carefully compiled descriptions, moving pictures in verbal terms, as it were, which will show the continuity of individual and group interrelations with criminality viewed as an aspect of group, or of inter-group, behavior;

(c) an attempt to combine all information resulting from all methodological approaches into relatively simple and understandable explanations of particular offenses, or of the behavior of particular offenders.

On basis above naturalism condition each theory has explained below:

1.6.2: Prospects for the Future

Paranjape (2009) also explain theory for research which based on future. Crime must be recognized clearly as not being a unitary phenomenon but as consisting of many kinds of behavior occurring under many different situations. No single theory therefore should be expected to provide the explanations for the many varieties of behavior involved. The problem calling for clearer thinking in the future than has been given it in the past is the systematic and realistic delineation of kinds or types of criminality actually occurring that need to be comprehended. Consistent and unitary theory than
should be possible for each type, so there would be less confusion due to the utilization of a non-applicable theory to any particular type. In this manner, too, the absurdities of a too facile eclecticism may be corrected.

Research of the future may be expected to become more seriously concerned with the establishing of meaningful, functionally operative typologies. Then the methods and procedures applied to one type of criminal behavior problem would be recognized as of only limited applicability to other kinds of problems. Thus, for example, the exhaustive attention given in the past to the establishing of individual differences in traits and characteristics of criminals and delinquents will be recognized as appropriate for only certain, specific kinds of problems or situations. Other problems and situations will need to develop other techniques and methods than those utilized in the analysis of the individual. In a number of these non-individual types of crime problems, some of the political entanglements and interrelations involved have already been described in an informal, journalistic sort of way. An example of this is the story of the AL Capone crime syndicate, and of a number of other equally notorious. It remains for the future to reduce this to systematic, accurate, and verifiable research techniques.

1.6.3. : Social Learning Theory

Akers R. L. in Criminological theories (2004) explains social learning theory. In the field of criminology, however, social learning theory refers primarily to the theory of crime and deviance developed by Ronald L. Akers. Akers' social learning theory was originally proposed in collaboration with Robert
L. Burgess (Burgess and Akers, 1966) as a behavioristic reformulation of Edwin H. Sutherland's differential association theory of crime. It is a general theory that has been applied to a wide range of deviant and criminal behavior. It is one of the most frequently tested (Stitt and Giacopassi, 1992) and endorsed theories of crime and delinquency among academic criminologists (Ellis and Walsh, 1999).

Akers' social learning theory combines Sutherland's original differential association theory of criminal behavior with general behavioral learning principles. The theory proposes that criminal and delinquent behavior is acquired, repeated, and changed by the same process as conforming behavior. While referring to all parts of the learning process, Akers' social learning theory in criminology has focused on the four major concepts of differential association, definitions, differential reinforcement, and imitation. That process will more likely produce behavior that violates social and legal norms than conforming behavior when persons differentially associate with those who expose them to deviant patterns, when the deviant behavior is differentially reinforced over conforming models, and their own definitions favorably dispose them to commit deviant acts.

This social learning explanation of crime and delinquency has been strongly supported by the research evidence. Research conducted over many years, including that by Akers and associates, has consistently found that social learning is empirically supported as an explanation of individual differences in delinquent and criminal behavior. The hypothesis that social learning processes mediate the effects of socio-delinquently studied, but the evidence so far
suggests that it will also be upheld. The behavioral, cognitive, and social interactional principles of social learning theory have been applied in a range of prevention and treatment programs, mainly with adolescent populations but also with adult offenders. The outcomes of these programs often have been disappointing. But there is also some evidence of success, and generally such programs are more effective than alternative approaches.

1.6.4. : **Reformation and Labeling Theory**

Akers (2004) explains labeling theory is so named because of its focus on the informal and formal application of stigmatizing, deviant “labels” or tags by society on some of its members. The theory treats such labels as both a dependent variable (effect) and an independent variable (cause). It views labels as the labels as the independent variable when it hypothesizes that discrediting labels cause continuation of the criminal or delinquent behavior.

The most often quoted statement on labeling theory is Beeker’s following assertion:

Social groups create deviance by marking the rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an “offender”. The deviant is one to whom that label has successful been applied; deviant behavior is behavior that people so label. (Becker,1963:9;
Thus, labeling theorists contend that the actual deviant behavior of those who are labeled is itself of secondary importance. The important question is, who applies the label to whom and what determines when the deviant labels will be assigned? What produces the stigmatizing label and determines the way in which it is applied, particularly by formal control agents, to different individuals and groups in society? The usual answer that labeling theorists give is that the agents of control, who function on behalf of the powerful in society, impose the labels on the less powerful. The powerful in society decide which behavior will be banned or discredited as deviant or illegal. Moreover, the designation of an individual as criminal or deviant is not directly determined by whether or not he or she has actually violated the law or committed the deviant act. Even for the same law-violating behavior, individuals from less powerful groups are more likely to be officially labeled and punished than those from more powerful groups. Branding persons with stigmatized labels, therefore, results more from who they are than from what they have done.

1.6.5. Social Disorganization, Anomie, and Strain Theories

Social disorganization and anomie (also referred to as strain) theories have evolved from different theoretical and research traditions. They are included in the same chapter, however, because they have a common theme. Both propose that social order, stability, and integration are conductive to conformity, while disorder and mal-integration are conductive to crime and deviance. A social system (a society, community, or subsystem within a society)
is described as socially organized and integrated if there is an internal
consensus on its norms and values, a strong cohesion exists among its
members, and social interaction proceeds in an orderly way. Conversely, the
system is described as disorganized anomic if there is a disruption in its social
cohesion or integration, a breakdown in social control, or misalignment among
its elements.

Both theories propose that the there exists solidarity, cohesion, or
integration within a group, community, or society, the higher will be the rate of
crime and deviance. Each attempt to explain high rates of crime and
delinquency in disadvantaged lower-class and ethnic groups. At one time or
another, both theories have focused specifically on delinquent or criminal gangs
and subcultures.

Anomie/strain and social disorganization theories that social order,
stability, and integration are conducive to conformity, whereas disorder and
malintegration are conducive to crime and deviance. Anomie is the form that
societal malintegration takes when there is a dissociation between valued
cultural ends and legitimate societal means to those ends.

The more disorganized or anomic the group, community, or society, the
higher the rate of crime and deviance. Merton proposed that anomie
characterizes American society in general and is especially high in the lower
classes because they are more blocked off from legitimate opportunities. High
levels of anomie and social disorganization in lower class and disadvantaged
ethnic groups, therefore, are hypothesized to be the cause of the high rates of
crime and delinquency in these groups. At the individual level, the strain

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produced by discrepancies between the educational and occupational goals toward which one aspires and the achievements actually expected are hypothesized to increase the chances that one will engage in criminal or delinquent behavior. Research provides some support for these hypotheses in regard to class and race, but the relationship are usually not strong. Other structural variables are more strongly related to crime rates. Self-perceived aspirations/expectations discrepancy.

Cohen, and Cloward and Ohlin, modified Meton's theory to apply anomie to lower-class delinquent gangs. Miller theorized that the delinquency of street corner groups expresses the focal concerns of lower class culture. Research shows clearly that gang delinquency continues to be concentrated in the lower class and minority neighborhoods of large cities. But research has not verified that urban gangs fit very well into the theoretical specifications of Cohen, Cloward and Ohlin, and other subcultural versions of anomie theory. Social disorganization and anomie theory have been applied in community programs to enhance neighborhood social organization and legitimate opportunities for youth. Due in part to political opposition, these programs have been hampered in implementation and effectiveness.

Messner and Rosenfeld suggest that the high crime rate in American society can be explained by a distinctively American emphasis on monetary success and an institutional imbalance of power in which the economy dominates the social structure. There has not been enough research done as yet to assess the theory's empirical validity, but a variety of ways to strengthen non-economic institutions through social welfare programs are recommended.
Agnew has proposed a modification of anomie/strain theory, primarily by broadening the concept of strain to encompass several sources of strain, failure to achieve goals, removal of positive or desired stimuli from the individual, and exposure to negative stimuli and by including negative emotions as the mechanism by which some types of strain theory, but the process by which strain delinquency anger and variables derived from other theories to influence delinquency has not been demonstrated. Agnew recommends applications of general strain theory in family and school interventions that resemble those based on social learning and social bonding theories.

1.6.6. : Legal theory

In just prudence, the first approach is represented by those theories that regard certain basic principles of conduct as essential to a satisfactory legal order, not as a matter of social experience. Generally we can group under this approach all the “social contract” theories their appetites for violence, greed, and domination, in order to achieve a minimum of mutual protection and security. A logical continuation of the “social contract” approach could be Kant’s Categorical Imperative and its derivative definition of law as “the aggregate of the conditions under which the arbitrary will of one individual may be combined with that of another under a general inclusive law of freedom. But in Kant’s philosophical scheme these principles are not empirical; they are given a priori, as an essential basis of man’s volition as a free and rational being.

Similar or even identical ethical postulates can thus be derived
wither from a priori judgments or from empirical observations. A corollary to this duality of approaches in ethical theory can be found in legal philosophy. Thus, throughout the long history of natural law philosophy, many postulates such as the absolute authority of the Church over the State, or vice versa, the equality or inequality of men, nations, or races, and many more, have been deduced from metaphysical principles of a God-given universe or universal reason. But a contemporary jurist has formulated five principles of what he describes as “the minimum content of natural law” not as a priori principles but as necessary to “the minimum purpose of survival which men have in associating with each other.” They are thus essentially a continuation and modernization of the “social contract” philosophy. The five principles are: (1) human vulnerability, which makes it necessary for a legal order to restrict the use of violence; (2) approximate equality, which makes it necessary for a legal system to develop rules of mutual forbearance and compromise; (3) limited altruism, which makes necessary some provisions to restrain tendencies to aggression; (4) limited resources, which makes necessary some system of exchange or joint planning of services and goods; and (5) limited understanding and strength of will, from which follows the need for a system of voluntary cooperation in a coercive system. Thus, maxims of conduct which many of the older natural law philosophers have presented as flowing from the immutable nature of man, are here presented as having been shown by experience and history to be necessary to the survival of man in civilization.14

1.6.7. : Sociological Theories of Legal Evolution
Renner’s work, based as it is on certain Marxist premises, will be discussed in connection with socialist thought on law. The two other attempts, differing widely from each other as well as from Renner’s study, indicate the tentative and experimental character of the sociological study of legal evolution.

Weber’s Sociology of Law has for its main theme the analysis of the transformation of law from a “charismatic” finding of law to a state of rationalization. This transformation is followed up in various legal, which is, however, a distinction shifting with the development and principles of government; in the evolution from the decision of individual cases to general principles and eventually a systematization of law; in the development from the early formal status-contract to the elastic and formless purpose-contract; from the autonomous legal personality of the Middle Ages to the modern state monopoly of the creation of legal personality.

All these are legal development closely linked with social, political and economic factors. Thus a development of an exchange economy with its increasing use of money leads to the development of modern contract with its free assignability.

The most interesting part of Weber’s analysis is concerned with the influence of legal professionalism and of different forms of political government on the development of law.

When belief in irrational powers of law-finding has gone and rational reasoning takes its place, the administration of justice becomes more and more
a regulated procedure to decide a conflict of interests. A class of persons of high social standing, half-way between the law-finder of earlier and the professional jurists of later days (Rechtshonoratioren). Develops and largely influences a rationalization of legal procedure, although it is often interested in retarding the material rationalization of law. This process weber traces comparatively in the development of Roman, English, German, Islamic and many other systems of jurisprudence.

The theoretical conclusions which Weber derives from his comparative sociological investigations are that law in general develops from a charismatic revelation by “prophets of law” to an empirical creation and administration by a special class of legal advisers, further to law imposed by worldly or theocratic powers and eventually to a rationalized system of law-giving and professional administration of justice by experts. Correspondingly, legal technique develops from a magically rooted formalism through the utilitarian rationalization sponsored by modern absolutist government towards the logical rationality of modern law.

This very summary account of Weber’s sociology of law reveals an approach which, without preconceived valuations, has points of contact with Maine’s historical jurisprudence on one hand and the Marxist approach to law on the other. It demonstrates the interdependence of law with political, economical and social forces.

Had Weber lived longer (he died in 1920) he might have been less confident of the inevitable process of rationalization of law. But his work, as a whole, beings out the relative character of any particular legal development.
1.6.8. **Theory of punishment**

With the passage of time, developments in the field of criminal science brought about a radical change in criminological thinking. There was a fresh approach to the problem of crime and criminals. Individualised treatment became the cardinal principle for reformation of offenders. This view found expression in the reformative theory of punishment.

The reformative view of penology suggests that punishment is only justiciable if it looks to the future and not to the past. The propounders of reformative theory like Bentham (Rationale of punishment, 1830 21), Ewing (1929), and Hart (1968) rejected the retributive and deterrent theories of punishment in the nineteenth and twentieth centuries and sought to take the anger out of punishment. According to Bentham, “punishment is not an act of wrath or venegance but is an act of calculation, disciplined by considerations of the social good and the offender’s needs. The reformative and utilitarian justification of punishment was that it would persuade the offender to accept his sufferings and face the own guilt. Reformative theory thus presented punishment to offenders as being in their best interests.15

The reformative theory gives importance not to crime but to criminal. It considers defective functioning of social systems and social structures, defective environment, and lack of opportunities to achieve one’s goals as the causes of crime.

Undoubtedly, modern penologist re-affirm their faith in reformative justice but they strongly feel that it should not be stretched too far. The reformative method has proved useful in cases of the juvenile delinquent and the first
offenders. Harder criminals however do not respond favourably to the reformist ideology. It therefore follows that punishment should not be regarded as an end in itself but only a means, the end being social security and rehabilitation of the offender in the society.

The aim of reformative theory is found in the poem of George Bernard Shaw:

If you are going to punish a man retributively –
you must injure him,
If you are to improve him –
you must improve him, And men are not improved by injuries.

References:


6. see note 3

8. see note 7
10. Govt. of Maharashtra: State Gazetteer for state of Maharashtra, 2001
11. see note 7