CHAPTER - II

REVIEW OF LITERATURE

The literature of the prison is abundant and puzzled.

Sociological studies of prisons have been conducted only since the 1940's. Most studies have been conducted on a single prison. These case studies often provide conflicting images of important characteristics of prison structure (such as program availability and quality, or physical condition of prisons) and prison life (for example, the extent of violence, drug use, and homosexuality). Generalization about prison life based on any one institution are suspect. Moreover, since prisons are constantly changing even valid generalizations are valid only for short periods.

Political and social changes occurred inside and outside prisons in the 1960's and 1970's, reducing the importance of the informal norms documented by Sykes. The Civil Rights movement of the 1960's produced a modest set of rights for inmates.

Most of the studies of prisons have included only prisons for men. Women account for only 5 percent of imprisoned offenders, though, proportionately, the population of women prison inmates is growing faster than the male inmate population. Women's crimes – typically theft and drug offenses – inspire comparatively little fear, and their condition, until recently, has generated little scholarly interest. Much of the interest in women's prison has
been prurient, such as curiosity about the extent of lesbianism. Serious assaults are uncommon in women's prisons, but inmates suffer greatly from separation from their children. Women's prisons are typically smaller, with less concern about security and fewer program options, than male prisons. The majority of women prison inmates are mothers, and only a few states permit the young children of inmates to live in prison with their mothers. An imprisoned single mother is likely to lose legal custody of her children.

For hundreds of years many autobiographical works by prisoners, wardens, and other prison functionaries have provided interesting literary descriptions of life in prison. But such impressionistic, often emotional, and self-justifying writing is of limited usefulness. Prior to 1940 no systematic sociological analysis of prison life had yet been made, since then, however, theoretically oriented, objective descriptions by sociologists as well as more sophisticated empirical studies have appeared. Beginning with the prison community (1940) by Clemmer, then a sociologist at the Penitentiary at Menard, criminologists and penologists have been increasingly aware of the formidable nature of the latent social structure existing in all prisons side by side with the formal organization.

These and many more questions may not be answered in a general way with a universal assumption. What is proposed is to put forward an empirical analysis of the prison life and come to conclusion with regard to some of the questions with the help of other studies done on the problem.

In recent times the study of prison has been emphasized in two contexts. First, it is a challenging area for the study of organizational problems. With the
emergence of social work and psychiatric analysis the concept of reformatory ideologies is now provided with a scientific approach. Which in turn has necessitated the basic evaluation of the old organizational goals and objectives. The authoritarian norms of both the custodians as well as the inmates have been replaced with cooperative and treatment ideals. The information on the studies of hospitals, army units and camp life is being compared with the data of prison life. It is only possible to make a comparative study as the organizational logic has gained new dimension at present. The evidence of such thrust is evident in the emergence of such areas of studies as operation research and system analysis.

The prison life is open to various experiments, there may be some errors in the trials. Nevertheless, such experimental insight is not the outcome of social scientists involvement: rather they are the result of direct experience of the politicians imprisoned at various stages of their life. They participated in protests for changes in prison conditions and come out convinced for the change.

Donald Clemmer's pioneering work came out in 1940s and leaned heavily upon the theoretical sociology of the 1920s. It was the age of face to face sociology of Cooley and George Mead where every explanation was sought in the looking glass of the society. The processes were greatly emphasized. Donald Clemmer came out with the concept of patronization and asserted that prisons convert inmates into permanent and incorrigible strains of criminality and it is related with the period of their stay in prison.

Gresham Sykes was greatly influenced by the structure (system)
sociology of parsons and others. His description of pain of imprisonment was nothing more than the problem of the structure. Terence Morris and Pauline Morris viewed prison problem mainly in the administrative context of policies and programmes.

The prison is not an autonomous body like a church. It is not an independent system of power, but an instrument of the state shaped by its social milieu and by stage of social, political and economic developments. It reacts to and is acted upon by the society as various groups struggle to advance their interests.

2.1. : Prison System in India

In the present context it becomes imperative to deal briefly with the evolutionary stages of prison system in India, and to ascertain how far the social environments and the stages of societal developments helped to shape the penal institutions. Though it is not necessary to review the judicial aspect of statecraft, however, for a systematic description of jails, particularly of ancient and Mughal India, the indirect reference will enable us to know something about the system, and its evolution.

In Vedic period, which is nearly 1000 years earlier than the age of Manu, administration of justice did not form a part of the state duties. Offences, like murder, theft and adultery are mentioned, but there is nothing to indicate that and adultery are mentioned, officer as a judge, either in civil or criminal cases, passed any judicial judgment. Some critics have suggested that Sabhapati of
the later Vedic period may have been a judge. But his being as a governor cannot be excluded. Usually the aggrieved party had itself to take such steps which could redress him. Constraint of the defendant or the accused by the plaintiff, his sitting before the latter’s house and not allowing him to move out till his claim was satisfied or wrong righted was a well-established practice in Vedic India.

The Dharmasutras and the Dharma Shastras (the earliest of which is that of Manu and other important Dharma Shastras are those of Yajnavalkya, Visnu, and Narada), reveal to us a more or less full-fledged and well-developed judiciary. Law or dharma was not a measure passed by legislature in Ancient India, it was based upon shrutis and smritis. Vedic literature and shrutis, which is shruti (heard) and which was believed to have been directly revealable to its authors, and therefore, of great sanctity than the later smriti, smriti (remembrance) literatures are post – Vedic and comprised sutras and shastras whose nature was religious, and were based on custom of universal validity and authority. It was enforced by social customs and practices. King was at its head and it was his pious duty to punish the wrong doers; if he failed from discharging it, he would go to hell? In these two kinds of literatures, i.e., sutras and shastras, we rarely come across the words “prison”, “jail” or “jailer” (In Arthashastra the word bandhanagardhyaksha is used for jailer).

Megasthenes, Fa-hsien and Arab travelers have described the Indians as remarkably law abiding, and have stated than crime was a rare phenomenon. However, Hiuen Tsang gives a somewhat less favourable picture. He gives an account of hereditary bandits who robbed their victims and murdered them as a
religious duty. Trading caravans were frequently plundered by bandits. Some later sources speak of castes of professional thieves, who had developed a high skill of stealing. To suppress crime, curfew of two-and-half-hours after sunset and before dawn has been suggested in Arthashastra. It shows that crime was a problem in ancient India, but many foreign travelers have stated that Indian kings were able to cope with it.

There is no systematic description about the construction of prisons. Many critics have suggested that abandoned and small fortresses served the purpose of prison. There are some references which indicate that Sannidhata was incharge of jail department who was to select sites for the location and construction of prison (BK. II 4). It seems from such references that prisons were designed like forts and castles with cells and small compartments. In a pamphlet entitled Rajgir, published by the Department of Archaeology, 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 Maniyar Math, the visitor will find an area, about 200 sq ft., enclosed by a stone wall, about about 6ft. Thick with circular bastions at the corners. The structure has been identified with the prison in which Bimbisara was confined by his son Ajatasattra. It is said that from this prison Bimbisara was able to see Budha on the Gridhrakuta. Partial clearance of the sited brought to light stone cells, in one of which was found ironings with a loop at one extremity, which possibly ave served the purpose of manacling prisoners.

The ancient literature gives no less encouraging account of prison reform. In the early years of Ashoka, there was an unreformed prison in which most of
the traditional fiendish tortures were inflicted and from which no prisoner came out live. But from his moral edicts which belongs to his later period of rule – when he was influenced by Buddhism- it appears that many reformatory measures were taken. According many critics, especially by Professor R. Ramachandra Dikshit in his book entitled Mauryan Polity, has suggested that Ashoka was familiar with the Arthashstra for Ashoka speaks of as much as twenty five jail deliveries effected by him in the course of 26 years since his anointment to the throne.

Another reformatory method introduced by Ashoka was the visits to the prisoners made by the authorities concerned once a day, sometimes, once in five days, to enquire about their conditions with regard to their specific work and health, and sometimes grant them money, perhaps for their personal upkeep. This is evident from the verse:

Divase paneratre ya bandhanasthan visodhye,
Karmana Kayadandena hiranyanugrahena va II (B.K. II. Ch. 36)

2.2. : Mughal Periods

During Mughal period sources of law and its character essentially remained Quranic. The crudeness and insufficiency of the judicial systems were aggravated by the fact that only law recognized by the emperor and his judges was the Quranic Law, which had originated and grown to maturity outside India. It was supposed to have been defined once for all within the pages of the
Quran. All the three sources of Indo-Mohammadan Law, i.e. Quran, precedents (case laws) and opinions of jurists were trans Indian. Indian Qazis depended upon the digest of Islamic Laws and precedents compiled by accepted Arabic writers. The last law digest prepared in India was the fataua-i-Alamhiri, during the rule of Aurangzeb.

Brahmanic courts which followed Manu and Gentoo Code a loose mass of Sanskrit legal rules and sacred injunctions survived under emperor Akabar.

According to Muslim ideas of jurisprudence crimes are grouped into three categories: offences against God: offences against the state and offences against private property. And punishments for these offences are of four types hadd, tazir, qisas, tashhir and hazat (lockup).

Hadd is the punishment which a supposed to be the right of God and cannot be altered by any human judge. Qisas constitute the retaliatory measures while tarnish is public degradation. Tazir is punishment entitled to reform the culprit and it could take one of these four forms: Public reprimand (Taqabi-9) Jirr dragging the offenders to the floor: imprisonment or exile, and boxing the ear: scourging.

Imprisonment was not encouraged under the Mughal laws, though it remained a form of punishment. Prisons were neglected institutions and prisoners were to suffer in the cells so that their crime may be washed off for peace in heaven.
2.3. British Period

In 1784 British Parliament empowered the East India Company to rule India and since then some attempts were made to introduce reforms in the administration of justice. At that time there were 143 civil jails, 75 criminal jails and 68 mixed jails. In fact, these jails were an extension of Mughal rule which were being managed by the personnel of the East India Company in their efforts to maintain peace and peace and establish their trade. No effort was being made to ameliorate the conditions of prisoners. They were just slave-labourers. There were 75,100 prisoners, out of which 65,700 were engaged on the construction of roads and were given exemption from works inside the prison. There are some references according to which it is known that only in two jails carpets were being manufactured.

It was only in 1836 that a major step was taken in this direction by the company. With Lord Macaulay as a member, a jail enquiry committee was appointed. After two years of continued sittings the committee recommended many far-reaching changes.

The enquiry committee was a landmark in the history of penal administration in India. Prison was given different treatment, the nature and character of the institution assumed a changed meaning. Though it remained punitive basically. The committee took a serious view of the unsanitary conditions of prison and ill health of the inmates. Many visitors described jails as “hells” where contagious diseases were extremely rampant and death rate
was excessively high. In 1860 the death rate was 141 per thousand of prisoners.

The committee recommended for the provision of good food, clothing and the attention to sick. Later on prison administration started replacing I.C.S. (Indian Civil Service) officers with I.M.S. (Indian Medical Service) officers as jail Superintendents to control the death rate and maintain sanitary conditions. In 1856, Dr. Stevenson was first I.M.S. Officer to become Superintendent of Allahabad Jail. The committee criticised the corruption of subordinate establishment, the laxity of discipline and the system of employing prisoners in extra-mural labour on public roads. The prisoners who worked on roads as well as engaged in manufacture of carpets etc. kept bad health and their death rate was always high. The committee, therefore, recommended that prisoners should not be employed for road construction.

The committee, though not with a scientific aim, recommended for the classification of prisoners on the basis of crimes and advised the administration that a prisoner who is exempted from hard labour should not be made to work in prison. Thus, a new classification was introduced in for imprisonment-simple imprisonment and rigorous imprisonment.

However, the committee deliberately neglected all such reforming influences as moral and religious teaching, education or any system of rewards for good conduct, and advocated the institution of central prisons for lifers and other convicts of longer period of imprisonment. The convicts of central prisons were to be engaged on dull, monotonous, wearisome and uninteresting
tasks. Perhaps these recommendations based upon the conception of engaging a convict of heinous crime into a trade means providing him excuses for passing time and learning skill.

It was after this committee's recommendations that a chain of central prisons was constructed. In 1848, first Central Prison of Agra was followed by Bareilly Central Jail (also constructed in 1848) and in 1854 in Banares, Meerut, and Jabalpur Central Jails were built. Naini Central Jail came later into existence, followed by Lucknow Central Jail was the last to be constructed. The policy of the governments during those days was to construct central prisons with proximity of military stations so that the services of military may be available in the vent of internal disorder and riot. So is the model prison situated near the headquarter of Central Army command at Lucknow. The committee also initiated a change into the administrative pattern of the jails Jail used to be under the district collectors. There were no superintendent, but only a derogate (police inspector) who was in charge of a jail.

In due course, as the work increased and the collectors could not supervise the work. Whole-time superintendent were appointed. For example, in Agra, the first whole-time superintendent was one I.C.S. Officer Dr. Woodcock by name. Later, he was made Inspector General of prisons of U.P. And was succeeded by Mr. Shornhill. At present in some of the district jails whole-time superintendent are not appointed at district jails but district civil surgeons act as superintendents.

After 26 years of the first Enquiry Committee, the Government of India
appointed another committee with some experts. In 1877 a third enquiry committee was instituted to enquire about the prison administration. The committee, which was composed of jail officers, exclusively arranged a conference of experts at Calcutta jail officers, exclusively arranged a conference of experts at Calcutta to discuss the question of jail administration. With Dr. Walker and Lethbridge as members the fourth committee was instituted to evaluate the jail administration in the light of recommendations of the previous three committees. Consequently, the Prison Act of 1894 was passed.

In the present context of penology and prison administration, the first concrete effort towards jail reforms was the appointment of Alexander Cardew Commission by the Government of India in 1919-20). In fact, the commission served as the jumping board for jail administration to catch up with the reformatory methods being tried in the West. The commission toured many countries, including England, America, and also visited jails of India and Andamans and Burma. The main idea behind the appointment of the commission was to overhaul the jail administration and introduce up-to-date changes in it. It was found that the administration was lagging behind in reformatory approach, it was devoid of humanitarian elements and the prisoner was denied due attention for his individual and social rehabilitation. It was a sorry state of affairs.

The commission recommended the establishment of separate institutions like Borstal school for juvenile delinquents. The under trials were to be kept separate from the convicted and the adult convicts were to be classified as:
habituals and casuals.

It also took a serious view of the transportation of convicts to Andaman Islands and recommended for the discontinuation of the practice. Solitary confinement was to be abolished and convicts were to share barracks in group as habituals and casuals. All convicts below 29 years of age were to be cared under adult education programme and libraries were to be established in all jails.

The commission advocated the establishment of the system of probation and parole for juvenile and adult offenders. It also recommended remissions for every convict who stays more than six months in any prison, and advised that a progressive system of reward will be helpful in maintaining internal order of the jail and also help the prisoners to learn to adjust in society. Flogging of prisoners except in the case of riot was to be abolished and use of fetters was to be discouraged. The quality of food was to be improved and the prisoners were to be provided with two sets of clothing. Non-official visitors to jails were to be introduced. Prison officials and guards were to be oriented to understand the reformatory approaches. The prisoners were permitted to have interviews with their family members and also write them.

The commission underlined the idea of reform of inmates as the ultimate objective of imprisonment and rehabilitation of prisoners as social necessity.

In 1921 jail administration came under provincial administration which was initiated by Montague Chelmsford Scheme. The department remained under an executive councillor. In 1929, the U.P. (The United Provinces)
Government appointed a committee with Sir Louis Stuart as president and Khan Bahadur (Hafiz) Hidayat Husain and Pt. Jagat Narain Mulla as members. The committee pointed out the differential treatment of English prisoners and recommended better treatment for educated and “star class” prisoners.

In 1935 the prison administration are under the control of a minister and Mr. Rafi Ahmad Kidwai was the first minister under the popular government of congress 1937-39. During this short period, as many as three committees were appointed for bringing about improvements in prison administration.

2.4. : Post Independence Period

Dr. Bhattacharya has devoted many years of first-hand study to the subject of prison reform and penal reform in general which is very near to his heart. Looking at world penological literature we do not find very many examples of High Court judges appearing in the role of reformers and interesting themselves in all the details of this unpopular topic with the enthusiasm and knowledge exhibited by author. It is particularly fortunate that his first-hand observations extend not only to India but also to the English penal system, which fact enables his constantly to compare conditions and to consider how far recent innovations in Britain might usefully be introduced in his own country.

It was Rajkumari Sharma who is one of the early women in India who has done research on women criminality (1965) in Uttar Pradesh. A systematic
presentation in book form on female offenders in India was done by Ram Ahuja (1969) various sponsoring agencies like Bureau of Police Research and Development, Ministry of Social Welfare, Social Defence, etc. have created much attention on the subject.

Today prison life is seen something more than a matter of walls and bars of cells and locks (Ghosh, 1986). The prison is a community within the community. It is a social system which despite occasional disruption, function reasonable well (Cloward, 1960). Srivastava (1977) has concluded in his study that prison as a system may develop a sub-rosa organization and may maintain all those institutional characteristics which form an essential part of any social organization. In such a social system a prison once again able to maintain a status and role in the prison community.

Dr. Datir's 'Prison as a social system' (1978) is the first comprehensive work on the subject in India. Vidyabhushan has written a work called prison Administration in India and Dr. Barkar has also given us an account of modern prison system in India. The work of these scholars deal with one aspect of prison system. Dr. Datir's work to my knowledge is the first historical and structural study of prison system in India, which does not ignore any significant element of this system. Dr. Datir exhibits his awareness of international debates on these problems and struggles to assess the situation in this country in this context. His comprehensive, historical, analytical study had concluded with certain deeper theoretical debates connected with the prison as sub system, and its relation to specific larger-class society. His book suggests many ideas which can be analyzed in a more fundamental manner.
Since the appearance of Donald Clemmer’s The Prison Community just over a quarter of a century ago, the literature dealing with the correctional organization has multiplied many times over. For example The society of Captives (1958) by Greham M Skyes and Pentomville (1963) by Terence Morris, Pauline Morris, and Barbar Barer. The studies have added enormously to the knowledge of correctional organization. However most of the literature dealing with the prison as a social system has appeared in scholarly journals. For example, Administrative Science Quarterly, American Sociological Review, Human Relations and social service review. A few such articles are summarized below.

George H. grosser in his “Exteranla Setting and Internal relations of the Prison” provides an introduction to the prison as a social system through a general discussion of its relationship to larger society, its internal dynamics, including patterns of deviance and control, and some implications of its organizational structures to the stated goal of treatment.

John Galtung in his “The Social Functions of Prison”, analysis the social functions of the prison. He brings to his work the necessary academic scholarship in the social sciences plus the direct experince of his incarceration in a Norwegian prison as a conscientious objector. Galtung states the significant sociological problem of the prison as the determination of “what limitations this one critical function of resocialisation sets for the choice of prison structure”, and whether these limitations are such that resocialization and the remaining functions of the prison are “not obtainable simultaneously by means of the same structure”. It is worth noting that Galtung makes a distinction between
resocialisation and the more popular term, rehabilitation. By the latter, the individual abstains from criminal acts simply because the opportunities for such acts are not prevalent in his general sphere of action. Resocialisation, on the other hand, means that the individual does not engage in criminal acts even when the opportunities are present. Newly internalized normative constraints prevent him from engaging in such acts that would violate this new standards of proper and expected behavior. According to these respective definitions, one might conclude that the majority of our direct correctional efforts end at best in rehabilitation, since resocialisation implies a level of efficiency in techniques of induced changes that the social, psychological and psychiatric disciplines have yet to offer.

Donald R. Cressey in his “Achievement of An Unstated Organisational Goal: An Observation on Prisons”. Examines the existence of relatively new and unrecognized goal of the contemporary correctional institution: the protection of inmates from society. He notes the variations in achievement of this goal between the treatment and the custodial oriented institution and suggests that the variations reflect opposed conceptions of deviance: deviance as the inability to conform (the treatment view) versus deviance as intentional nonconformity (the custodial view).

Harold Garfinkel in his “Conditions of Successful Degradation Ceremonies” affords the reader a background against which subsequent discussion of social control, deviance and the therapeutic process acquire added significance. He actually describes what the inmates has experienced by the time he reaches the prison door: he has been publicly denounced and degraded. This
denouncement, as Goffman has illustrated elsewhere, does not cease with imprisonment. As one consequences of the degradation, the inmates status has been reduced to such a level that he becomes ever less psychologically effected, which reduces him further to a subhuman level in society's eyes, and thus deprived of human status, he can become the justified target of any activity deemed necessary. In this world of the prison inmate, the end does seemingly justify the means.

Richard A Cloward in his “Social Control in Prison” proceeds to demonstrate the “Pressures toward deviance” which emerge from status degradation ceremonies and, especially, to suggest the thesis that social control processes in the prison often “generate the very behaviour they were intended to avert”. A system of incentives, intended as inductive ans supportive of conformity, actually induces and supports deviant behaviour simply because these incentives are unattainable for the majority of inmates.

Richard McClerry in his “Correctional administration and Political Change”. Considers process of control in the prison. But whereas Cloward focuses the attention on the function of the inmates system to the maintainance of the total organization, McClerry considers the system of authority and control as they are influenced by process of change. In his monograph, “policy Change in Prison management” McClerry documented the complex changes in the power structure and communication patterns of Oahu Prison (Hawaii) as the prison’s management shifted from a punitive, authoritarian stance to a more liberal and rehabilitative orientation. By 1955 the new operational philosophy had become an accomplished fact, and Oahu prison had been transformed into an
exceptionally open, experimentally oriented correctional institution. During 1960, however, the newly established system of authority and control collapsed in a climax of insubordination by top prison officials and one of the most violent riots in the history of American corrections. McClerry attempts to account for the series of events that led to the collapse of the entire system of social control by turning to the broader analytical framework of policy change at the societal level. His analysis not only further explores the thesis that communication patterns can serve as functional substitutes for force in systems of control, it also illustrates once again the dependence of social institutions upon the context of larger society.

Santan Wheeler in his “Socialization in Correctional Communities” reexamines the problem of how and to what extent the newly admitted inmate integrates into the general inmate social system. Through empirical tests of the socialization process, he suggests refinements of Donals Clemmer's original concept of prisonisation' and relates the resulting reformation to other characteristics of the prison. As one of the central conclusions of this study, Wheeler found that the level of inmate integration does not increase in simple linear fashion as the inmate passes through his prison term, but responds curvilinear; low at entrance to the institution and again when release is anticipated; high during the middle phase of the prison term.

Frances Gillespie Scott in his “Action Theory and Research in Social Organisation” offers a theoretical framework for the study of those formal organisation which perform an integrative function in society and illustrates the utility of this approach with an analysis of two such organisations, the prison and
the mental hospital.

In India no such attempt appears to have been made. Hence I have tried, as best as I could, to study prison as a social system in India in general and Maharashtra State in particular.

2.5. : Judicial Activism in Prisoner's Reformation

Case laws are the secondary source of data to the researchers. While reading the case laws, I come across a problem of legal issue and form hypothesis which leads to empirical inquiry and thus to gather the reasons.

It is not everything said by a judge when giving judgment that constitutes a precedent. Law quality relates to the principle behind a decision.

In a general use, the term 'precedent' means some set of pattern guiding the future conduct. In the judicial field it means 'the guidance or authority of post decisions for the future cases'. Only such decisions as lay down some new rule or principle are called 'judicial precedent'. Precedents are judge made law. This is material Legal source of law. Legal source of law are those sources which are authoritative. They are recognized as such by the law itself. Therefore they are more practical. They are based on actual cases. It is not like statute law which is based on a priori theories.

The historical backgrounds of a following cases are having considerable importance as it sheds light on the true grounds of, and on the policy related to the decision. Its political, social and economic context is equally important from
the point of view of the problem in hand.

Where the court, while pronouncing judgement has indicated some guidelines for law reform, those guidelines must also be examined and where it has not laid down any guideline, it must be seen as to how the Court has interpreted the law and for this a detail study of the judgement is essential.

Supreme Court is guardian and guarantor of every right of human being, whether he may be free or convict. Alongwith Supreme Court various High Courts has also dealt with the various issues regarding the prisoners. It may for their reformation or for their basic necessities in jail.

Krishna Iyer, a former justice of the Supreme Court who even after retirement championed the cause with renewed fervor. In particular he has highlighted neglected field of prison jurisprudence. In the seventies and early eighties he transformed Indian prison jurisprudence and a few other judges inspired by him contributed to this change. By the time of his retirement in the mid eighties he had led India through a decade of forensic change. The issue of prison conditions and environment has emerged as one of the predominant themes of correctional philosophy, raising questions concerning inmate’s rights and the blight of prison life. Justice Krishna Iyer was socially conscious Judge, resourceful, versatile and experimental, dealt with human problems to a complex background of modernity and tradition. The extraordinarily contribution of Justice Krishna Iyer can not be unheeded.

In this chapter researcher proceed to discuss some case laws, which are explained periodical wise, it helps to observe the developments in focusing the
issue of prisoner's reformation by judiciary. Researcher examine the relevant case laws who accorded priority to prisons at political and social levels, gave transparency to the prison system in the public eyes and orientation to the prison officials. The general case-index at the end of the chapter, also provides an issue wise analysis of the each case. It mainly based on Supreme Court and High Court of Bombay decisions reported in various journals considering the jurisdiction of thesis. I have also included some foreign judgments which leads as a milestone to precedents of our apex courts. Efforts have also been made to present the other High Court's ruling hereby in an index format to have a quick glance and its comparative study.

2.5.1. : Indian Case Laws

STATE OF MAHARASHTRA Vs. PRABHAKAR SANGZGIRI & ANT.

(K. Subba Rao, K.N. Wanchoo, J.C. Shah, S.M. Sikri and V. Ramaswami,)

6th September, 1965

Held :-

1. We have gone through the provisions of the Bombay Conditions of Detention Order, 1951. There is no provision in that Order dealing with the writing or publication of book by a detenu. There is, therefore, no restriction on the detenu in respect of that activity. Sub-rule(iii) of r. 17 of the said Order reads:

2. “All letters to and from security prisoners shall be censored by the Commissioner or the Superintendent, as the case may be. If in the opinion of
the Commissioner or the Superintendent, the dispatch or delivery of any letter is likely to be detrimental to the public interest or safety or the discipline of the place of detention, he shall either withhold such letter, or dispatch or deliver in after deleting any objectionable portion there from. In respect of the censoring of letters of security prisoners the Commissioner or the Superintendent shall comply with any general or special instructions issued by Government.”

3. As there is no condition in the Bombay Conditions of Detention Order, 1951, prohibiting a detenu from writing a book or sending it for publication, the State of Maharashtra infringed the personal liberty of the first respondent in derogation of the law where under he is detained.

DANIAL H. WALCOTT Vs. SUPERINTENDENT, NAGPUR CENTERL PRISON

(Mr. Justice Chandurkar and Mr. Justice Khan)

1971 Bom. L. R. 436

Held:-

1. There is nothing on this record to disclose that the two statements of the co-prisoners were recorded by the Superintendent himself. There is also nothing on record to show that the petitioner was present when those statements were recorded or that he was called upon to give an explanation or was given an opportunity to show that the statements made by the two co-prisoners were not true. The petitioners was admittedly punished by awarding a major punishment and as already observed the conclusion of guilt was reached
should have found place in column 10 of that entry. If the names of the two co-prisoners are not to be found in this column, we see no reason why the necessary inference which must follow, namely, that these two co-prisoners were never examined at all should not be drawn on the basis of the document filed by respondent No. 1 himself. The entry of Shinde’s name is justified only on the ground that Shinde brought the written statements of the two co-prisoners to the Superintendent. That would hardly make Shinde a person who can be said to have been examined within the meaning of Section 46(1) of the prisons Act.

2. Having heard the learned counsel for respondent No.1 at some length we are not satisfied that there was any material as contemplated by Section 46 of the prisons Act, 1894 before the Superintendent on the basis of which he could arrive at a conclusion that the petitioner had committed a prison offense with which he was charged, apart from the fact that the enquiry, if any was made, was vitiated by noncompliance with principle of natural justice and therefore the punishment awarded to the petitioner is liable to be quashed.

3. We may usefully refer to a decision of the Madhya Pradesh High Court in Hemchand Vs. State in which a Division Bench of that Court held that where punishments awarded under Section 46 of the Prisons Act, 1894; were not based on proper evidence there was miscarriage of justice and the punishments were liable to be quashed. We, therefore, quash the order of punishment made by respondent No.1 by which the petitioners was punished with separate confinement for a period of thirty days and we also quash the
consequent entry made in the Punishment Register by the Superintendent.

D. BHUVAN MOHAN PATNAIK & ORS. V. STATE OF ANDHRA PRADESH & ORS.

( H. R. Khanna, Y. V. Chandrachud and P. K. Goswami, JJ.)

9th September, 1974.

Held:-

1. There is thus no possibility that the petitioners will come into contact with the electrical device in the normal pursuit of their daily chores. There is also no possibility that any other person in the discharge of his lawful functions or pursuits will come into contact with the same. Whatever be the nature and extent of the petitioners’ fundamental right to life and personal liberty, they have no fundamental freedom to escape from lawful custody. Therefore, they cannot complain of the installation of the live-wire mechanism with which they are likely to come into contact only if they attempt to escape from the prison. Carrying the petitioners’ contention to its logical conclusion, they would also be entitled to demand that the height of the compound wall be reduced from 13 feet to say 4 or 5 feet as a fall from a height of 13 feet is likely to endanger their lives.

2. The petitioners are, therefore, not entitled to either of the two reliefs sought by them and the rule must be discharged but that is no the ground that the acts complained of are not shown to cause any interference with the fundamental rights available to them and not on the ground that prisoners possess no fundamental rights. The rights claimed by the petitioners as
fundamental may not readily fit in the classical mold of fundamental freedoms, but: basic rights do not become petrified as of any one time, even though as a matter of human experience some may not too rhetorically be called eternal verities. It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. To rely on a tidy formula for the easy determination of what is a fundamental right for purposes of legal enforcement may satisfy a longing for certainty but ignores the movements of a free society.”

MOHAMMAD GIASUDDIN Vs. STATE OF ANDHRA PRADESH

(V. R. Krishna Iyer and Jaswant Singh, JJ.)

6th May, 1977

Held: -

1. What are the other circumstances which we may look into? The appellant is a young man of 28 years. He has a degree in Bachelor of Oriental Languages and another in Commerce, which suggests that he may respond to new cultural impact. He was working as a Junior Assistant in the Government Secretariat and has now lost the post consequent on the conviction. This is a hard lesson in life. The socio-economic circumstances of the man deserve to be notices. His parents are old and financially weak, since they and the appellant’s sisters and younger brother are his dependents. The younger brother also is unemployed. These factors suggest that the economic blow, if the appellant is imprisoned for long, will be upon his brother at college and the other members of his family. Extenuation is implicit in this fact. He prays for
release on probation or under Section 360 of the Code because he has no
blemish by way of previous crime or bad official record. Having regard to his age
(not immature) and the deliberate plan behind the crime operated in partnership
upon four-perhaps more-persons, we reject his request as over ambitious. At
the same time, a contrite convict, yet in his twenties, may deserve clement
treatment. A just reduction of the sentence is justified and we think that
incarceration for 18 months may be adequate. But this long period has to be
converted into a spell of healing spent in an intensive care ward of the
penitentiary, if we may say so figuratively. How can this be achieved? First, by
congenial work which gives job satisfaction not jail frustration, nor further
criminalization. We therefore direct the State Government to see that within the
framework of the Jail Rules, the appellant is assigned work not of a
monotonous, mechanical, degrading type, but of a mental, intellectual, or like
type mixed with a little manual labour. This will ensure that the prisoner does
work more or less of the kind he is used to. The jail certainly, must be able to
find this kind of work for him, even on its own administrative side- under proper
safeguards though.

2. We allow the appeal in humanist part, as outlined above, while affirming
the conviction. More concretely, we direct that (a) the sentence shall be
reduced to 18 (eighteen) months, less the period already undergone; (b) our
directions, above mentioned, regarding parole and assignment of suitable work
and payment of wages in jail shall be complied with; and (c) the appellant shall
pay a fine of Rs. 1200/- . We appreciate the services of counsel Shri.P.P.Rao in
disposing of this appeal firstly. We may also mention that Shri.G.V.R. Sastry
appearing for the appellant has also helped the court towards the same end.

HIRALAL MALLICK Vs. THE STATE OF BIHAR

( V.R. Krishan Iyer and P.K. Goswami, JJ.)

16th August, 1977

Held:-

1. One method of reducing tension is by providing for vital link between the prisoner and his family. A prisoner insulated from the world becomes bestial and, if his family ties are snapped for long, becomes de-humanised. Therefore we regard it as correctionally desirable that this appellant be granted parole and expect the authorities to give consideration to paroling out periodically prisoners, particularly of the present type, for reasonable spells, subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside.

2. Modern scientific studies have validated ancient vedic insights bequeathing to mankind new meditational, yogic and other therapeutics, at once secular, empirically tested and trans-religious. The psychological, physiological and sociological experiments conducted on the effects of Transcendental Meditation (TM, for short) have proved that this science of creative intelligence in its meditation applications, tranquillises the tense inside, helps meet stress without distress, overcome inactivities and instabilities and by holistic healing normalizes the fevered and fatigued man.

3. Extensive studies of TM in many prisons in the U.S.A., Canada,
Germany and other countries are reported to have yielded results of improved creativity, higher responsibility and better behaviour. Indeed, a few trial Courts in the United Stats have actually prescribed TM as a recipe for rehabilitation. As Dr. M.P. Pai, Principal of the Kasturba Medical College, Mangalore, has put down

4. Meditation is a science and this should be learn under guidance and cannot be just picked up from books. Objective studies on the effects of meditation on human body and mind is a modern observation and has been studied by various investigation at MERU – Maharishi European Research University. Its tranquillising effect on body and mind, ultimately leading to the greater goal of Cosmic Consciousness or universal awareness, has been studied by using over a hundred parameters Transcendental Meditation practiced for 15 minutes in the morning and evening every day brings about a host of beneficial effects. To name only a few:

7. Body and mind gets into a state of deep relaxation.
8. B.M.R. drops, less oxygen is consumed.
10. Automatic stability increases.
11. Normalisation of high blood pressure.
12. Reduced use of alcohol and tobacco.
13. Reduced stress, hence decreased plasma cortical and blood lactate.
14. Slowing of the heart, etc.

SUNIL BATRA V. DELHI ADMINISTRATION AND OTHERS
AND

CHARLES GURMUKH SOBRAJ V. DELHI ADMINISTRATION AND OTR


30th August, 1978

Held :-

1. Safe custody is imperiled only where escape probability exists. Such escape becomes a clear and present danger only where the prisoner has by his precedents shown an imminent attempt to escape. Mere violence by a prisoner or bad behaviour or other misconduct which has no reference to safe custody has no relevance to Section 56 of the Prison Act.

9. Section 56 must be tamed and trimmed by the rule of law and shall not turn dangerous by making the prison ‘brass’ an imperium in imperio. The Superintendent’s power shall be pruned and his discretion bridled in the manner indicated.

10. Under-trials shall be deemed to be in custody, but not under going punitive imprisonment. So much so, they shall be accorded more relaxed conditions than convicts.

11. Fetters, especially bar fetters, shall be shunned as violative of human dignity, within and without prisons. The indiscriminate resort to
handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases dealt with next below. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.

12. Where an undertrial has a credible tendency for violence and escape a humanely graduated degree of ‘iron’ restraint is permissible if-only if- other disciplinary alternatives are unworkable. The burden of proof of the ground is on the custodian. And if he fails, he will be liable in law.

13. The ‘iron’ regimen shall in no case go beyond the intervals, conditions and maxim laid down for punitive ‘iron’. They shall be for short spells, light and never applied if sores exist.

14. The discretion to impose ‘iron’ is subject to quasi-judicial oversight, even if purportedly imposed for reasons of security.

15. A previous hearing, minimal may be, shall be afforded to the victims. In exceptional cases, the hearing may be soon after. The rule in Gill’s case and Maneka Gandhi’s case gives the guidelines.

16. The grounds for ‘fetters’ shall be given to the victim. And when the decision to fetter is made, the reasons shall be recorded in the journal and in the history ticket of the prisoner in the State language. If he is a stranger to that language it shall be communicated to him, as far as
possible, in his language. This applies to cases as much of prison punishment as of ‘safety’ fetters.

17. Absent provision for independent review of preventive and punitive action, for discipline or security, such action shall be invalid as arbitrary and unfair and unreasonable. The prison of the officials will then be liable civilly and criminally for hurt to the person of the prisoner. The State will urgently set up or strengthen the necessary infra-structure and process in this behalf—it already exists in embryo in the Act.

18. Legal aid shall to prisoners to seek justice from prison authorities, and, if need be to challenge the decision in court—in cases where they are too poor to secure on their own. If lawyer’s services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel is unapproachable and beyond purchase. By and large, prisoners are poor, lacking legal literacy, under the trembling control of the jailor, at his mercy as it were, and unable to meet relations or friends to take legal action. Where a remedy is all but dead the right lives only in print. Article 39A relevant in the context. Article 19 will be violated in such a cases as the process will be unreasonable. Article 21 will be infringed since the procedure is unfair and is arbitrary. In Maneka Gandhi the rule has been stated beyond mistake.

19. No ‘fetters’ shall continue beyond day time as nocturnal fetters on locked-in detenus are ordinarily uncalled for, viewed from considerations of safety.
20. The prolonged continuance of ‘irons’, as a punitive or preventive step, shall be subject to previous approval by an external examiner like a chief Judicial Magistrate or Sessions Judge who shall briefly hear the victim and record reasons. The are ex-officio visitors of most central prisons.

21. The Inspector General of Prisons shall, with quick dispatch consider revision petitions by fettered prisoners and direct the continuance or discontinuation of the irons. In the absence of such prompt decision, the fetters shall be deemed to have been negatived and shall be removed.

2. Prison laws, now in bad shape, need rehabilitation; prison staff soaked in the Raj past, need reorientation; prison houses and practices, a hangover of the die-hard retributive ethos, need reconstruction; prisoners, these noiseless, voiceless human heaps cry for therapeutic technology; and prison justice, after long jurisprudential gestation, must now be re-born through judicial midwifery, if need be. No longer can the Constitution be curtained off from the incarcerated community since pervasive social justice is a fighting faith with Indian humanity.

MADHUKAR JAMBHALE Vs. STATE OF MAHARASHTRA & OTHR.

(P.S.Shah and V.A. Mohta, JJ,)

1987 Mah. L. J. 68

Held: -

1. Respondents should implement the following procedure:
(i) Grievance Deposit Box:

In addition to complaint boxes which are presently kept in different cells in the prison, a sealed Grievance Deposit Box shall be kept at a conspicuous place inside the prison under lock and key. The key of the Box shall remain exclusively with the District Judge. Access to the Complaint Box shall be accorded to the prisoners. The said Box shall be open by the Sessions Judge within whose jurisdiction the prison falls, at regular intervals. In case of jails which are rendered impracticable for the Session Judge to visit, Additional District Judge or a Senior-most Assistant Judge, nominated by the Senior Judge should perform the aforesaid task. A detailed record of the complaints, grievances shall be maintained by the concerned Session Judge who will also investigate into the complaints and if found necessary and expedient shall take appropriate action. The record of the complaint shall also contain the particulars of the action taken.

(ii) Complaint Register:

The District and Session Judge shall maintained a Complaint Register in prison office in such manner as may be directed by him in respect of the complaint found in the Grievance Deposit Box. He shall also record the appropriate action taken in respect of said complaint.

(iii) Visit by District and Session Judge/ District Magistrate:

The District Magistrate and the Session Judge shall personally visit prison in their jurisdiction and offer effective opportunities for ventilating the legal
grievance of the prisoners and shall make expeditious enquiries and take suitable remedial action. They shall also ascertain the conditions prevailing in the prisons and ascertain whether the prisons are provided with all the necessary facilities as set out in the Maharashtra (Facilities to Prisoners) Rule, 1962. In the appropriate case, report shall be made to the High Court by a letter to initiate, if necessary, habeas action.

(iv) Visit by Lawyers:

The Session Judge shall nominate lawyers to make separate visits to the prison within his jurisdiction. The lawyers so appointed in their visit shall be afforded by the prison administration facilities and opportunities to inspect the prison premises and the record relating to complaint from the prisoners and to interview and receive confidential communications from the inmates of the prison subject to disciplinary and security conditions. The lawyers so nominated shall carry out periodical visit and report to the concerned legal grievances.

The prisoner can send a letter or address a petition containing grievances regarding prison administration, to the following authorities:

8. The Secretary of Home Department, Bombay.
9. The Home Minister/Chief Minister Maharashtra, Bombay.
10. The District Judge, High Court Judge, or Supreme Court Judge.
11. Lawyers nominated by the District Judge, or Prison Visitors.
12. Lokpal, Lokayukta.

13. Secretary, District Legal Aid Committee/ Secretary, State Legal Aid Committee.

All these letters of petitions shall be forwarded to appropriate authorities through proper channel, viz. through the Superintendent of respective prison. Such communication shall not be included in the scale prescribed in sub-rule (iii) of Rule 17 of the Maharashtra Prison (Facilities to Prisoners) Rule, 1962.

RAMA MURTHY V. STATE OF KARNATAKA

(Kuldip Singh, B.L.Hansaria and S.B.Majmudar, JJ.)

23rd December, 1996.

Held:-

2. It would be enough for our purpose to note the various conclusions arrived at by the District Judge, which have been incorporated in para 23 of the report reading as below:

"23, Therefore, on the basis of a thorough and proper enquiry by me in the Central Prison, Bangalore as directed by the Hon'ble Supreme Court, I have reached the following conclusions:

8. The general condition of the prisoners is satisfactory. Their treatment by the Jail Authorities is also satisfactory.

9. The quality, quantity and timely supply of food to the prisoners are satisfactory.

10. The pattern of payment of wages is as per Annexure F and it is being followed properly. The wages are correctly recorded and paid to the prisoners
as per rules.

11. The residence (the accommodation) to the prisoners in the jail are adequate and satisfactory. But the maintenance of buildings by the PWD Authorities is hopelessly bad for want of funds from the Government according to them.

12. The sanitation is not satisfactory due to acute scarcity of water. The Jail premises is normally maintained clean and tidy with great efforts. But it is improving since about a month after opening 3 or 4 borewells.

13. The medical facilities in the Jail Hospital and supply of medicines to the prisoners are satisfactory. Due to overpopulation in the jail the two doctors and their staff at present in the jail Hospital are unable to cope with the demands but still there is no slackness or negligence in their work. For want of a lady doctor and women staff in the hospital the medical attendance to women prisoners is not proper or satisfactory.

14. Visit of prisoners to their homes or their places is not prompt or regular as per rules due to want of police escorts. This has caused lot of dissatisfaction and depression among the prisoners.

15. The production of prisoners in courts on the dates of hearing in their cases is not regular or prompt due to want of police escorts and vehicles. This has affected the expeditious disposal of custody cases in courts. The prisoners are very much agitated over this.

16. The production of prisoners in the hospitals outside the jail for examination or treatment by the experts is not prompt or regular due to want of police escorts.

17. Mental patients in the jail and the prisoners with serious diseases requiring treatment outside the jail are compelled to remain in jail for want of accommodation in such hospitals.

18. The place and procedure followed for interviews between the prisoners and their kith and kin, friends and visitors is not satisfactory.

19. Canteen facilities should improve. The sale of articles in the canteen at a price above the market price to make profit is causing great hardship to the prisoners.”

2.5.2. : International Case Laws :-

SECRETARY OF STATE FOR THE HOME DEPARTENT Vs. ROBB
Held :-

1. The first, namely the interest that the state holds in preserving life, seems to me to be but part and parcel of the balance that must be struck in determining and declaring the right of self-determination. The principle of the sanctity of human life in this jurisdiction is seen to yield to the principle of self-determination. It is within that balance that the consideration of the preservation of life is reflected.

2. The second countervailing state interest, preventing suicide, is recognizable but seems to me to be of no application in cases such as this were the refusal of nutrition and medical treatment in the exercise of the right of self-determination does not constitute an act of suicide.

3. The third I find hard to recognize as a distinct consideration. Medical ethical decision can be acutely difficult and it is when they are at their most acute that applications for declaratory relief are made to the High Court. I cannot myself see that this is a distinct consideration that requires to be set against the right of self-determination of the individual.

4. The fourth consideration of protecting innocent third parties is one that is undoubtedly recognized in this jurisdiction, as is evidenced by the decision of Sir Stephen Brown P in Re s (adult : refusal of medical treatment ) (1992) 4 All ER 671, (1993) Fam 123. Also recognized within this jurisdiction is a consideration that was given weight in the decision of Re Caulk, namely the need to preserve the internal order, discipline and security within the confines of the jail. But
neither of these considerations arise in the present case.

EVE PELL, Betty Segal, and Paul Jacobs, Vs. RAYMOND K. PROCUNIER, Director, California Department of Corrections, et al.

AND

RAYMOND K. PROCUNIER, Director, California Department of corrections, et al., Vs. BOOKER T. HILLERY, Jr., et al.

(Powell J., Doughlas J.)

24th June, 1974

Held:-

1. An important function of the corrections system is the deterrence of crime. The premise is that by confining criminal offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, they and others will be deterred from committing additional criminal offenses. This (417 US 823) isolation, of course, also serves a protective function by quarantining criminal offenders for a given period of time while, it is hoped, the rehabilitative processes of the corrections system work to correct the offender’s demonstrated criminal proclivity. Thus, since most offenders will eventually return to society, another paramount objective of the corrections system is the rehabilitation of those committed to its custody. Finally, central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves. It is in the light of these legitimate penal objectives that a court must assess challenges to prison
regulations based on asserted constitutional rights of prisoners.

2. A State might decide that criticism of its affairs could be reduced by prohibiting all its employees from discussing governmental operations in interviews with the media. leaving criticism of the State to those with the time, energy, ability, and inclination to communicate (417 US 839) through the mails. The prohibition here is on less offensive to First Amendment principles; it flatly prohibits interview communication with the media on the government’s penal operations by the only citizens with the best knowledge and real incentive to discuss them.

CHARLES WOLFF, Jr., Etc. et al. Petitioners, Vs. ROBERT O. MCDONNELL, Etc.

(Marshall J., Doughlas J.)

26th June, 1974

Held:-

1. Prison (418 US 577) that a lawyer desiring to correspond with a prisoner, first identify himself and his client to the prison officials, to assure that the letters marked privileged are actually from members of the bar. As to the ability to open the mail in the presence of inmates, this could in no way constitute censorship, since the mail would not be read. Neither could it chill such communications, since the inmate’s presence insures that prison officials will not read the mail. The possibility that contraband will be enclosed in letters, even those from apparent attorneys, surely warrants prison officials’ opening the
The chapter ends with a brief comment on the role of judiciary. A sensitive judiciary could take cognizance of social realities while interpreting the provisions of the law and could be more assertive while protecting and promoting the interests of the beneficiaries of the legislation. To sensitize the judiciary, judges need to be made conscious of their role. Uprised problems should come before the apex courts for its specific solution by way of detailed guidelines. Social activists as well as social action groups for public interest litigation come forward for the rights of prisoners. Penal policy while finding the guilt of accused should not be ignored. Due to the emphasized on manner of punishments, the mind of prisoner will stop its hostility to the system and will positively respond to the reformation procedure by his own. Equally important is that mere filing the Public Interest Litigation does not make people decide it. The government must create more reformative methods in prison. There has to be enough budgetary provisions to implement these policies and law. Responsibility of civil society to make the awareness among themselves and attitude should be changed towards the prisoners.

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4. Charles Wolff vs. Robert O. Mcdonnell, etc. 418 US 539 41 L ed. 2d. 935 Inspection of mail of attorneys of inmates.

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“Not all persons convicted are criminals, and also that not all criminals are convicted of their crimes, but they say that both for practical purposes and for theoretical purposes, we must proceed as if that were true.”

- George B. Vold

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