CHAPTER III

REFORMATION AND REHABILITATION

The essence of this study lies in understanding the reformation process of prisoner in context of Maharashtra. Following review of literature, the present research focused on relevant key factors of reformation method, which need separate explanation.

3.1. : Women prisoner

3.1.1. : Introduction

It was believed till a few decades that crime is predominantly a male phenomenon and the world of crime is only a man’s world. The subject of female criminality was totally neglected. No attention was paid to research on women’s crime which resulted in paucity of theoretical material on crime amongst women.

The difference in the rate of male and female crime is basically the result of the difference in their respective roles. The basic role of wage-earning by men is performed outside the home for which they have to compete with others. In the process of competition, sometimes when they are not able to achieve their goal through legitimate means, they use illegitimate means. On the other
hand, the basic role of a householder is performed by women within the four walls of home for which they have not to compete with anybody and are not forced to use anti-social means for achieving their goal. Moreover, compared to men, women are more god-fearing, moral and tolerant. They are also subject to greater social restrictions. Further, some crimes require masculine skills and techniques or active independence on the part of the offender and the use or threat of violence (e.g., auto-thefts, chain-snatching, etc.). Women’s participation in such crimes is very low. Lastly, the police and the court’s take a more sympathetic attitude towards female offenders. In short, the important factors of difference in rate of male and female crime may be described as:

(1) differential sex role expectations,

(2) sex differences in socializations patterns and application of social control,

(3) differential opportunities to engage in crime,

(4) differential access to criminal subcultures and careers, and

(5) sex differences built into crime categories

Female criminals get unequal and discriminatory treatment within the correctional apparatus, if not within the correctional apparatus, if not within the justice apparatus, in our society. Though the courts do not discriminate against female offenders by imposing a sexual (double) standard upon them but in jails, we see sexual discrimination operating against female inmates at a variety of points.
The programmes and facilities in correctional institutions for female offenders do not vary widely from one state to another. Most of the Female Reformatories are in poor condition as compared to institutions for male offenders. The social experiences encountered by women inmates are decidedly negative ones, with the rules of conduct being more restrictive in women’s prisons than in men’s prisons. Treatment programmes for female prisoners are either non-existent or markedly inadequate. Female prisoners are often excluded from training programmes and parole facilities. The training programmes (mainly cleaning foodgrains, cutting vegetables, cooking and sewing) for female inmates are basically designed to prepare women to reenter the community as nineteenth-century domestics. No effort is made to introduce programmes that would adequately equip the women to deal with the variety of social adjustment problems they are likely to encounter in modern society.

3.1.3. : Present Position :

As far as the government programme is concerned, the data reveals that there is no special provision for the rehabilitation of the female prisoners.

To facilitate the rehabilitation of released female prisoners following efforts should be made in this direction –

1. First of all arrangement should be made to raise the educational standard of the female convicts in Jail. As Dhar (1983: 2) has also mentioned, young girls should be encouraged to study as they themselves are not aware of the benefit of education.

2. They should be given vocational training of their choice depending on
their aptitude. This training will give them a skill and confidence to start cottage industries with the Government’s financial help.

3. The Welfare Officer of Jail should make them aware of the rehabilitation assistance scheme and help the deserving ones to secure it.

4. The provision of parole and facility of short leave at the interval of few months should come into practice for all the lifers. As Sandhu (1968 : 123) has also advocated, though these arrangements the convicts may be enabled to re-establish their social contacts which go a long way in helping them in effective rehabilitation in the society. The Jail visits by the relatives of the convicts should be encouraged for this purpose.

5. Prior to the release of the female convicts the probation officer should visit home towns and study the situation for setting them down properly. He should convince the concerned people to accept and treat them properly.

6. The convicts willing to live in unknown place for various reasons should be provided with after care services. Counseling and guidance about various aspects of life can be given to them by Government as well as voluntary agencies.

7. The amount of money released by the Government for providing rehabilitation assistance should be increased to benefit larger number of convicts.

8. Rescue homes, Asylums and sheltered workshops should be opened with the training, boarding and lodging facilities.
9. The released convicts should be encouraged to form co-operative societies for the production as well as sale of some commodities.

10. Marriages of the willing young female convicts, should be arranged with other handicapped males. Better understanding between the husband and wife in such cases may help them to lead a happy life.³

3.1.4. : Remedial Measures :

1. All custodial premises for women prisoners should have a private, secured and therapeutic environment.

2. Proper medical facilities and medical examination of women inmates on admission and periodically thereafter are to be ensured in all custodial centres including prisons, jails, sub-jails, etc.

3. Qualified lady doctors and nurses should be attached on a visiting basis to every female prison and custodial centre with women inmates.

4. Expectant mothers in custody shall be shown special consideration by way of medical and nutritional care, education in child rearing and mother craft and assigned work in accordance with their expectant status.

5. Female prisoners shall be paid equitable remuneration for their work in prison. Wages paid shall be of a rehabilitative value. Out of their earnings, they will be allowed to purchase essential articles for their use while in custody, and to save and/or remit to their families.

6. As far as practicable, women prisoners shall be imparted training which
will make them economically self sufficient and capable of functioning independently in society. Choice of skill taught will be related to marketability and independent earning potential. Some representative trades are; home science, mother craft, nursing, hand-loom weaving, hosiery, toy-making, ceramics, stationary articles, gardening, fruit preservation, electronics, etc. In addition, socially useful knowledge such as use of bank, post office, health centre, employment exchange, saving schemes, etc. will be imparted to the prisoners. Educating women in their rights, status, role and capabilities will be mandatory.

7. A reasonable number of interviews with the relatives and unlimited opportunities to write letters to them and receive letters from them should be allowed to the female prisoners.

8. Compulsory education for illiterate prisoners shall be provided.

Literate prisoners will be motivated to pursue further learning

9. Recreational facilities, books and reading materials, etc., should be provided to female prisoners and they should be encouraged to use them. This should include the use of religious books of the prisoner's choice. Pursuit of painting, music, theater, etc., shall be encouraged as part of correctional therapy.

10. In no circumstances should girls be imprisoned or kept in mixed custody with adult women. Habitual offender, prostitutes and brothel keepers must be kept separate from other inmates in prisons.
11. As far as possible, children of inmates may not be kept within adult jails and visits by children to the inmates may be liberally allowed. In cases where imprisonisation is unavoidable, children of prisoners must have rights per se in terms of food, spare, spare clothing, education, recreation, visitations, etc.

12. Probation, parole and other non-institutional modalities of corrective treatment shall be widely used in case of women offenders, save in exceptional cases where specified considerations of prisoner’s or state security limit such options.

13. Before a female prisoner is released, her relatives shall be informed and where no relative exists or shows up, the released prisoner shall be sent with a female escort.

14. Appropriate assistance shall be rendered to every female prisoner on release whether during or after completion of sentence. For this purpose, a centre for assisting released prisoners shall be set to service a cluster of prisons and custodial institutions on an area-wise basis. Even without the centre, the prison authorities shall take necessary steps to arrange the rehabilitation of the released prisoners either through the family, the relief centre or a voluntary organization.

15. Aftercare and short-stay homes for women prisoners may be established in every state to serve those prisoners who are homeless or rejected by their families.
3.2. : Open prison

3.2.1. : Definition of Open Prison:

Criminologists have expressed different views about the definition of open prison. Some scholars have preferred to call these institutions as open air camps, open Jail or parole-camp. The United Nations Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955, however, made an attempt to define an open prison thus:

“An open institution is characterised by the absence of material and physical precautions against escape such as walls, locks, bars and armed-guards etc., and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives.”

Thus open prisons are ‘minimum security’ devices for inmates to rehabilitate them in society after final release. In India, they are popularly called as open Jails.

3.2.3. : Main Characteristics of Open prisons:

The main features of an open prison institution may be summarized as follows:

1. Informal and institutional living in small groups with minimum measure of custody.

2. Efforts to promote consciousness among inmates about their social responsibilities.
3. Adequate facilities for training inmates in agriculture and other related occupations.

4. Greater opportunities for inmates to meet their relatives and friends so that they can solve their domestic problems by mutual discussion.

5. Liberal remissions to the extent of fifteen days in a month.

6. Proper attention towards the health and recreational facilities for inmates.

7. Management of open Jail institutions by especially qualified and well trained personnel.

8. Improved diet with arrangement for special diet for weak and sick inmates.

9. Payment of wages in part to the inmates and sending part of it to his family.

10. Financial assistance to inmates through liberal bank loans.

11. Free and intimate contact between staff and the inmates and among the inmates themselves.

12. Regular and paid work for inmates under expert supervision as a method of reformation; and


3.2.3.: International Perspective

The utility of open-prisons as a part of After-care device has been
accepted at the International level. The Social Defence section of the United Nations through its literature on the subject has convinced the member nations of the usefulness of open institutions as a measure of prison reform. This has helped a lot in creating interest among professional men in the adoption of new ideas and experiments in the field of prison reforms. The treatment of offenders in open conditions similar to outside world as far as possible has found wide acceptance in recent years. This is indeed a significant contribution to the development of progressive penology and a professional approach to treatment of offenders. 8.

The subject of open-institutions was particularly discussed in the first United Nation Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955. The consensus was that minimum security such as absence of prison walls, bars, fence, armed guards gun towers, and voluntary discipline among the prisoners should be the two guiding principles underlying the working of these open institutions.

The system of open prisons was essentially founded on trust and confidence reposed in prisoners and was an intermediary stage between the guarded prison life and the outside life of complete freedom. Five years later, when the second U.N. Congress on prevention of Crime and Treatment of Offenders was held in London in 1960, open-institutions had become an integral part of Anglo-American prison system for the correctional treatment of offenders. The prisoners are allowed to attend to their ailing relatives and friends and women delinquents are extended certain additional facilities and maternity privileges 9.
3.2.4. : The Indian scene

A Jail committee on the all-India level was appointed in 1836-38 to review system of employment of prisoners and by the time a second committee in 1864 was appointed, this practice of employment of prisoners completely disappeared. But the prison conference of 1877 reopened the question employing prisoners on public works, such as digging of canals etc. This Conference suggested that employment of prisoners is not only valuable but necessary for Jail administration. This recommendation was accepted and followed in practice.

The All India Jail Committee did not favour this employment for two reasons. It did not permit the classification of prisoners and also made enforcement of discipline and proper task difficult.

India took part in various international conferences held in recent years and the literature issued by the Social Defence Section of the United Nations and other countries helped quite a lot in developing interest among the professional and non-professional men in adoption of new ideas and experiment in the fields of prison reforms. The training of prison officers, release of offenders on probation, home leave to prisoners, introduction of wage-system, release on parole, educational, moral and vocational training of prisoners and treatment of offenders in open condition as in done in other countries, are some of the new ideas widely accepted in recent times. The result of such experiments were encouraging and constructive. Although the
schemes were not introduced on scientific lines for the rehabilitation of offenders due to shortage of staff and many other reasons, even than it made a significant to the treatment of offenders. The experiment regarding the employment of prison labour in open conditions have proved to be most successful from many points of view.

It shall not be irrelevant to mention here that the employment of prisoners in open conditions is more than a century old practice. The objectives of such employment have vastly changed. Originally it was meant to take hard work from prisoners under conditions which were humiliating and de-humanising and now it aims at providing them with useful and meaningful work under conditions which help in restoring their self-respect and giving them a sense of pride and achievement.¹⁰

Table 3.1

Open Prisons in India

<table>
<thead>
<tr>
<th>Name of the State</th>
<th>Name of Open Prison</th>
<th>Date of establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>1. Maula Ali Colony, Hyderabad</td>
<td>1954</td>
</tr>
<tr>
<td></td>
<td>2. Prison's Agriculture Colony, Anandpur</td>
<td>1965</td>
</tr>
<tr>
<td>Assam</td>
<td>Open Air Agricultural-cum-Industrial Colony, Basheta, Jorhat</td>
<td>1964</td>
</tr>
<tr>
<td>Gujrat</td>
<td>Open Prison, Amereli</td>
<td>1968</td>
</tr>
<tr>
<td>State</td>
<td>Camp Details</td>
<td>Year</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Kerala</td>
<td>Open Prison, Nettahelthari</td>
<td>1962</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1. Open Prison, Yeravada</td>
<td>1955</td>
</tr>
<tr>
<td></td>
<td>2. Open Prison, Paithan</td>
<td>1968</td>
</tr>
<tr>
<td>Mysore</td>
<td>Open Air Jail, Soumdatti</td>
<td>1968</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>1. Prisoner’s Open Air camp at Agricultural Research Farm, Durgapur</td>
<td>1955</td>
</tr>
<tr>
<td></td>
<td>2. Sri Sampurnanand Bandi Shivir, Sanganer, Jaipur</td>
<td>1963</td>
</tr>
<tr>
<td></td>
<td>3. Prisoner’s Open Air Camp, Central Mechanized Farm, Suratgrah</td>
<td>1964</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1. Sampurnanand Agricultural-cum-Industrial Camp, Sitarganj, Nainital</td>
<td>1960</td>
</tr>
<tr>
<td></td>
<td>2. Sampurnanand Camp, ghurima, Markundi, Mirzapur</td>
<td>1956</td>
</tr>
<tr>
<td></td>
<td>3. Open Prison attached to Model Prison, Lucknow</td>
<td>1966</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Open Air Jail, Bilaspur</td>
<td>1960</td>
</tr>
<tr>
<td>Madras</td>
<td>1. Open Air Prison, Singanallur</td>
<td>1956</td>
</tr>
<tr>
<td></td>
<td>2. Open Air Prison attached to Central Prison, Salem</td>
<td>1966</td>
</tr>
</tbody>
</table>


3.2.5. **Evaluation and suggestions**

The purpose of the following evaluation of the structure and function of the study is to show the extent to which these Camps are fulfilling the
objectives of the open-air camps movement. Suggestions have also been given here in order to improve the working of these camps. The idea of open was given by Maconie, but in a different form. The present form of these Shivirs is an outcome of Geneva Conference held in the year 1950. In India, the state of Utter Pradesh is probably the first to have introduced these open air camps called Shivirs and for this the credit goes to Dr. Sampurnanan. Sampurnanan Shivirs are the outcome of modern trends to treating and rehabilitating the prisoners and it has been observed during study that it has brought an overall change in the minds of inmates. This was also observed from the fact that the number of escapees from these camps was negligible as compared to walled or closed prisons.

The activities and programmes of these camps are multi-purpose and multi-dimensional. They are numerous and varied, short and long-term, reformative and reeducative. All this is meant to bring about changes in their human and social outlook and personality in such a way that after their release from the Shivirs they may not relapse into crime. They are given incentives for normal life. They are trained in the fields of agriculture, horticulture, cement preparation etc. because they generally come from working classes. Games and sports and other recreationed facilities from part of their routine life at the camps to inculcate in them a sense of discipline and social responsibility.

Inmates in these camps learn to follow a regular routine of work with regular wages under supervision. They get up early in the morning and
after a short interval, gather in the open field for community prayer followed by mass physical exercise. After breakfast, they march to the work places and they come back for mid-day meals and rest. The food given to these inmates is of a low standard, and is without gustatory satisfaction. They are given special dishes only on Sundays. This too is tasteless.

The inmates in these camps are given hard jobs to perform. In Sitarganj Camp inmates are given training and employment in agricultural and agro-industrial fields (e.g. fruit preservation, oil etc.) and in Gurmah Camp the inmates are given employment in quarrying bricks for Churk Cement Factory, and public works such as construction of dams, canals, roads etc. Their gives them a sense of honour and dignity. But there is no compensatory funds for providing relief to the dependents of inmates in case the inmates suffer physical impairments or death during the period of Camp life.\textsuperscript{11}

The location of these camps is not very, good, because it has been chosen from the view point of security and administrative conveniences. The roads inside the Sitarganj Camp are in a very bad conditions. It effects the transport system of these camps, and the vehicles soon go out of order which ultimately affects the camps’ economy.

Besides this, inmates are faced with the problems of inferior food and unsuitable living conditions. This can be improved with little effort and expenditure.

Sampurnanand camps have established well-meaning and effective administration to control escapees and maintain discipline without resorting to
the traditional method of locks, bars, walls, guards, and that prisoners are also taught to express their needs and dissatisfaction through approved administrative channels. More over, to give prisoners a feeling that they are relied upon, an attitude of trust will enthuse them to work more devotedly. In this context it was also remarked during the course of discussion that there were very few cases of indiscipline, defiance of authority. Experiments have shown that proper authorities should visit these camps at frequent intervals. This would provide the inmates with an opportunity to present their grievances, suggestions and requests. It is also suggested that authorities should stay for a few days in the camps in order to acquaint themselves thoroughly with the conditions, although it may be possible to over-come all the problems faced in this new experiment. It is, therefore, essential that some authority and discretion should be vested in the person directly in charge so that he may take immediate remedial steps to avoid the delay and inconvenience to the inmates. It is likely to affect overall administration and efficiency of the camps. It may, however, necessitate some orientation of the inmates and reorientation of members of the staff. This orientation programme of staff should not be treated at par with the staff of closed prisons.\(^\text{12}\)

Regular staff meetings at which all staff members, including the head of the institution, should take place and the problems should be discussed freely. Although such meetings are held at times but the necessary freedom of discussion is missing.

In terms of finances, open camps are far less costly than prisons of maximum security. The further advantage of these camps is that the
Government have been able to employ in work a large number of inmates for the benefit of public.

It has to be realised that as means of correction and reform the treatment in these camps are of great value. There is no doubt that these camps are valuable as a means of rehabilitation of prisoners and their reintegration into the family and the community. It is significant to note that a prisoners at the time of release leaves the camp with a substantial amount of saving and with this he can look forward to cordial reception by relatives and friends. The money possessed by the inmates is of great help in executing plans for resettlement.

3.3. : Prisoner's rights

3.3.1. : Sources of prisoners rights

In India there are essentially three different kinds of laws from which “prisoner' rights” are derived: (A) statutes : (B) decisional or judge-made law: and (C) the constitution of India.

(A) Statutes

(1) Statutes are laws are passed by the legislatures either the Parliament (for all-India statutes ) of by the legislatures of the various states ( for state statutes). Statutes are binding on everyone that comes within their coverage. For example, for the most part, all-India statutes are binding on all persons in India, while state statutes generally only have effect in the particular state in which they were passed. Statutes are interpreted by the courts.
The prisons Act, 1894 provides the skeletal framework for the statutory body prisoners rights and prison facilities. The prisons Act provides the states with considerable authority to pass laws, rules and regulations regarding the details of prison life. In most states these enactments are compiled in “Prison Manuals” or “Jail Manuals” in the form of both statutory and non statutory rules. Some of the many aspects of prison life which are addressed by the sanitary requirements, daily routine, separation of prisoners, employment, prison discipline, punishment for committing prison offences, interviews and other communications with outsiders and rule regarding parole, furlough, remission of sentence and release.

B) The Constitution of India

The Constitution of India is the supreme law of the land. It is the law against which all other laws are judged. That is to say, if a statute is passed by a legislature that goes against a particular part of the constitution, then that statute, or part thereof, may be found by a court to be “unconstitutional” and will not have any binding effect.

Although there are no constitutional provisions which explicitly deal with rights of prisoners, Articles 14, 21 and 22 have been expansively interpreted to cover a wide range of rights, including those of prisoners. The most important constitutional provision for prisoners seeking to enforce their rights is Article 21. Article 21 provides that: “no person shall be deprived of his life or personal liberty except according to procedure established by law.”

3.3.2. Some important constitution rights

A. Right to be Free from Torture and Maltreatment
Courts have frequently used Article 21 as a weapon against torture and maltreatment. In Francis Coralie Mullin v/s. Admn. Union Territory of Delhi (AIR 1981 SC 746), the supreme court commented that: “There is implicit in Article 21 the right to protection against torture (and) inhuman and degrading treatment.” The courts have on innumerable occasions used this right to “ensure some minimum of social hygiene and banishment of licentious excesses” (Rakesh Kaushik v/s. B.L. Vig, Superintendent, Central Jail, Delhi, AIR 1981 SC 746).

In Sunil Batra (II) v/s. Delhi Administration (AIR 1980 SC 1579), a case which involved the claim on behalf of a prisoner whose anus had been penetrated and ruptured with a stick by a jail warden, the supreme court held that Article 21 prohibited mental torture, physic pressure and physical infliction and torture beyond the licit limits of lawful imprisonment.

In many other cases the supreme court has issued guidelines regarding solitary confinement and the use of handcuffs and fetters as forms of punishment and as “safe custody measures” (see chapter XXI, Sections I.2 and J). If these guidelines are not followed strictly then the Article 21 rights to human dignity and to be free from torture would be violated.

B. The Right to legal Aid.

The right to legal aid is well established as a part of Article 21 to the constitution. In a number of recent supreme court cases the right to legal aid has been discussed.
In M.H. Hoskot v/s. State of Maharashtra, *(1978 (3) SCC 544; AIR 1978 SC 1548)*, the supreme court stated that if a prisoner is disabled from engaging a lawyer on reasonable grounds such as indigence (Poverty), on intercommunicate situation, a court shall, if the circumstances of the case, the gravity of the sentence and the ends of justice so require, assign competent counsel for the prisoners deference, provided the party does not object to that lawyer. In other words, if a prisoner is poor and cannot afford a lawyer, the court, in most circumstances, must appoint one for him or her if one is so desired. The state must pay for the appointed lawyers services. Also in Hoskot's case, the supreme court discussed the right to legal aid during the appeal process. The supreme court held that any procedure or practice which restricts a person's right to appeal is unfair and against the principles of natural justices and is therefore in violation of Article 21. The court stated certain requirements for a fair procedure under Article 21 during appeals:

(a) The convict shall be given a free copy of the judgment from the court within a reasonable period of time so that they may exercise their right to appeal.

(b) If a convict seeks to file an appeal or revision every facility for exercising of that right must be made available by the jail administration.

(c) Free is poor or otherwise unable to secure legal who is poor or therewise unable to secure legal assistance, provided “the ends of justice call for such services.”

In Khatri v/s. State of Bihar, *(AIR 1981 SC 928)* (the Bhagalpur blinding
case) the supreme court held that the right to free legal services was “an essential ingredient of reasonable, fair and just procedure for a person accused of an offence.” The state must provide free legal services to anyone accused of an offence who cannot afford them. The judge or magistrate must inform the accused of the right to free legal aid. The right to free legal aid arises the first time the accused appears before the judge or magistrate (See also Sheela Barse v/s. State of Maharashtra (AIR 1983 SC 378); Hussainara Khatoon (III) v/s. Bihar, *AIR 1979 SC 1377).

Legal aid is available to help prisoners vent grievances. In sheela Barse v/s. State of Maharashtra (AIR 1983 SC 378), the supreme court stated: “It is therefore absolutely essential that legal aid be made available to prisoners in jail whether they are undertrials or convicted prisoners. For instance, to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture or ill-treatment or oppression or harassment at the hands of his custodians.

And finally, in Sukdas v/s. Union Territory Arunachal Pradesh (AIR 1986 SC 99; 1986 (2) SCC 401), the supreme court held that the magistrate or sessions judge trying a case is obligated to inform the accused, who on conviction would be liable for imprisonment, of the right to free legal services. A trial conducted without legal assistance being provided or offered in such sanctions, is to be set aside because of the fatal constitutional infirmity (see also Hussainara Khatoon (III); Badri v/s. State of M.P., 1988 Cri.L.J. 1592.)

To summarize the judicial decisions discussed above, the following
general guidelines may be given:

(a) Legal aid is a fundamental right of every person accused of a crime for which imprisonment is possible and who cannot afford legal services.

(b) If the accused cannot afford legal services, the state has a constitutional duty to provide the accused free legal service.

(c) Legal aid is available from the time of arrest and production before the magistrate or judge, during the trial process and throughout the appeals process. It is also available while in prison for undertrials as well as convicts.

(d) It is the duty of the magistrate to inform the accused of the right to free legal services.

(e) If legal aid is not offered to an accused and the trial proceeds to a conviction, the conviction must be set aside.

D. Legal Aid in Civil cases in Maharashtra

I. In Maharashtra, legal aid and advice is made available in civil cases pursuant to the Maharashtra State Legal Aid and Advice Board Rules, 1981 and the Maharashtra State Legal Aid and Advice Scheme. “Civil” cases are generally all those cases which do not involve the trial or appeal of a criminal charge, including writ petitions concerning the violation of fundamental rights. In Maharashtra, legal aid and advice is available to all persons:
(a) Who are bona fide residents of Maharashtra

(b) Whose annual income is less than Rs. 20,000/-

(c) Who are members of scheduled Castes, scheduled Tribes, irrespective of income, in cases of disputes of domestic matters.

II. The above test is known as the “means test” and is dependent on income. However, in certain cases, legal aid and advice may be made available regardless of income. Legal aid and advice committee decides that a particular case falls in any of the following categories:

(a) Cases of great public importance:

(b) Test cases, the decisions of which are likely to affect cases of numerous other persons belonging to the weaker section of the community:

(c) Special cases, which are considered deserving of legal aid.

III. Legal aid is not available in the following civil cases:

(a) Those relating to defamation:

(b) Those relating to malicious prosecution:

(c) For offences punishable only with a fine:

(d) For offences against social laws (such as Suppression of Immoral Traffic
E. Legal Aid in criminal cases in Maharashtra

In Maharashtra, legal aid and advice is also available in criminal cases and appeals. Legal aid is available pursuant to the rules framed under Section 304 of the Code of civil Procedure and other rules (for Sessions and Magistrate court cases), in all criminal cases where the accused:

(a) Has an annual income less than Rs. 20,000/- and is unrepresented;

(b) Is kept in an incommunicado condition (i.e. in custody):

(c) Is entitled to maintenance allowance under Section 125 of the code of criminal Procedure;

Is a poor person who wants to defend himself in a criminal case.

II No legal aid is available in criminal cases involving:

(a) Economic offences against social laws such as suppression of Immoral Traffic in women and Girls Act and Protection of civil Rights Act;

(b) Child abuse.

III In criminal cases, lawyers who are appointed to represent accused persons must have practices for at least five years. In cases involving an offence punishable by death or imprisonment for seven years or more, a senior advocate assisted by a junior must be appointed.
F. Right to Speedy Trial

Under Indian law, the right to a speedy trial is found in both statutory and in judge-made and constitutional law. The basic principle behind the right to a speedy trial is that if the trial of an accused is unreasonably delayed due to reasons not caused by the accused himself, then the charges against the accused, if in custody, should be dropped and the accused should be unconditionally released.

The Code of criminal Procedure, 1973, contains several provisions which relate to the right to a speedy trial.

Under Section 167 (5) of the Code of criminal Procedure, 1973, if, in a summons case triable by a magistrate, the investigation has not been completed within a period of 6 months from the date of arrest, the magistrate should order the investigation to be stopped. However, this period may be extended if the officer in charge of the investigation satisfies the magistrate that for “special reasons” and “in the interests of justice,” the extension is necessary. Several courts have used this statutory section to dismiss large numbers of cases in which this time requirement was not met.

G. Right to compensation

In the past, Indian courts have been reluctant to award compensation to persons whose fundamental rights have been violated by the state or its officers. Often courts have refrained from awarding such compensation on the ground that the state is immune from such liability under the doctrine of
“sovereign immunity” (which basically means that a state or its officers cannot be held liable for damages caused during the exercise of their official functions) (Kasturba Lal v./s State of U.P., AIR 1965 SC 1039).

Similarly, the courts have until recently, been reluctant to grant compensation under their writ jurisdiction under Articles 32 or 226. This also has changed. For example, in M.C. Mehta v/s. Union of India, (AIR 1987 SC 1086), in supreme court held that its power under Article 32 includes the power to issue writs and directions as well as the power to forge new remedies and fashion new strategies. Under Article 32, the court could prevent breaches of fundamental rights as well as provide relief in the form of monetary compensation for the breach of fundamental rights in a appropriate cases.

Recently several courts including the supreme court have been willing to abandon the notion of sovereign immunity and to use their writ power to hold the state and its officers liable to pay monetary damages. This has also been true in the context of prisoners rights where several courts have awarded monetary compensation to prisoners whose rights have been violated by prison officials. A discussion of a few of these cases will follow.¹⁴

3.3.3. : United Nations has prescribed the following standards for the treatment of Prisoners : (as referred in Human Rights and Correctional Administration by Commonwealth Human Rights Initiative)

(a) Body of principles for the protection of all persons under any form of
Detention or Imprisonment.

(b) Standard Minimum Rules for the Treatment of Prisoners.

(c) Safeguards guaranteeing protection of the rights of those facing Death Penalty.\textsuperscript{15} & \textsuperscript{16}

Some of the relevant principles which are relevant to the thesis are reproduced below.

Principle 1: All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect of the inherent dignity of the human person.

Principle 5: These Principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national ethnic or social origin, property birth or other status.

15. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers. Children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of such measures shall always be subject to review by a judicial or other authority.

Principle 20: If a detained or imprisoned person so requests, he shall if possible to kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 24: A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to
the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 28: A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 31: The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 36: A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

Principles 38: A person detained on criminal charges shall be entitled to trial within a reasonable time or to release pending trial.

Principles 39: Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in
accordance with the law. Such authority shall keep the necessity of detention under review.

General clause: Nothing in the present Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on civil and Political Rights.

3.4 Aftercare of released prisoners

Aftercare of released prisoners is one of the effective methods of curbing recidivism. It has to be an integral part of correctional programmes. An offender on release faces several personal and social problem, such as unemployment and stigma. Aftercare programmes mitigate these problems. Aftercare programme should include free or concessional rail/bus fare for released prisoners free supply of tool kits for acquired trades to them, help in getting employment, financial support to them for self-employment, half-way homes and aftercare centers. NGOs can render immense help towards aftercare of released prisoners. Punjab has no worthwhile aftercare programme and there is hardly any NGO active in this area. Social activists, affluent people and government should get together to work out a comprehensive aftercare programme should begin at the commencement of sentence.

Imprisonment of an individual causes shock, dismemberment and demoralisation to his family. Good news about family facilitates adjustment and better behavior of most of the prisoners. But bad news has negative effect on the prisoners. Compassion also demands that such unfortunate families should
be provided succour. NGOs mentioned above should also cater to this requirements.¹⁷

3.5. : The probation system

One of the most successful measures that have been adopted as an alternative to imprisonment in suitable cases is what is called the Probation System. The system is generally applied to first offenders, especially when they are young and their offence is not serious. Courts, however, have full discretion in this matter, and he system can be applied to any persons to whom the court considers it will be suitable.

Probation is a postponed sentence. The sentence is not fixed at the time the accused is enlarged on probation. The accused, after conviction, is placed under the supervision of a probation officer, for a prescribed period, instead of being sent to jail. He is free to follow his ordinary life, but on conditions imposed by the court. These conditions vary but are mainly intended for the protection of the offender himself. The chief conditions are

1. that the offender is to obey such instructions as the probation officer may give and to inform the probation officer of every change of address.
2. that he is to take up some honest occupation;
3. that he is not to associate with bad characters, and
4. that he is not to commit any offence whatsoever.¹⁸

The court, of course, has powers to impose any additional conditions it
When the accused has agreed to the conditions imposed, he is placed in charge of a probation officer, who acts as his guide, friend, and philosopher throughout the period of probation, and in many cases even after. A probation officer helps his ward to obtain suitable employment if necessary. He pays frequent visits young man so that his influence is constantly available to counteract the effects of any evil forces there may be about, and to give the accused the necessary and often lacking moral backbone.

3.6. : Revision of sentences

There is much diversity of opinion as to the wisdom of revising sentences once they have been passed. Some people think that once a sentence is given, a prisoner should be made to serve it in full. Others argue that if you release a prisoner before the expiry of his sentence, you will encourage him, as well as others to commit crime.

Imprisonment tends to produce in the criminal an atrophy of certain mental powers, and a man loses initiative and all sense of responsibility. Prisoners are not encouraged to think for themselves, and their mental faculties become dwarfed. Instances have been known, happily not so common nowadays, of men released after long terms of imprisonment, not knowing where to go or what to do. Some have been known to sit on the doorstep of a prison, and to complain that they did not know what they had done to deserve being turned out in 'such a cruel manner'.
No magistrate or judge can claim with any degree of certitude that a particular individual can be corrected, say, after a period of five years, but not after one of four. The courts certainly go through the details of an offence, and they are perhaps the best judges of the circumstances under which it was committed. But the courts in India have neither the time nor the requisite machinery for making a searching investigation into the character and social antecedents of the accused, and they certainly cannot prophesy, estimate, how the accused will react to the treatment to be meted out to him. It is impossible for a court judicially to investigate motives, training, character, temperament, and opportunities, except in the most superficial fashion. The result is often a haphazard guess as to whether a man should be given five or ten years.

Another factor which still further confuses the issue is the personality and temperament of the judge. One judge may be merciful, another severe; one may be even-tempered and sympathetic, another moody, irritable, and stern. One judge may give two years for an offence, another seven. Such irregularities mean injustice, and bring discredit upon the law and its officers.

When the system of revision of sentences is introduced, the outlook of every long-term prisoner is immediately changed. A prisoner, faced with a sentence of ten or fifteen years, loses all heart and all interest in life. It may be the State's punishment for his offence, but it helps neither the culprit nor the community. Despair and helplessness do not encourage a prisoner to work well or behave well. He becomes apathetic and sulky, and will not co-operate. But if this same prisoner is told right from the start, that after a certain number of years his case will be reconsidered, by a committee, and that provided he gives proof
of having made a serious effort to mend his lapse by virtue of hard work and good behavior, he is likely to be recommended for release, with or without conditions, then there is an entirely different state of affairs. In practically every case, the man becomes a normal human being, ready to do his best to make good. Wherever there is any positive capacity in a criminal for good, it is brought out, and abject despair if replaced by hope.

Only those who are in daily touch with prisons can realize how the adoption of this policy of revision helps the administration.

Revision of sentences is a powerful weapon in the hands of the prison authorities for the prevention of misbehaviour in jail. Every prisoner is made to understand that his good conduct in jail is essential before his case is considered. He naturally makes every effort to keep out of mischief.

A revisory board should consider the following points and evidence before arriving at a decision:

1. The age of the offender at the time of the commission of the offence.
2. The section or sections of the Penal Code under which he was sentenced.
3. The district to which the offender belongs.
4. A short not giving the salient points of the case, based on the judgment of the court.
5. Conduct in jail, giving details of offences committed in jail, if any.
6. Opinion of the Medical Officer of the jail, especially in cases in which the sanity of the offender has been questioned.
7. The local reputation of the offender in his village, as given by the village headman, with endorsements by the Police and the Deputy Commissioner of the District as to the desirability or otherwise of release.\(^{19}\)
The consideration of the age of the offender is important. An offence that may be treated with a certain amount of indulgence in a boy of 16 would probably be unforgivable in an adult of 30. On the other hand, old persons deserve a certain amount of leniency. Though it is not strictly relevant to the subject, it is advisable to know the reputation of the District from which the offender comes. The members of the board, being practical men of the world, are bound to pay attention to the subject. For example, in the case of a District which is notorious for the number of dacoities committed, one would take greater care before returning an ex-dacoit to it. A precis of the case is essential in order to enable the members of the board to decide what part was actually taken by the offender concerned, and whether the way in which the crime was committed showed great moral depravity or cruelty or some such factor which would affect their opinion. A consideration of the circumstances in which the offence took place is specially important in the case of young offenders and in cases in which organized crime, involving several offenders, was committed.

Conduct in jail should be the most important of the factor forming one's decision in a particular case. Every case in which the conduct of the prisoner has been bad should be ruthlessly rejected, on the principle that the prisoner though given a chance, has made no effort to mend his ways. By bad conduct is not meant trivial or technical prison offences. Amongst the more serious offences that may be classified as bad conduct would be quarrelling, fighting, showing violence, stealing, and persistently disobeying orders or refusing to work. It is unnecessary to add that when a prisoner has undergone a long period of imprisonment one or two lapses of the above nature committed several years before the case comes up for consideration deserve to be
Revision should only be applied to first offenders. The habitual has already had his chance and has not reformed himself, and reducing his sentence would do him no good, nor would it help society. Releasing habituals before their time is unsound policy. A revsory board should never allow sentiment to influence its judgment, but should proceed in a businesslike manner, the only point for decision being whether it is safe to release a prisoner, taking all the circumstances into consideration. No outside influences should be allowed to sway the judgment of the members.

3.7. : Parole

Parole is “releasing a prisoner from the prisons into the community under certain conditions for a specific period, after he has served a portion of the prison sentence.” Conventionally, parole is described as the granting of a privilege of release for a short period rather than a right. Release on parole is granted in return for an offender's compliance with rules in the prison. After release on parole, the parole continues to be subject to the threat of penal confinement, if official expectations are not fulfilled. The supervision by an agent of correctional agency is supposed to serve the parole's interests by offering guidance and assistance.

3.7.1. : It may, thus, be said that the important characteristics of the parole system are:
22. Release from prison after completing a specified portion of prison sentence.

23. Imposition of certain conditions for behaviour.

24. Remaining under the control of officials of prison/correctional institution, or supervision by a probation or a parole officer.

25. Returning to prison after completing the parole term.

3.7.2. : The object of parole are:

i) to check frustrations and attitudes of bitterness and hopelessness among long-term prisoners.

ii) to enable an offender to live with his family members during emergencies, particularly at the time of marriage, death, harvesting, etc.

iii) to help the offenders to gratify their varied needs.

iv) to help the prison administration to use the strategy of parole-release as the carrot to seek prisoners conformity to prison rules, to preserve internal order in prison, and to motivate inmates to accept work assignments.

3.7.3. : In India, eligibility for parole entails;

14. serving at least one third sentence of the total term of imprisonment

15. evaluation of the inmate's record of behaviour in prison.

16. Granting parole only to long-term prisoners

17. parole period varies from state to state. For example, in Rajasthan,
first parole release may be granted for 20 days after eleven months stay in the prison, second may be granted for 30 days after 22 months prison stay and third may be granted for 48 days after staying in jail for 33 months. After the third parole, the prisoners may be granted premature release. The Inspector/Director General, Prisons has the authority to grant fifteen days parole in emergencies while the superintendent of a central jail may grant seven days parole under similar (emergency) circumstances.

18. Before release on parole, a prisoner has to sign an agreement with the prison authorities for conforming to set release conditions. And

19. the district magistrate is informed of the prisoner's release on parol so that he may arrange either police surveillance or probation officer's supervision.

3.7.4. : Suggestions for changes in the present system:

20. The concept of parole as a correctional method varies widely as does the terminology employed. A redefinition of parole and a standardization of terminology are necessary to avoid confusion and to enable parole give full rehabilitation to prisoners.

21. Parole is basically a rehabilitative and social defence measure. Legislation should be enacted for parole system. But legislative and administrative restrictions incompatible with this concept.

22. Before granting parole, prisoners should be sent on leave upto 15 days and their behaviour pattern during such period should be carefully examined. If they behave well, they shall be considered for parole.

23. Parole conditions are frequently unrealistic and not standardization. Their application would be more effective if the offender were consulted and conditions were designed to meet individual needs and requirements.

24. Parole Board members are largely non experts and selection for parole is therefore mainly based on subjective attitudes.

25. The reasons underlying parole decisions and the factors held to be important in granting parole are completely unknown to the offender. Sufficient information be disclosed to provide positive incentive to the prisoners striving for adjustment.

26. Contact with the offender and his family is frequently initiated only when release is evident.

27. The members of trained and professionally qualified social workers are far too small in number in India Prisons.
28. The public by and large should be made aware of the positive value of parole.  

“There cannot be a society without crime and criminals, the institution of prison is indispensable for every country”

- Prof. N. V. Paranjape

References:


20. see note 18