

- **UNIT IX –**
- **PRISON SYSTEM**

- Some historical perspectives
- Humanizing prison life
- Indian prison system
- Prison reforms in India
- Open air prison
- Nature & scope of open air prison

- **Introduction –**
- It is the **duty of a Welfare State –**
 - I) to protect the society from crimes
 - II) to punish the offenders.
- Prisonisation symbolizes a system of punishment & also a sort of institutional placement of under trials & suspects during the period of trial.
- Since there can not be a society without crime & criminals, the **institution of prison is indispensable for every country.**

- The system of imprisonment represents a curious combination of different objectives of punishment such as a method of retribution or deterrence or prevention.
- It helps in keeping crime under control by elimination of criminals from the society.
- It may also serve as an institution for reformation & rehabilitation of offenders.
- Simply, whatever be the object of punishment, it serves to keep offenders under custody & control.

- Initially, the prisons were used as detention houses for under trials. The persons who were guilty of some political offences or war crime or debt defiants/ fines were lodged in prison to extract confession from them or securing the payment of debts or fines.
- With the march of time & advancement of knowledge & civilization, the conditions of prisons also improved.
- As Modern penology looks at offenders with a **view of rehabilitation**, the prison system also underwent changes.

- Nowadays prisons are no longer detention houses for offenders but they seek to reform inmates for their future life.
- The modern techniques of punishment lay greater emphasis on reformation, correction and rehabilitation of criminals.
- The modern prison system in India is based on the British prison model which in itself is an outcome of prison system of America.

- **Jail V. Prison –**
- **Jail –**
- I) It is a place for confinement of the people accused or convicted of a crime.
- II) It is a place of confinement for persons held in lawful custody.
- III) It is a place under the jurisdiction of a local government (such as a county) for the confinement of persons awaiting trial or those convicted of minor crimes.”
- IV) It is for less serious crimes, or for detention awaiting trial.

- **Prison –**

- I) It is a place properly arranged & equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or for punishment.
- II) It is a place of confinement especially for lawbreakers
- III) It is “an institution (such as one under state jurisdiction) for confinement of persons convicted of serious crimes
- IV) It is used for serious crimes with longer sentences.

- **Some Historical Perspectives –**
- The American Prison System
- The British Prison System
- The Russian Prison System
- The Indian Prison System

- **The American system-**
- **Quaker's Movement (1775) –**
- It led to remodelling of Philadelphian prison on a new pattern.
- The prisoners were classified into 2 main classes-
 - 1) Incurable or Hardened Criminals &
 - 2) Corrigible or Ordinary criminals Capable of Reformation.
- The prison was modelled on 2 major principles –
 - 1) Work during day &
 - 2) Humanitarian treatment of offenders.

- The condition of Philadelphian prison deteriorated towards the end of 18th century due to overcrowding, laxity in discipline & abuse of power by the government. It necessitated establishment of a new Model Prison elsewhere.
- Consequently, two model prisons were set up, one at Pennsylvania & the other at Auburn. The study of American prisons broadly comprises these two systems which were started simultaneously in Pennsylvania & auburn.

- **1) The Pennsylvanian System –**
- It was first introduced in the Walnut Street Prison in Philadelphia in 1790.
- The prisoners were kept in **complete isolation in separate cells during day & night.**
- The **solitary confinement** was designed to bring about quick reformation in prisoners because of its **extreme deterrent effect.**

- Later on, the **system of labour & work** was introduced for prisoners.
- The inmates were subjected to prayers & appropriate discourses.
- The major setback of this system was lack of productive labour for prisoners, over-crowding and cruelty.
- It was finally abandoned in favour of **Auburn system**.

- **2) The Auburn System –**
- A new prison modelled on Pennsylvanian pattern was built at Auburn in New York State in 1818-19.
- The prisoners were **to work in shops under a strict rule of silence.**
- Initially, only the hardened criminals were awarded with the solitary confinement without work. But its impact on mental & physical health on the inmates was adverse. Most of the prisoners became mad or committed suicide.

- This system opted for forced silence & separation at night but congregate work in shops during day time.
- While labouring the inmates were not allowed to talk / communicate with the other prisoners.
- It was a **system of discipline by repression & labour under fear.**
- The system yielded good results but it **not pleaded for exercise, play or sociability.**

- **The American Prison System –**
- During **medieval period** (period of European history between the end of Roman Empire & starting of period of renaissance & the age of discovery in 476AD & about 1500AD), the punishment was **barbaric & deterrent.**

- The merciless torture & brutality were inflicted against the offenders.
- Even for minor offences, the punishment of death, branding, public humiliation, whipping etc. were used.
- The imprisonment was used only in rare cases.
- The life inside the prison was hard, unbearable & painful.

- **Penn's Charter of 1862-**

- 1) Release of prisoners on bail

- 2) Compensation for wrongful imprisonment

- 3) Choice of food & lodging to prisoners to a certain extent.

- 4) Abolition of the pillory system of punishment.

- **The Illinois Prison, 1933 –**
- The **opening of reception centre** at Illinois marked the beginning of reformatory era in the American prison system.
- The cells in the prison were airy, well ventilated & equipped with adequate arrangement of lights.
- Health & sanitation were improved,
- Facilities for reading, writing & schooling.
- Adequate arrangements for physical exercise & recreation of inmates.

- The American prisons were over-crowded. The beating up, extortion, blackmail & sexual assaults are common occurrences in prison institutions.
- Until the mid-half of the 20th century, the American courts had little regard for the rights of prisoners.
- This indifferent attitude has been changed drastically due to human rights consciousness of the American judges & the constitutional rights of prisoners in USA are now well honoured & safeguarded.

The British Prison System –

- Like USA, in England also the prisoners were treated brutally & punishments were barbarous in nature.
- During the 18th century, the prisons were damp & vermin infected & were the places full of filth, corruption, sex indulgence & all sorts of vices.
- In order to mitigate the rigours of isolation, the prisoners were engaged in hard manual work during the day hours. This kept them physically & mentally fit for the institutional life.

- The Act of 1778 passed by the British Parliament was instrumental in prison reforms.
- Under this Act, the prisoners were put to work during day & kept in solitary cells during night. They could meet with their relatives & friends.
- The prisoners were released “on ticket on leave” on a condition that they would not resort to criminality.

- By this time, the prison administration was transferred from local municipal authorities to the national government. It was a landmark change in the history of prison development in Britain.
- On the recommendations by the Gladstone Committee, the Prison Act was enacted in England in 1898.

- **The Modern British Prison System –**

- 1) Improved classification of prisoners
- 2) Vocational training to inmates inside the prison for their physical, moral & mental upliftment.
- 3) Reformation of prisoners
- 4) Rehabilitation of prisoners after release
- 5) Recognition of basic rights of prisoners.

The Russian Prison System –

- In Russia, the **educative reforms system** adopted in prisons offers the better opportunities for inmates to reform & rehabilitate themselves in normal life.
- Liberal good time allowance is granted to prisoners & they can be released before the expiry of their term of sentence. They are allowed wages for the work done by them, so that their family & children are saved from hardship & starvation.
- This system also provides for education, adequate means of recreation & religious discourses . They are also allowed to form a **Council of Culture** to settle their mutual disputes in a spirit of co-operation.

- **Prison System in India –**
- **Prisons in Ancient India –**
- Earliest times - A well-organized system was used.
- **Brahaspati** - Imprisonment of convicts in closed prisons
- **Kautilya** - Frequent use of fortresses to lodge their prisoners & construction of prisons by the road-side to reduce monotony of prison life.

- The spiritual aspect of human life - To provide sufficient opportunity for penance & remonstrance.
- Solitary confinement for self-introspection .
- Object of punishment during the Hindu & Mughal period in India was to deter the offenders from repeating the crime.

- **Prisons in British India –**

- The British colonial rule in India marked the beginning of penal reforms.
- The Britishers made efforts to improve the conditions of prisons & prisoners. They made radical changes in it.

- **First Prison Enquiry Committee (1836) -**
- Recommended abolition of practice of prisoners working on roads.
- Adequate steps were also taken to eradicate the **corruption among the prison staff.**
- In **1855**, the **Inspector General of Prisons** i.e. the Chief Administrator was appointed to maintain the discipline among the prisoners & the prison authorities.

- **Second Prison Enquiry Committee (1862) –**
- Provision for proper food & clothing for the prison inmates & medical treatment of ailing prisoners.
- **Third (1889) & Fourth (1892) Prison Enquiry Committee –**
- **Recommendations to improve the prison system in India.**

- **The Prison Act, 1894** was enacted to bring about uniformity in the working of prisons in India. The classification of prisoners, abolition of whipping, medical facilities etc.
- **From 1907**, the laudable efforts were made to improve the **condition of juvenile & young offenders**. They were now kept segregated from the hardened adult offenders. Establishment of a number of reformatories and Borstal institutions modelled on British pattern.

- **Indian Jails Reformatory Committee, (1919-1920)**
- It was appointed to suggest measures for **prison reforms** & headed by Sir Alexander Cardew.
- It underlined the reformatory approach to prison inmates, discouragement of use of corporal punishment , an intensive after-care programme for the released prisoners for their rehabilitation.

- **Indian Prison onwards 1950 –**
- The subject of jail along with police & law & order is placed in the **State List of the 7th Schedule of Indian Constitution.**
- The Union Government has literally no responsibility of modernizing the prisons & to look after its administration.
- Unfortunately, the 5 Year Plans offered a very low priority to prison administration & jail reforms.

- Prisons in India are governed by the **Indian Prison Act, 1894** and the rules & regulations for the administration & management of prisons as specified in the **Prison Manuals of the States**.
- **Pandit Nehru** – “Criminals are largely creations of social conditions & therefore they are required to be treated rather than being punished”.

- During 1950's, the attention was paid to the treatment of prisoners on psychological & psychiatric basis.
- It was felt that the rehabilitative activities of modern prison should generally be of two kinds –
 - I) Psychological & psychiatric treatment &
 - II) Educational or vocational training programmes.
- A Committee was appointed to prepare an **All India Jail Manual in 1957** on the basis of the suggestions made by **Dr. Walter Reckless**. An All India Conference of Inspector General of Prisons of the States was also convened.

- Consequently, following **major guidelines** were accepted –
- I) Inclusion of **correctional services** in the Home Department of each State
- II) Establishment of a **Central Bureau of Correctional Services** at the Centre
- III) Use of reformative methods of **Parole & Probation** to reduce the burden on prisons
- IV) Setting up of **State After-Care Units** in each State
- V) Abolition of **solitary confinement**
- VI) **Classification of prisoners** for their treatment
- VII) Periodical **revision of State Jail Manuals**.

- **Committees & Recommendations**

- Various Committees & Commissions have been constituted by the State Governments as well as the Government of India to study & make suggestions for improving the prison conditions & administration.

- **Committees -**

- **1) Jail Reforms Committee on Classification of Offenders (1980-83)**
- **2) Mulla Committee, 1983**
- **3) Krishna Iyer Committee, 1987**

- **1) Jail Reforms Committee on Classification of Offenders (1980-83) –**
- The Ministry of Home Affairs, New Delhi established a Jail Reforms Committee to suggest effective classification of offenders to counter with various prison related problems.

- **Recommendations –**
- I) Separate prisons or annexes for under trials & for women.
- II) Separate semi-institutions for juveniles & young offenders with medium security arrangements.
- III) Maximum security prisons for professional & hardened criminals & gangsters who indulge in organized criminality &
- IV) Separate camps for offenders courting arrests in connection with social or political movements or participating in strikes, protests etc.

- **2) Mulla Committee, 1983**
- The Government of India appointed an **All India Jail Reforms Committee** in 1980 with Justice A. N. Mulla as its Chairman.

- **Major Recommendations (Total 659 Rec.) -**
- 1) To establish **National Prison Commission** for the modernization of the prisons.
- 2) To **ban clubbing** of juvenile offenders with the hardened criminals in prison.
- 3) To enact a comprehensive & protective legislation for the security & protective care of **delinquent juveniles**.
- 4) To **improvement of the conditions of prison**
- 5) **Minimum lodging of under trial** in jails & they should be kept separate from the convicted prisoners.

- 6) To move subject of prison from **State List to Concurrent List.**
- 7) Constitution of An **All India Service** namely the **Indian Prisons & Correctional Service**
- 8) **Human dignity of prisoners in all aspects.**
- 9) Protection of **human rights of prisoners** by prison management
- 10) Provision for **free legal aid**
- 11) **Segregation of mentally ill** prisoners to a mental asylum.

- **3) Krishna Iyer Committee, 1987**

- A Committee was constituted to study the condition of women prisoners in the country under the Chairmanship of Krishna Iyer in 1986.

- **Main Recommendations -**
- I) Provision for **national policy for women** prisoners.
- II) Construction of **separate prisons** for women.
- III) Provision for **free legal aid** to women prisoners.
- IV) Enactment of **new rules & regulations qua punishment & conduct** of women prisoners.

- V) Provision for **proper care of the child** born to a woman prisoner in jail as regards medical help & diet.
- VI) **Speedy trial & bail process** & facility to meet their relatives.
- VII) Provision of the security, discipline, holistic programmes, adequate standards of prisons & human rights etc.

- **India's International Obligations –**
- **I) International Covenant on Civil & Political Rights, 1976 (ICCPR) -**
- It is the core international treaty on the protection of the rights of prisoners.
- India – Enforcement - 1979
- **Key features -**
- I) Separation of prisoners in pre-trial detention from those already convicted of crimes.
- II) Focus of prisons on reformation & rehabilitation, not on punishment
- III) Banning of torture or other cruel, inhumane or degrading treatment.

- **II) International Covenant on Economic, Social & Cultural Rights, 1976 (ICESCR)-**
- It acknowledges that the prisoners have a right to the highest attainable standard of physical & mental health. Further, second-generation economic & social human rights as set down in the ICESR also apply to the prisoners.
- India – Enforcement – 1979.
- **III) UN Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment , 1987(UNCAT)-**
- India signed UNCAT in 1997. However, has not yet ratified it.

- **IV) UN Standard Minimum Rules for the Treatment of Prisoners, 2015 or Nelson Mandela Rules-**
- **Fundamental Principles -**
- 1) To respect prisoner's **human rights & dignity**.
- 2) **No torture or inhumane practices** towards prisoners
- 3) Aiming at to prevent **recurrence of crime**.
- 4) **Safety in the prison** for everyone at all times
- 5) **Absence of discrimination** & administrators responsibility of taking into account **needs of individual prisoners** especially the vulnerable ones.

- **International Best Practice**
- **Prison System- Norway -**
- Norway's incarceration rate is only 75 per 100,000 people.
- Further, it has one of the lowest recidivism rates in the world at 20%.
- The criminal justice system in Norway focuses on the principle of restorative justice & rehabilitating prisoners.
- 30% of prisons in Norway are open & all prisons ensure healthy living conditions, vocational training and recreational facilities.

- **Legislations relating to prisons etc. -**

- 1) **The Prisons Act, 1894 –**

- It contains various provisions relating to health, employment, duties of jail officers, medical examination of prisoners, prison offences etc.

- 2) **Transfer of Prisoners Act, 1950 –**

- The Act deals with the transfer of a prisoner from one State to another State.

- 3) **Legal Services Authority Act, 1987 -**

- By the provisions of this Act, a person in custody is entitled to free legal aid.

4) Repatriation of Prisoners Act, 2003 -

- The Act enables the transfer of foreign prisoners to the country of their origin to serve the remaining part of their sentence.
- It also enables the transfer of prisoners of Indian origin convicted by a foreign court to serve their sentence in India.

5) Model Prison Manual , 2016 -

- It aims at bringing in basic uniformity in laws, rules & regulations governing the administration of prisons & the management of prisoners across all the States & UTs in India.

- **Prison Problems in India –**
- **Case - Rama Murthy V. State of Karnataka,
AIR 1997 SC 1739**
- I) Overcrowding
- II) Delay in trial
- III) Torture & ill- treatment
- IV) Neglect of health & hygiene
- V) Insufficient food & inadequate clothing
- VI) Prison vices
- VII) Deficiency in communication
- VIII) Streamlining jail visits
- IX) Management of open air prisons

- Inviting the attention of the Apex Court to the inhumane conditions prevailing in 1382 prisons in India, the former CJI R. C. Lahoti pointed out that the Indian prisons are suffered from 4 major issues as follows –
 - I) Overcrowding in prisons
 - II) Unnatural death of prisoners
 - III) Gross inadequacy of staff &
 - IV) Available staff being untrained or inadequately trained.

- **Prison Problems in India -**
- **1) Overcrowding –**
- **The National Crime Records Bureau (NCRB) Report (2015)**
- The average overcrowding rate in Indian prisons is 14 per cent.
- The 149 jails in the country are overcrowded by more than 100 % & that 8 are overcrowded by margins of a staggering 500 %.
- The ‘**Satyamangalam**’ sub-jail in Erode district of Tamil Nadu where 200 prisoners "stuffed" in a space meant for 16 people.

- The National Legal Services Authority (NALSA)(2018)
- Holding capacity of jails in the country 3.78 lakh, & actual number of inmates lodged - 4.19 lakh.
- There were 8500 prisoners in Tihar Jail of Delhi in 1995 as against the capacity of 2500 persons.
- Currently, there are about 4 lakh prisoners in 1,401 prison institutions across India.

- **2) Under-trials—**

- More than 65% of the prison population in India are under trials. The share of the prison population awaiting trial or sentencing in India is extremely high by international standards;
- **Eg.** It is 11% in the UK, 20% in the US and 29% in France. 67 % prisoners in the "overcrowded" jails across India are under trials.

- **Important Cases –**

- **1) Hussainara Khatoon V. Home Secretary, State of Bihar, AIR 1979 SC 1360**

- The SC observed that the incarceration of undertrials who had virtually spent their period of sentence was clearly illegal & a blatant violation of their fundamental rights u/A 21 of the constitution.
- **Speedy trial** is a constitutional mandate & the state cannot avoid its constitutional obligation by pleading financial or administrative inability.
- Consequently, the State of Bihar released as many as 18,000 undertrial prisoners in 1981 & other states followed the suit.

- **2) Kalyan Chandra Sarkar V. Pappu Yadav, AIR 2005 SC 972**
- The SC held that the fundamental right of an undertrial prisoner **u/A 21 is not absolute** & therefore it may be circumscribed by prison manual & other relevant statutes imposing reasonable restrictions on such right.
- It had the power to order such transfer in exercise of its powers u/A 142 of the constitution though the jail manual did not provide for such transfer.

- **Under- Trial Review Committee, 2013**
- The Ministry of Home Affairs, India on 17th January 2013 placed a proposal requiring **an Undertrial Review Committee to be set up in each district** within 1 month to consider the cases of undertrials who are entitled the benefit of **S. 436-A of CrPc.**
- It should not be mandatory that the undertrial prisoner must remain in custody for at least $\frac{1}{2}$ the period of his maximum sentence only because the trial has not completed in time.

- **Composition of the Committee –**
- I) The District Judge as Chairperson
- II) The District Magistrate &
- III) District Superintendent of Police, as members.
- The member Secretary of the NALSA as the Co-ordinator for the State Legal Services Authority & the Ministry of Home Affairs.
- This proposal was finally adopted in the meeting of the Committee held on June 30, 2015.
- The Committee in every district should meet every quarter & the first such meeting should take place on or before 31st March, 2016.

- **3) Legal Aid related Issues –**
- No effective implementation of constitutional mandate **u/A 39-A of Indian Constitution.**
- Less payment to legal aid lawyers.
- Less quantity of legal aid lawyers.
- Overburdening of such cases.
- No effective mechanism for the evaluation of implementation of Art 39-A.
- **Cases –**
- **M.H.Hoskot V. State of Maharashtra (1978)**
- **Hussainara Khatoon's Case.(1979)**
- **Khatri V. State of Bihar (1981)**

- **4) Unsatisfactory Living Conditions –**
- Problems such as lack of space, poor ventilation, poor sanitation & hygiene, overcrowding, lack of physical & mental activities, lack of decent health care etc.
- **Case – Parmanand Katara V. UOI, AIR1989 SC 2039.**
- Preservation of human life is of paramount importance. The patient, whether he may be an innocent person or a prisoner/criminal deserves medical attention. As a custodian of prisoners, the state has a duty to provide proper health facilities to the prisoners.

- **5) Torture & Sexual abuse -**
- Prisoners are subjected to inhuman psychological & physical torture.
- Sexual abuse of persons in custody is also a part of the broader pattern of torture in custody.
- **The National Human Rights Commission –**
- Custodial violence as “Worst form of excesses by public servants entrusted with the duty of law enforcement.”

- **Cases –**
- **I) Prabhakar Pandurang V. State of Mah.,
AIR 1966 SC 424.**
- The Apex Court ruled that the detention in prison cannot deprive the detenu of his fundamental rights.
- **II) Sunil Batra V. Delhi Administration, AIR 1978
SC 1675.**
- The supreme court held that, “Fundamental rights do not flee the persons as he enters the prison although they may suffer shrinkage necessitated by incarceration”.

- **III) Sheela Barse V. State of Maharashtra,
AIR 1983 SC 378**

- The Supreme Court on a complaint of custodial violence to women prisoners in jails, directed that those helpless victims of prison injustice should be provided legal assistance at the State cost & protected against torture & maltreatment.

- The Court issued **directions** for –
- I) Separation of female prisoners from male wards
- II) Guarding by female guards or women constables.
- III) Interrogation of women in presence of women officials.
- IV) Immediate intimation of women regarding arrest of a woman offender to her relatives.
- V) Immediate information of such arrest to nearest Legal Aid Committee.

- **6) Custodial Deaths -**

- In 2015, a total of 1,584 prisoners died in jails. A large proportion of the deaths in custody were from natural & easily curable causes aggravated by poor prison conditions.
- Further, there have been allegations of custodial deaths due to torture.

- **Cases –**
- **I) SAHELI V. Commissioner of Police,(1990)**
- A writ petition was filed by the Women Civil Rights Organisation, called ‘SAHELI’ u/A 32 on behalf of the deceased’s mother for recovery of compensation consequent of the death of her 9 years old child caused in custody due to beating by police. The court awarded compensation of Rs. 75,000/- to the mother.
- **II) D. K. Basu V. State of West Bengal, (1997)**
- Custodial Death (Exhaustive Guidelines)

- **7) Underpaid & Unpaid Labour –**
- Labor is extracted from prisoners without paying proper wages.
- **Case – Ramamurthy V. State of Karnataka.**
- **8) Inadequate Security Measures & Management**
- Poor security measures & prison management often leads to violence among inmates & resultant injury & in some cases death.
- **Case – Mithu V. State of Punjab.**

- **9) Corruption –**

- According to Humans Rights Watch, a “rigid” class system exists in Indian prisons. There is rampant corruption in the prison system & those who can afford to bribe, often enjoy luxuries in prison.
- On the other hand, socio-economically disadvantaged prisoners are deprived of basic human dignity.

- **10) The Plight of Women Prisoners –**

- Women prisoners face a number of challenges including poor nutritional intake, poor health & lack of basic sanitation & hygiene.
- Further, there are alleged instances of custodial rapes which generally go unreported due to the victims' shame & fear of retribution.

- **11) Lack of Reformatory Approach -**

- Absence of reformatory approach in the Indian prison system has not only resulted in ineffective integration with society but also has failed to provide productive engagement opportunities for prisoners after their release.

- **Humanizing Prison Life –**
- After the independence, the Government of India recognised the need for a comprehensive After-Care Programme for the released prisoners & appointed a Committee under the chairmanship of **Shri. Gore** .
- Pursuant to this Committee's report, **a Central Social Welfare Board & a few After-Care Homes** were established in some States during 1955-1960.
- Some of the States also set up **Juvenile Correctional Institutions** for rehabilitation of juvenile offenders.

- The released prisoners face manifold problems such as avoidance by his family & society, losing of job, shattering & disintegration of family etc.
- They need to be attended with **a humanistic approach**.
- The government, voluntary social organisations, NGO's and the society as a whole, must come forward to help the released prisoners in solving their woes.
- The released prisoners being mostly poor, illiterate & helpless, need **care & sympathy of the people whose co-operation** is most needed for the rehabilitation of these ex-prisoners.

- **Steps Taken in India –**
- During 1993-94, the **Vipashyana Meditation Programme** was introduced which brought about a big change in the living & thinking of the prisoners.
- The State of Gujrat launched a prison reform programme seeking to bring about reformation of jail inmates through **daily bhajans & yoga practice**.
- The Sabarmati & Vadodara central jails started a 2 months long **creative programme of yoga & bhajans** which is conducted by the **Prajapita Brahma Kumaris Ishwariya Vishwa Vidyalaya** to teach moral & ethical values to the jail inmates & thus to encourage them to live a better life.

- The underlying philosophy behind using these programmes is that a person often commits a crime because of anger, hatred or a feeling of rivalry or revenge. To help such offenders, it is essential **to control their emotions**. Besides, pessimistic feelings like tension, failure or anxiety also add to their woes.
- An **atmosphere of devotion, meditation and spiritualism** will certainly help to such offenders.

- **Prison Reforms –**

- 1) Elimination of long term imprisonment.
- 2) Generous treatment to women prisoners & allowing them to meet with their children
- 3) Need for scientific classification of prisoners based on the nature of the crime committed, age, sex, character & propensities of the offender including his educational level & likely response to prison treatment.
- 4) Temporary “Ticket on Leave” to peasant class prisoners during harvesting season to look after their agriculture.

- 5) Allowing privacy to prisoners with their family members or relatives during visit.
- 6) Celebration of festivals & auspices days not only for namesake (rejoicing & meaningful programmes).
- 7) Liberalisation of rules relating to restrictions & scrutiny of postal mail of inmates.
- 8) Inclusion of provisions for compensation to prisoners for wrongful detention or suffering of injuries due to callous or negligent acts of the prison personnel.

- 9) Education to prisoners beyond 3 R's & inclusion of vocational training of inmates., correspondence courses.
- 10) Women prisoners – tailoring, doll- making, embroidery etc.
- 11) The well educated prisoners should be engaged in some mental-cum-manual productive work.
- 12) Yoga training.
- 13) To make the prisoners discipline conscious the good time laws should be liberalised.

- 14) An intensive After-Care Programme (non-penal institutions such as Seva Sadans, Nari-Niketans & Reformation Homes) & also the Open Air Camps. Prisoners Aid Societies to assist released prisoners.
- 15) Use of media for changing the attitude of public towards prison institutions & their management. To allow them to visit prisons.
- 16) Therapeutic approach with prisoners, human rights, dignity, compassion & sympathy.
- 17) Prisons Act, 1894 need to be revised & restated.

- 18) Effective Legal aid mechanism.
- 19) Intensive training to prison staff
- 20) Reformation in inmate wages
- 21) Increase in no. of welfare or law officers
- 22) Open jails may not be a bad idea
- 23) Reformation in basic infrastructure
- 24) Quick & effective Parole procedure.
- 25) Implementation of E-Prisons Project.

- **Prison System/ Types of Prisons in India –**
- Prisons, and their administration, is a State subject covered by **Item 4** under the **State List** in the Seventh Schedule of the Constitution of India.
- The management & administration of prisons falls exclusively in the domain of the **S/G**, and is **governed by the Prisons Act, 1894 & the Prison manuals of the respective S/G.**
- Thus, the **States have the primary role, responsibility & authority** to change the current prison laws, rules & regulations.

- The **C/G provides assistance** to the States to improve security in prisons, for the repair & renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.

- The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down **3 broad principles** regarding imprisonment & custody.
- **First**, a person in prison does not become a non-person.
- **Second**, a person in prison is entitled to all human rights within the limitations of imprisonment.
- **Third**, there is no justification for aggravating the suffering already inherent in the process of incarceration.

- Prison establishments in India exist at **three** levels—
 - I) **Taluka** Level,
 - II) **District** Level, &
 - III) **Central** (sometimes called Zonal/Range) Level.
- The jails in these levels are called **Sub Jails, District Jails & Central Jails** respectively.
- In general, the infrastructure, security, & prisoner facilities such as medical, educational & rehabilitation are progressively better from Sub- Jail to Central Jail.

- **Types of Prisons in India-**

- Depending upon the level of crime committed jails are classified into -
 - 1) Central Jails
 - 2) Sub-jails
 - 3) District Jails
 - 4) Open Jails\
 - 5) Borstal Schools
 - 6) Women Jails
 - 7) Special Jails
 - 8) Other Jails.

- **Open Prisons –**
- An Open Prison, also called “**Minimum Security Prison**” or “**Open Camp**”, or “**Prison Without Bars**”.
- In India, they are popularly called as “**Open Jails**”.
- **Dr. C. P. Tandon –**
- An open prison is characterised by –
- I) The degree of freedom from physical precautions such as walls, locks, bars & special guards
- II) The extent to which the regime is based on self-discipline & the inmate’s responsibility towards the group.

- Open Prison is a prison which is open in **4 respects-**
- (i) **Open to Prisoners** i.e., inmates can go to market at sweet will during the day but have to come back in the evening.
- (ii) **Open in Security** i.e. there is absence of precautions against escape such as walls, bars, locks & armed guards.
- (iii) **Open in Organisation** i.e., working is based on inmate's sense of self-responsibility, self-discipline & self-confidence; &
- (iv) **Open to Public** i.e. people can visit the prison & meet prisoners.

• **Main Objectives of Open Prisons –**

- To reduce overcrowding in jails,
- To reward good behaviour,
- To give training in self-reliance,
- To provide dependable permanent labour for public works,
- To prevent frustrations & create hope among long-termers,
- To provide training in agriculture & industry,
- To examine the suitability of releasing offenders from prisons &
- To enable prisoners to live with their family members.

- **Historical Perspectives of Open Prisons –**
- **1) U.S.A. –**
- During the 19th century open air prisons were in existence in the name of **prison farms**.
- The prisoners nearing the end of their sentence were generally transferred to these open farms **in forests as labourers**.
- In reality, these camps were ‘**Slave –Camps**’ for prisoners who were made to work under heavy guard & under surveillance.

- The experience with these prisons were quite encouraging as it created self reliance & self-confidence among the prison inmates by resorting to minimum security measures.
- The problem of overcrowding in prisons became more tense in times of war and political upheavals. To overcome it, some of the prisoners were picked up in open air camps.
- This step was fruitful in terms of –
 - I) Rehabilitation & reformation of prisoners
 - II) Economic system etc.

- **2) France –**

- France has an open prison institution in Casablanca & a **semi - open institution** in Oermingen.
- The inmates in these institutions go for work as free workers without any supervision & they return to the prison every evening or during non working days.
- The scope for expansion of open air camps in France is limited because its traditional system allows prisoners to work outside the institution with private employers under proper supervision.

- **3) Norway & Sweden –**
- Norway & Sweden also established open prisons for their offenders. There are special arrangements for lodging the drug addicts, habitual & drunkards.
- **Educational centres** have also been set up for the treatment of the young delinquents.
- The inmates are trusted & their **sense of honour & self respect** is stimulated resulting into their reformation.

- **Establishment of Open Prisons –**

- The first open prisons were established in -
- Switzerland - 1891,
- United States - 1916,
- Britain - 1930, &
- Netherlands - 1950.

- **Open Air Camps in India –**
- The modern prison policy & techniques of handling criminals are by no means new to Indian penology.
- In ancient India, the emphasis was on **reformation of the offender rather than punishing him indiscriminately.**

- **Manu –**
- **Opinion** - Unjust & harsh punishment makes the criminal more dangerous to society & also brings disrepute to law administrators.
- He pleaded for placing the offenders into such surroundings that they can think & realise what they committed was not in the interest of society or themselves.
- He strongly pleaded for **an effective scheme of after-care** can certainly help in bringing about rehabilitation of even the most dangerous & hardened criminals.

- **Origin & Development of Open Prisons in India**
- First **All India Jail Committee (1836)** was the first step towards the occurrence of open prisons in India.
- The Committee did not favour employment of prisoners on major public works & therefore the system fell into disuse during the next 20 years.
- **In 1877**, the **Prison Conference** strongly recommended that employment of prisoners as labourers on large public works was not only valuable but also a necessary adjunct to jail administration. It was subsequently accepted & followed in practice.

- The **All India Jail Committee of 1919-20** viewed that the prisoners could be engaged into construction of jail buildings, workings on agricultural farms. But the guarding & supervision over the prisoners became difficult. So the idea was dropped.
- After independence, the **change in the prison policy & techniques of handling offenders** was felt necessary. The open air prison system is the output of such a need.

- The **All India Jail Committee, 1956** made recommendations to set up open jails for the rehabilitation of prisoners. The emphasis under this system was on self discipline & self help.
- In nutshell, the basic philosophy behind the working of open prisons is the **utilisation of prison labour for employment in open conditions**. Though it was a century old practice, but nowadays its object has been changed from hard labour from prisoners to their reformation.

- **Main Characteristics of Open Prisons –**
- I) Informal & institutional living in small groups.
- II) Minimum measure of custody.
- III) Consciousness among inmates about social responsibilities.
- IV) Greater opportunities for inmates to meet their relatives & friends.
- V) Management by specially qualified & well trained staff.

- VI) Financial assistance to inmates through liberal bank loans.
- VII) Avoidance of unduly long institutional detention of prisoners.
- VIII) Regular & paid work for inmates under expert supervision.
- IX) Payment of wages in part to inmates & their families.
- X) Arrangement of improved diet & special diet for weak & sick inmates.

- XI) Proper attention towards the health & recreational facilities for inmates.
- XII) Liberal remissions to the extent of 15 D/ month.
- XIII) Free & intimate contact between staff & inmates & among the inmates as well.

- **Advantages of Open Prisons –**
- I) Reduction in overcrowding in jails
- II) Reduction in construction cost
- III) Low operational cost
- IV) Engagement of inmates in productive work keeping them mentally & physically fit
- V) Opportunities for self-improvement & re-socialisation to the inmates
- VI) Conservation of natural resources
- VII) Widening the scope of rehabilitative process.

- **Open Air Prisons in Different States of India –**
- The State of U.P. was **first in point of time** to set up an open air camp attached to model prison at Luck now in **1949**.
- The State of A.P. followed the suit & started Mauli Ali agricultural colony for convicts in 1954.
- In 1955, the State of Maharashtra started an open air prison at Yervada as a part of its correctional programme.

- The **success of open prisons** in these states encouraged other states to set up open air camps for the rehabilitation of their offenders by providing them employment on agricultural farms, industrial establishments & construction sites.
- At present there are **69 open prisons** operating in India.
- The **State of Rajasthan** has the highest number of open jails i.e. 29.
- The State of Maharashtra has **13 open prisons**.

- **1) State of U.P. –**

- The State of U.P. was the first to initiate steps to set up open prisons in the name of late **Dr. Sampurnanand** who was the then Home Minister of the State.
- The open prisons were established –
 - I) Sampurnanand Camp, Chakiya – 1952
 - II) Sampurnanand Camp, Naugarh – 1953

- **2) State of Maharashtra –**
- Open Jails in State of Maharashtra are functioning at Paithan, Aurangabad, Gadchiroli, Nagpur, Thane, Akola, Kolhapur, Yerwada, Visapur, Morshi, Nashik, Amravati & Sangli.
- By a new Notification issued by the Home Dept. there will be construction of new open jails at Sindhudurg, Ratnagiri, Latur, Dhule, Wardha & Yeotmal districts.
- Yerwada Open Camp – 1955
- The inmates were put to farming on cooperative basis, animal husbandry etc.

- **4) State of M.P. –**

- The State of M.P. established an open jail in **Hoshangabad** in 2011.
- It was built on an area of 17 acres of land & presently housing 25 selected prisoners.
- The jails are with the **facilities for education** to children of prisoners & helps them to lead a **normal life** in the prison premises.
- The orientation programmes including skill development, vocational training etc. are offered for the inmates.
- The S/G has decided to open **Industrial Training Institutes (ITI's)** for jail inmates of Betula & Dhar.

- **Scope & Nature of Open Air Prisons –**
- There is a **confusion** in regarding the exact nature & scope of open prisons.
- Some scholars treat these open institutions as **places of employment to prisoners** while others characterise them as an **integral part of pre-release programme**.
- Some scholars think that, such institutions are the places where convicts who were victims of circumstances could be given greater freedom & responsibility similar to the **normal living conditions of society** so that they may reform themselves & become fit to lead a normal life in society after their release.

- Undoubtedly, these prisons differ from conventional prisons in at least two fundamental aspects, namely –
- I) **Absence of maximum security arrangements** such as walls, barbed wire fencing, locks, bars, handcuffs & special armed guards, &
- II) **Greater contact of inmates with the outside world** so as to develop among them a sense of responsibility towards the community.

Relevant Cases –

- **1) Dharmbir V. State of U.P. (1979)**
- The Court observed that open prisons had certain **advantages in the context of young offenders** who could be protected from some of the well known vices to which young inmates are subjected to in the conventional jails. The court also directed the S/G to send 2 young accused prisoners who were in their early 20's to one of the open prisons in U.P. without adhering to the technicalities of law.

- **2) Rammurthy V. State of Karnataka (1997)**
- The Court held that, the entire functioning of the open air prison is based on the **philosophy** that after release, the prisoners **may not relapse into crimes**, for which purpose they are given incentives to live a normal life by training them in the fields of **agriculture, horticulture etc. games, sports & other recreational facilities** are provided which form a part of the routine life.

- Also the Court stated that, open air prisons play an **important role in the scheme of reformation of a prisoner.** They also represent one of the most successful application of the **principle of individualisation** of penalties with a view of social readjustment.
- It provides for **release of offenders on probation, home leave to prisoners, introduction of wage-system, release on parole, educational, moral & vocational training of prisoners** etc.

- **Selection of Open Prisoners –**
- The selection process of open prisoners is governed by the Maharashtra Open Prison Rules, 1971.
- As per the rules, the **Selection Committee** consists of-
 - I) Inspector General
 - II) Deputy Inspector General
 - III) Superintendent of Prison
 - IV) Superintendent of the Open Prison formed.

- **Conditions for Admission to Open Prisons –**
- Willingness of prisoners
- Physical & mental fitness to work
- Sentence for terms of 1 year or more
- Spending of at least 1/4 of the total term of imprisonment in jail
- Record of good behaviour in prisons
- Age - above 21 or below 50 years as prescribed by State

- Not being convicted for certain types of crimes such as dacoity, forgery, counterfeiting, etc.
- Not having any case pending in courts
- No being a habitual offender
- Not being class I prisoners or
- Not being women prisoners.

- **Critical Appreciation of Open Prison System –**
- The working of open prison in the first two decades was useful & showed some positive results but there has been a sharp decline in its popularity.
- **Reasons –**
- 1) No significant addition to the existing open jails after. No Union Territory in India has open jails.
- 2) The idea of an exclusive open jail for women did not gain much public support.
- 3) The extensive use of probation as a measure.
- 4) Taming places of miscreants.

- 5) Maintenance of offenders at the cost of public exchequer.
- 6) Transfer of rights & responsibilities by the prison officials to the powerful criminal chief to command power over his fellow inmates.
- 7) No uniform criteria for the selection of open prisoners in India.
- 8) Under-utilisation of the Open Prisons. These prisons have a capacity to accommodate over 25700 prisoners however, only 3786 prisoners are currently in these prisons (as of 2015). Most open prisons are with less prisoners.

- 9) The Selection Committee for open jails has no accountability & transparency in the selection process. It leads to partiality & corruption.
- 10) No provision of Open Jails to under trial prisoners.
- 11) There is a need for more rehabilitative provisions/processes for various convicts, in order to reduce the extent of custodial deaths, overcrowding in jails etc.
- 12) The rules & laws governing the selection & administration are extremely old & thus unfit for the present situations.

- **Suggestions for Open Prisons –**
- These findings thus point out the positive use of open prisons in the reformation & rehabilitation of criminals. It may, however, be noted that open prisons need to be restructured & re-organised.
- **Suggestions –**
- **1) Establishing open prisons in all those States** where they do not exist at present. To increase more open jails throughout in India including all the **Union Territories**.
- **2) Framing common rules of eligibility for admission & providing facilities for offenders in open prisons in all States.**

3) Laying down **common rules of remission** for inmates.

- **Eg.** A prisoner in Sitarganj camp, Nainital (Uttar Pradesh) & Sanganer prison, Jaipur (Rajasthan) earns remission at the rate of 1 day for 1 day stay. In addition, he is entitled to 15 days remission for good conduct every year. Besides, the Superintendent & IGP are also empowered to grant special remission. The prisoners are also permitted to keep their families with them.

- 4) Checking biases, pressures & corruption in **preparing lists of prisoners** to be sent to open prisons by officials.
- 5) Assigning **powers to the Courts** for sending certain types of offenders directly to open prisons.
- 6) Efforts should be taken to move the subject of prisons to the **Union List**. As this will bring in uniform reforms & every prisoner will get similar rights.
- 7) The **Supreme Court or the concerned High Courts** should also be given the **jurisdiction** to allow certain prisoners to directly go to the Open Prison.

- 8) Efforts should be taken to move the subject of prisons to the **Union List**. As this will bring in uniform reforms & every prisoner will get similar rights.
- 9) In order to bring **accountability in the selection procedure**, the State Committee should be compelled to provide reasons to the **Chief Minister** of the concerned State for the selection made.
- These documents should also be made available within the ambit of **RTI** so that common people can also get access to it.
- 10) More open prisons for **women**.

- 11) Semi-open Jail in order to provide rehabilitation to **mentally disturbed prisoners**, semi-open jails should be promoted. They do not provide complete liberty, but there are no prison cells & prisoners are provided with employment opportunities within the Jail campus. One of the finest semi-open jail in India is the Tihar Semi-Open Jail in Delhi.
- 12) Every prisoner should be made aware of his/her rights & should be **informed about the process of selection to open prisons**.
- This will not only give the required information to the prisoners but will also reinforce good behavior among these prisoners.

- **13) International conferences & seminars** on probation & its related aspects may help in popularising this reformatory method of treating the delinquents.
- **14) The co-operation of different social agencies** such as schools, family, religious institutions & other voluntary organisations including Scout-Guides, Girl-Guides, Salvation Army, Welfare Boards, Mahila Ashrams & Nari-Niketans etc. should be solicited so that rehabilitation of offenders may be possible within the society itself.