The Phenomenon of Recidivism – Its implications on the Reformative Theory of Punishment in Criminal Jurisprudence

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UNDER THE SUPERVISION OF

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DECLARATION

I do hereby declare that, this work has been originally carried out by me under the guidance of Dr.D.Sukumari Antherjanam, Reader, Government Law College, Ernakulam. This work has not been submitted either in part or in whole, for any degree at any University.

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CERTIFICATE

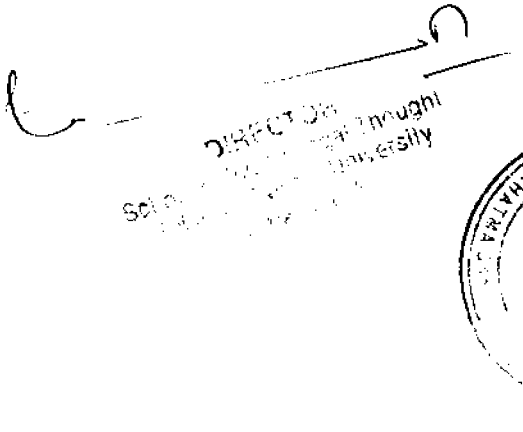
This is to certify that this thesis entitled "The Phenomenon of Recidivism – Its implications on the Reformative Theory of Punishment in Criminal Jurisprudence", submitted by BINDU M. NAMBIAR for the Degree of Doctor of Philosophy is the record of bona fide research carried out under my guidance and supervision in the School of Indian Legal Thought, Mahatma Gandhi University. This thesis or any part thereof has not been submitted elsewhere for any other Degree.

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PREFACE

When we look at the Crime scenario through out the world, it is alarming to see that the majority of crime is done by a minority. These few individuals terrorize the world through their deeds.

The phenomenon of recidivism has become an important aspect in crime prevention as it is on the increase. Curtailing the activities of the recidivists will bring down crime in society. Even though this is a highly relevant topic, not many studies have been conducted on this.

When studying this, I felt that a thorough research into this treasure is absolutely essential not merely to re-orient the criminal administration but also to resurrect this country from its present process of degeneration into a prosperous one, free from crime and terror. The task is Herculean but yet worth undertaking. It is some of these thoughts that propelled me into the present work.

If gratitude is the memory of the heart, then I begin my heart felt thanks by acknowledging the contributions of Dr.V.Kesavankutty, former Principal, Government Law College, Calicut, who guided me to this fascinating area of research who is no more with us.

Years ago, when I had embarked on a quest, a dream towards acquiring a Ph.D Degree I had no clue that the path to realize this dream was excruciatingly painful, full of thorns and an impossibly uphill task. Nevertheless, the dream remained aglow, the light of faith and inspiration burned brightly as ever. This path was made easy by some of the most wonderful people I had the good fortune to meet. Through this acknowledgement I thank all those persons who have given their inspiration, guidance, small support, encouragement and immense co-operation. Without their support, this dream would have remained unfulfilled.

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My data collection would not have been started without the Government orders given by the State of Kerala as well as the persmission given by Mr.Raman, DGP of Prisons, Kerala, and without the co-operation of his successors, the Superintendents, Welfare Officers and other personnel of the Central Prison in Kerala, District Prison, Calicut, Sub Jail Ernkaulam, Thrissur and Women's Prison Neyyanttinkara. I owe my special thanks to them.

I sincerely express my gratitude towards Judicial Officers, Police Officers, Academicians and also acknowledge the willingness of all those who agreed to be interviewed, some times for days together patiently answered my rambling questions and helped me a lot.

In the matter of collection of materials the co-operation extended to me by the staff of the libraries of Government Law College, Ernakulam, Government Law

College, Calicut, School of Indian Legal Thought, M.G.University, National Law School of India University, Banglore, Indian Law Institute, Supreme Court of India, Kerala High Court, School of Legal Studies, CUSAT, Public Library, Ernakulam, deserve special mention and thanks.

I would like to thank my parents, Mr. M.C.Nambiar, Advocate High Court of Kerala, Mrs.Hymavathi Nambiar, who have been my greatest source of inspiration through out my life, for their unrelenting support and encouragement through difficult phases when writing this thesis. I thank my brothers for having being very understanding and considerate.

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My thanks are also due to Mrs.Suja, Mr.Dileep.K.R. and Mr.Dipu.K.R for typing out the draft and fair copies of this thesis.

Expression of gratitude to all those who render their help in intellectual pursuits is a Herculean task, for the helpers community is so wide as not to admit express cataloguing. But it will be an impropriety not to acknowledge them. I am indebted for ever to the world of intelligentsia that has helped me in chiselling out this work. I take this opportunity to acknowledge all those who have helped me in this venture from the bottom of my heart.

With all the wishes and blessing of my elders and teachers I submit this thesis.

■

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CHAPTER I

CHAPTER I

INTRODUCTION

Society at any stage of its growth has never been free from the problem of crime. It is inevitable since; some violation of the prescribed code of conduct is bound to occur. Crime in society is universal and is inseparable[1]

Criminal behaviour is an integral part of the social behaviour and it can be understood only in relation to the personal and social situations. The problems are varied and intense and have their roots in the nature of the social environment, the personality of the offender, the social world in which he lives and the experiences growing out of interaction between the individual and the environmental situation. The more complex and intricate the social organization and its working, the more varied and wide is the manifestation of crime. The rapid transition from tradition to modernity has perhaps increased its intensity and extent.

Crimes are constantly increasing and the most effective means for preventing crime is something that is hotly debated by politicians, legal

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1 "Crime is present in all societies of all types; there is no society that is not confronted with the problem of criminality. Its form changes; the acts thus characterized are not the same everywhere but, everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression. If in proportion as societies pass from the lower to the higher types, the rate of criminality tended to decline, it might be believed that the crime, while still normal is tending to lose this character of normality. (Actually) it has every where increased.....There is ; then, no phenomenon that presents more indisputably all the symptoms of normality, since it appears closely connected with the conditions of all collective life." See Emile Durkheim, *Rules of Sociological Method (1950),* p.65. See also in Martin R Haskell and Lewis Yablonsky, *Criminology : Crime and Criminality* (1978), p.465-466

professionals, criminologists and the general public. Now the question is that of the tendency the released offenders show to lapse into previous condition or pattern of behaviour. Within that frame work, however, is a particular concern how to reduce crime by known offenders? What is the most effective way of stopping an offender from re-offending?

Various terms are used to describe recidivists or repeat offenders including habitual offenders and professional or career criminals. Recidivism can be defined in many ways. Recidivism is the act of a person repeating an undesirable behaviour after he has either experienced negative consequences of that behaviour or has been treated or trained to extinguish that behavior. [2]Webster's Dictionary has defined it as the tendency to relapse into a previous condition or mode of behaviour, especially a relapse into criminal behaviour. [3] Recidivism is derived from the Latin word 'Recidivus'[4] it can be as simple as reoffending at the basic level, that is, a person commits a crime and some time later he or she commits another crime, and it does not matter if he or she is caught, arrested, convicted or imprisoned. Like the Dutch proverb "Once a thief, always a thief." Nevertheless, many studies of recidivism are concerned with measuring the reoffending rates of persons once released into the community. In America according to the Bureau of Justice statistics special report on recidivism, within three years of release 67.5% of released persons were rearrested. [5] Out of 650,000 released from prisons and over seven million from jails annually about two out of three offenders were

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2 J.Simon, "Criminology and the Recidivists" in D. Shichor and D.Sechrest(ed.), *Three Strikes and You are Out: Vengeance as Public Policy*,(1996)p.26

3. *Merriam -Webster's online Dictionary, http://www.m-w.com/dictionary /recidivism.* 28-6-2006. See also," recidivism is a tendency towards chronic criminal behaviour leading to numerous arrests and re-imprisonment". *EncyclopediaBritannicaonline. http://www.britanica.com/eb/article.9062896*, 28-6-2006

4. Recidivius means "falling back", from recidere, "to fall back" from re-'back' +cadre; 'to fall' one who relapses or who is an incorrigible criminal is recidivist. *http://www.dictionary.reference.com/wordoftheday / archive.* 25-10-2003.

5. U.S.Department of Justice, Bureau of Justice Statistics, *Re entry trends in the U.S.Recidivism,http://www.ojp.us.doj.gov/bts/reentry/recidivism.htm*.21.4.2006

rearrested within three years. In the United Kingdom the rate of reoffending is 59%[6] In Sweden statistics indicates that 35% of the prisoners convicted for offences between 1991 and 2000 were reoffended[7]. The rate of reconviction in Canada is 44% for inmates released in 1994-95[8]. In Finland more than half of the released persons during 1993-2000 returned to Prison[9]. Among the inmates released from prisons of New Zealand between 1995 and 1998, 94.7% inmates have prior convictions. 86% were reconvicted within 5 years[10]. In Australia as on 30th June 2005, 60% prisoners in custody had previously served a sentence in an adult prison. 38% of prisoners who were released in 2002-03 returned to prison within two years[11]. In India the rate of recidivism was 8.3% in 1995 and it increased to 10.4% during 2004. In the state of Kerala the rate of recidivism increased from 6.4% in 1995 to 43.2% in 2004[12].

The rates of recidivism reflect the degree to which released inmates have been rehabilitated and the role, correctional programmes play in reintegrating prisoners into society. The high rate of recidivism result in tremendous cost both in terms of public safety and the money spent to arrest, prosecute, and incarcerate the offenders. It also leads to devastating social cost to the communities, victims, families of victims, families of offenders, as well as personal cost to the offenders themselves. In almost all the countries around the world the percentage of recidivists is increasing.

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6 Home Office. Statistical Bullettin 2005-06. *http://www.homeoffice.gov .uk/rds/crime0506.html,*18-05-2006

7 The Swedish National Council for Crime Prevention , *Recidivism, http://www.bra.se/extra/pod/?action-pod_show &id 19 and module _instance=11.8.06*

8 . James Bonta, Tanya Rugge, Mia Dauvergnl, *The reconviction rate of Federal Offenders 2003-02. Public works and government services Canada, http://ww2.psepc_sppcc.gc.ca/publications/corrections-200302_ca5p,* 14-5-2006

9 *The released from prison Finland1993-2001 and the re entered. http://www.rikassevramus.fi/25234.htm.*17-9-2005

10 Ministry of Justice, *New Zealand, Reconviction and Reimprisonment rates for released prisoners, http://www.justice.gov.nz/pubs/reports/2002/reconviction-imprison-rates-chapter-1.html#/*23-5-2005

11 Australian Bureau of Statistics, *Prisoners in Australia,*2005,4517.0.*http://www.abs.gov.au/ausstats/abs* 28-11-2005

12 National Crime Records Bureau, *Crime in India,* 1995-2004

Recidivism may be the result of the concatenation of failures: failures of the individuals to live up to society's expectations or failure of society to provide for the individual, a consequent failure of the individual to stay out of trouble: failure of individual as an offender, to escape arrest and conviction; failures of individual as an inmate of a correctional institution to take advantage of correctional programmes or failure of the institution to provide programmes that rehabilitate; and additional failures by the individual in continuing with a criminal career after release.

Crimes are constantly on the rise and they are bound to rise if recidivism is not prevented. The ever increasing recidivism is undoubtedly a crucial problem for the persons involved in the job of crime prevention, reformation and rehabilitation of offenders, their major part of the work is concentrated on recidivists.

Recidivism is the signpost which indicates the areas in which punishments fail. The problem of recidivism reflects upon the futility of the reformative measures of punishment for certain categories of criminals and at the same time raises a very pertinent question as to why the recidivists repeat their crime even after suffering the rigours of punishment, reformation and rehabilitation ?

SCOPE OF THE STUDY

It is clear that the high rates of recidivism jeopardize public safety and escalate expenditure on law enforcement and criminal justice. The growing prison population and high recidivism rates, result in enormous individual, social and economic costs. No creative research has yet been carried out which throws light on the phenomenon of recidivism, its causes and effect on the social and economic structure of the society.

Today, recidivism poses a serious problem in almost all countries. The rate of crime is increasing. The number of repeaters in the penal

institutions is consequently on the increase. One may be curious to know why this happens. Is there any special territory or state which show great increase or decrease in the rate of recidivism; can any special reason be attributed for that?

Family is the first and the foremost institution which makes him what he is. If there is constant conflict between parents it will create problems in the family. Apart from that, alcoholic members do not care for them and also they will be a nuisance to other members. Large number of family members than what is desirable may result in neglecting any member of the family. If it is a broken family, then the upbringing will not be normal. There may be criminal members in the family which will result in providing temptation to other members also to participate in criminal activities. It is natural that a criminal's family will be labelled as criminal. Will growing up in such families result in creating emotional instability and pervert tendencies in a person? It can induce him to commit crimes. Once he becomes a criminal, it is doubly important that he gets the full support of his family in discarding the criminal way of life; otherwise he will become a recidivist. Can we expect the unconditional support from his family?

As we all know, the environment in which a person lives is very important in moulding his behaviour. Suppose a person lives in an area where there is no good household, crime is prevalent, may be majority of persons who come into contact with him are criminals or who have criminal background, there is a good chance that he may automatically be pushed into a criminal way of life apart from that he will never find anything wrong in leading such a life. These situations will be waiting for him there when he comes back from prison. Isn't it possible that the environment which had made him a criminal will make him a recidivist? Is any particular type of offence the result of a particular environment?

We all love our children. In the normal situation we will not allow them to commit a crime. But there are many children who come from

unfortunate or unhealthy environment committing crimes. To their misfortune they will not have the support of their family in overcoming such situations. So a child coming back from juvenile custody will be at a disadvantage. At a younger age he will not be mature enough to overcome this. He may have to go through a lot of emotional turmoil, coming back to the same situation which had made him a criminal once. Will it be easier for him to fall back to a criminal way of life?

A person with a steady occupation will have a status in the society. If one doesn't have that he will try to do any job he can. Unemployment may force him to take-up unlawful jobs to support his family. Isn't it possible that to feed one's crying hungry child a loving father or mother be pushed to do some illegal jobs? Education is also important in getting a job and also directing his way of thought. So education and recidivism, occupation, family income of the recidivists etc. have to be analysed.

Is there any relationship between age and recidivism? The younger the age the more adventurous they become, more ready to take the risk, doing things without thinking about the consequences. Any inherent psychiatric problems which make them recidivists have to be taken note of.

Our Constitution itself says that no one should be discriminated. Will there be any discrimination in the society which makes him a recidivist or their bias resulting in arrest and prosecution. Religion/caste is to be analysed to find out whether persons belonging to any particular community / religion is involved in committing majority of the crimes.

Where there is crime, there is a cause. Behind all crime there is a fundamental cause as to every individual or a collective cause. Socio economic disadvantage, poor educational attainment, family breakdown, marital problems, high unemployment, low family income, marginalisation in the community, age of the offender, religion, caste, number of prior convictions, convictions as juvenile, all may feature strongly in accounting

for the high state of recidivism. Causes are to be viewed not in isolation, but in related interaction of different factors present in different cases.

The problem of recidivism itself reveals that the problem cannot be controlled by ordinary laws alone. Is there any need for special laws to deal with the recidivists? Considering that the ordinary criminal laws of the country is not enough to control the recidivists as they are immune to the effects of the ordinary penal process, the law makers at its policy making stage have made some special legislative measures. The presence of these persistent offenders is believed to generate amongst the members of the community a sense of fear and insecurity, which has been regarded as justifying the enactment of special measures. If we want to move something from a place we will apply some force, if it cannot be moved we will apply a little more force. Like wise, it is a question whether aggravated punishment is to be imposed upon the recidivists, whether former crime leads to the bad character of the offender etc. is to be looked into while considering punishment.

From ancient times India has been beset with the problems of criminal gang and armed bandits. Over several centuries these criminal gangs have lived mainly on crimes of theft and various offences against property. Thus they have achieved a high level of professional and specialised efficiency (talent) in that form of crime. During the British Rule, they tried to curb this menace by passing and enforcing a special statute, namely the Criminal Tribes Act 1871[13].This act was amended on 1924, and it was incorporated under Section 3[14] that the provisional government had reason to believe that any tribe, gang or class of persons or any part there of was addicted to the systematic commission of non-bailable offences, it was empowered to declare by notification that such tribe, gang or class or

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[13] This Act can be said to be the forerunner of the State Habitual Offenders Laws. See D.C.Panday, *Habitual Offenders and the Law* (1983), p.3-5, see also J.J.Panakkal and S.D.Gokhale (ed.), *Crime and corrections in India* (1989), p.8.

[14] See section 3 of The Criminal Tribes Act, 1924.

part thereof was a criminal tribe for the purpose of that Act. Section 4 to 9 of that Act dealt with the registration of members if any criminal tribe or part of a criminal tribe by the District Magistrate. The District Magistrate had to publish a notice at that place where the registration was to be made and other places as he thought fit calling upon all the members of the criminal tribe to appear at a time and place specified before the person appointed on that behalf and to give that person such information as may be necessary to enable him to make the register. The District Magistrate was given the power of exempting any member from the registration. After the preparation of the register, no person's name could not be added to the register nor any register cancelled except by or under an order in writing by the District Magistrate. Sub section (2) of section 7 expressly provided that before the name of any person was added to the register the magistrate had to give notice to the person accused.

Section 10 empowers the provincial government to issue the following directions namely, that every registered member shall in the prescribed manner (a) report himself at fixed intervals and (b) notify his place of residence and any change or intended change of residence, his movements to the areas specified in the notification. If the provincial government considered it expedient that any criminal tribe or any part or member of such tribe should be restricted in his movements to any specified area, it could declare such restriction. Power to vary the specified area of restriction was given to the government under section12. The provision for the establishment of industrial, agricultural or reformatory settlement and placing of the members of the tribe were also included.

After the independence and the commencement of Constitution and the incorporation of the fundamental rights, emphasizing the dignity of the individual, it was realised that labelling the entire tribe as "criminal" is discriminative and as such cannot be continued in the statute book. In 1949, the central government appointed a committee to study the utility of the existence of this law. Accordingly, the Act was repealed in 1952. The

repeal of this Act made it expedient to think of newer ways in which to tackle the increasing problem of recidivism. The forms and extent of recidivism have been changing their dimensions too.

The first All India Law that dealt with recidivism was the Indian Penal Code (1860). Section 75 operates as to authorise the courts to award a higher punishment for recidivism. The Code of Criminal Procedure contains provisions, both preventive and punitive to deal with habitual offenders. The researcher analysed the working of related sections dealing with recidivists of Criminal Procedure Code 1973, Indian Penal Code1860, Indian Evidence Act 1872 and tested their applicability, their limitations.

Several state legislators have passed special laws[15] for regulating the conduct, restricting the movements; corrective training of habitual offenders. At about the same time, after the repealing of the Criminal Tribes Act 1952, a model bill on the habitual offenders was circulated by the central government. This Model Bill was meant to be a guideline for the States that desired to enact a law on the subject. That is why there are similarities in the various State laws on habitual offenders.

The Laws enacted by the state on habitual offenders follows similar pattern. Mainly each Act can be divided into five parts, (1) the preliminary Part, where definition of "Habitual Offender" is to be found (2) the registration of habitual offenders and the procedures to be followed (3) the

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[15] In Haryana, Restriction of Habitual Offenders Act (Punjab Act 5 of 1918, which continues to be in force in Haryana); b.In Tamil Nadu, Restriction of Habitual Offenders Act, 1948(Madras Act of 1948, which continues in force in Tamil Nadu).;c. In Delhi, (Madras) Restriction of Habitual Offenders Act, 1948 as extended to the Union Territory of Delhi. ; d. In Punjab, Restriction of Habitual Offenders Act (Punjab Act 5 of 1918), supplemented by the Punjab Habitual Offenders (Control and Reform) Act, 1952.; e.In Rajasthan, Habitual Offenders Act, 1953.;f. In Gujarat, Habitual Offenders Act, 1959 (Bombay Act of 1959, which continues to be in force in Gujarat).;g. In Maharashtra, Habitual Offenders Act, 1959 (Bombay Act of 1959 which continues to be in force in Maharashtra).; h. In Kerala Habitual Offenders Act, 1960; i. In Karnataka, Habitual Offenders Act, 1961; j. In Andhra Pradesh, Habitual Offenders Act, 1962.; k. State of Orissa and Goa has passed Habitual Offenders Act in 1952 and 1976 respectively but not yet put into force.

restriction to be imposed on their movements (4) the provisions for corrective training of the habitual offenders (5) penalties for non compliance with the requirements imposed under the Act on a habitual Offender.

The State of Kerala has passed the Habitual Offenders Act in 1960. Here the pertinent question is whether the guidelines provided by this Act dealing with the habitual offenders are adhered to when it is put into practice. After the passing of this Act, the rate of recidivism is still on the rise and it has reached 43.2% in 2004. Is it because of any defect in the law or due to any failure on the part of the enforcing agency?

Lack of punishment creates a society which is incapable of maintaining civil order and citizen's safety. So punishments must be imposed on law violators, but what type of punishment? Should the same type of punishments be given to the same offence? If 'A' 'B' and 'C' have committed theft, the maximum punishment for theft is three years or fine or both according to section 379 of I.P.C. They might have come from different backgrounds; the circumstances might have been different and committed thefts in different ways. In such a case can the same punishment be given to all? What are the considerations that can be taken into account while imposing punishments?

All of us know that if a crime has been committed there will be unrest in the society. To alleviate that some pain should be inflicted on the offender, should it be the criteria for punishment? By inflicting this punishment, should it act as a model for potential offenders, or the offender should be shut in prisons or more importance be given to reforming the offenders. In short the question is whether the punishment inflicted should be retributive, deterrent, preventive, reformative or a combination of all these.

All of these are right in the case of first offenders. Is it enough in the case of recidivists, as they have already gone through all these processes

and are glaring examples of the failures of sentencing, correctional and rehabilitatory machinery? Should there be a special sentencing policy in the case of recidivists? Now how are these recidivists being looked upon by the courts? Whether a longer sentence is imposed for public safety or a shorter sentence with the assumption that incarceration for a longer period will reduce recidivism? Does incarceration reduce recidivism? Does the length of sentence effect recidivism? Does early release affect recidivism?

It is generally believed that lack of uniformity in the awarding of sentence is one of the major problems in the sentencing. Will this result in discontentment among the prisoners and help in creating recidivists? Is individualization of sentencing advisable for recidivists?

While studying the recidivists one will be forced to think about the alternatives to imprisonment, as the recidivists will be made only if a person is incarcerated. If he has been given some other punishment there is a possibility of curing a person from continuing the criminal way of life. As there is a saying that prevention is better than cure, likewise if producing ex-prisoners can be prevented by administering punishment other than incarceration, isn't it better to take that option instead of producing recidivists. In this study the researcher has examined various types of alternatives to imprisonment to find out if any of these alternatives has been used by the sentencing agency. If so what is the after effect of that?

After the sentence of imprisonment has been pronounced, the offenders are taken to prison. The aim of imprisonment has undergone drastic change from the simple purpose of stoppage by preventing him from committing another crime to the ultimate concept of reformation of the offenders. The prison system has undergone many changes through centuries in different countries. In India also there are many changes.

For the proper administration of correctional techniques on the prisoners, the occupancy rate in the prison has to be looked into. If the jails are overcrowded there will not be adequate infrastructure facilities, sufficient number of prison staff to provide essential services needed for the prisoners. It will be difficult to reform them in such situations. Is our prison filled with convicts alone or with any other type of prisoners? Whether the presence of under trial prisoners disrupts the prison atmosphere; are they responsible for the increasing rate of recidivism? For the proper management of the prison there must be adequate number of staff especially those who come into close contact with the prisoners. And also the basic infrastructure

On entering the prison the prisoners are classified. On what rationale, this classification is made and what is the type of classification made, whether these methods are being adhered to in prisons and if so to what extent, are pertinent questions. To change a person from a criminal to a law abiding citizen need a lot of corrective measures. The study examined the types of corrective measures administered to the prisoners. A look at the recidivism data shows that majority of the recidivists have not completed their 10^{th} standard. As the education level of the offenders is important while discussing recidivism, the education imparted to the prisoners are important especially the vocational education. The religious education administered to them , prison labour allotted to them, wages given, prison discipline administered, contact allowed with family and friends etc., are some of the modes by which correction can be administered to the prisoners by which their reformation can be made possible. The study examined the scope and extent of the existing corrective machinery. The aim of the corrective machinery is to keep the society safe, to inflict some pain on the offenders for committing that crime and mostly to convert the offender into a law abiding citizen.

After completing the prison term the prisoners have to come out of the prison and live among the people. What are the measures to be taken

to smoothen their transition successfully? Something has to be provided by way of aftercare and rehabilitation of the offenders. What are the violable solutions?

When a person comes out of a dark room into sunlight he has to stand a moment and take stock of his surroundings and also after a serious illness a person has to have a period of convalescence. Like wise, in the case of a prisoner coming out of the artificial and restrictive environment of prison, to settle back into society, requires a transitional period of aftercare. One has to examine whether any type of aftercare has been administered to the ex-prisoners. Does any financial assistance, job placement, place of residence is provided for recidivists? Has any rehabilitative assistance provided by governmental or non-governmental agencies? The attitude of society is a strong indicator in deciding whether or not to accept an ex-prisoner into its fold. The role played by the society in making him a good or bad citizen is another aspect looked into by the researcher.

Methodology

The field of study has been restricted to the state of Kerala for empirical study. To find the recidivist ratio, all the states in India has been taken into consideration. With this objective in mind the researcher conducted the survey of all the central prisons in Kerala, District Prison Kozhikode, Sub Jail, Ernakulam, women's Prison, Neyyattinkara. Further relevant information was collected from the Police Officers; Prison Officers, Judges, Lawyers, Academicians, Social workers, prisoners and ex-prisoners.

In order to obtain first hand information six set of questionnaires and interview schedules were prepared. The researcher interviewed 150 prisoners out of them 105 were recidivists; others included Prison Officers, Police Officers, Lawyers, Judges, Academicians, Social Workers and Probation Officers.

The questionnaire / interview schedule were not pre-coded. However, some of the questions in each questionnaire/interview schedule were pre-coded. After completing the field survey, the responses were coded. Respondents were selected on a random basis. The sampling rate differed from each unit, as some of the units have relatively small number of members.

The Prison Officers in Central Jail Thiruvanthapuram, Kannur, Viyyur, Womens Prison, Neyyattinkara, District Prison Kozhikode and Sub Jail Ernakulam were interviewed. They gave first hand information about the problems of the prisoners. Prisoners were selected at random. In order to find out whether there is any difference in problems faced by the recidivists, the researcher also collected information from the first offenders. Women prisoners were also interviewed in this fashion. Women offenders also may have their own different set of reasons for becoming recidivists.

The questions in the questionnaire were explained to them individually and answers given by them were recorded by the investigator. Firstly, the prisoners were afraid to talk as they feared that if anything they said about the prison authorities was made known to them they would have to face the repercussions. The researcher gave the assurance that the responses for the questionnaire would be kept anonymous. .

The interview of the ex-prisoners was comparatively a difficult task for the researcher. To collect their addresses and to get their whereabouts the researcher had to contact different police officers and social workers. The valuable information received from Judges, Lawyers, Police Officers, Academicians, Social Workers, Probation Officers etc. helped the researcher to point out many of the problems faced by the recidivists and to make suggestions/solution to reduce recidivism.

Apart from the data collected by questionnaire and schedule, statistical data was collected from Crime in India during the periods 1995 to 2004; Prison Statistics India 1997 to 2003; administrative reports of Jail Department State of Kerala 1996 to 2002. Besides, the researcher collected online data from the official web sites of the many countries about their recidivism statistics, laws, correctional institutions, aftercare and rehabilitative efforts, etc. The study included the data collected till the end of December 2005.

The present study is divided into nine chapters. After the introductory chapter the analysis of the statistical data concerning the recidivists is attempted in chapter II.

Chapter III examines the socio economic background of the prisoners in order to find out the causative factors that made them criminals in the first instance as well as made them recidivists later.

Chapter IV mainly revolves round the evolution and present law relating to recidivism in many countries, analysis of the central acts that especially deal with the habitual offenders, the Kerala Habitual Offenders Act, 1960 and the provisions dealing with the recidivists under the Police Act.

Sentencing process is examined in Chapter V. Here different theories regarding punishment has been gone through in order to find out the best possible method by which these offenders can be treated to prevent recidivism and how this challenge has been undertaken by the judiciary.

Chapter VI gives different alternatives to imprisonment; some of the alternatives that exist already in the system, to what extent they have been used as a substitute or as a supplement to imprisonment, etc.

Chapter VII seeks to explore the correctional institutions. The origin and development of the correctional institutions, the things that happen inside the institution, the extent to which the aim and objectives of the prison systems followed, how far does it increase or decrease recidivism, etc., are keenly observed.

In the chapter VIII the study covers the aftercare and the rehabilitation of the offenders to find out whether any of these are provided to the offenders coming out of the prison at any time.

Chapter IX contains the conclusion of the study and the suggestions for the reduction or prevention of recidivism, thus reducing the crime rate, number of prisoners and recidivists there by protecting the society and saving the exchequer.

■

CHAPTER II

CHAPTER II

Statistical analysis of rate of recidivism in major countries with particular reference to Kerala

Reconviction rates are a key measure of the effectiveness of different sentences and treatment programmes in deterring, reforming or rehabilitating offenders.

United Kingdom

In the United Kingdom, the reconviction of offenders sentenced or released from prison in 1994 showed that 56% of all sentenced prisoners discharged in 1994 were reconvicted for an offence within two years[1]. Reconviction rates vary considerably by type of original offence. Prisoners discharged in 1994 from sentences for burglary or theft is 74%. For those who had served sentences for sexual offences the rate of reconviction within two years were generally lowest that is 16%. Offenders who had been convicted firstly for theft, was likely to be reconvicted for the same offence. Reconviction rates for young offenders are higher, 75% male and 63% female. In the case of aged offenders it is 50% for male and 43% for female. 9% of the prisoners released in 1994 were reconvicted after three months, 39% after one year and 56% after two years. Longer term follow up was undertaken for those discharged in 1987. 70% were reconvicted after five years and 73% after seven. The levelling-off in reconviction rates as follow up period lengthened indicates that the longer these ex-prisoners remained without a reconviction, the lower the likelihood of becoming reconvicted in each subsequent period.

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[1] Chris Kershaw, *Reconviction of Offenders sentenced or released from prison in 1994*, Home Office Research and Statistical Department Research Findings No.90. (1999) *http://www.homoffice.gov.uk/rds/pdff,/r90.pdf*,12-8-05.

Reconviction rates were generally lower for prisoners discharged from longer sentences, this is partly a reflection of differences in prisoner's characteristics and partly due to the intensity in the rehabilitative measures he received. Reconviction rates were higher for those with more previous convictions. Of those with no previous conviction who were discharged from custody in 1994, 18% were reconvicted, rising to 59% for those with three to six previous convictions and 74% for those with 11 or more.

Two year reconviction rates for persons discharged from prison or commencing community penalties in the first quarter of 1997 is 56.8%[2]. For the first quarter of the year 1998 it is 56.9% and the first quarter of 1999 is 57.2%. The actual reoffending rate for 2000 is 57.6%.

This study analyses the two year reoffending rates of adults released from prison in the first quarter of 2002[3] and found it to be 58.5%. Rate of reoffending is rising steeply. By six month mark 38% had reoffended. By the one year mark 49% had reoffended. Younger offenders are more likely to reoffend. Offenders below 20 years have 68% reconviction rate while offenders above 50 years have 22%. Reoffending vary considerably between the different types of offences. More than 75% of the recidivists have committed offences against property. Majority of those sentenced for theft was male (77%) and the average age was 27. On average it had been eight years from their first conviction. Most offenders (91%) had previous conviction (ten on average). Sexual offence has about 17% reoffending rate. The reoffending rate increases rapidly as the number of previous offences and the number of previous sentencing occasions increase. Offenders having no previous offending history have only about 12% reoffending rate and those have more than twelve offences are more than 80%. Males reoffend more than females 59.6% for males and 51% for females. 78.4%

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2 Julian Prime, Home office online report 16/02. *Progress made against Home office public service agreement target, http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr.1602. pdf,* 17-2-2006.

3 Lucy Cuppleditch, Warren Evans, *Re-offending of adults: results from the 2002 cohort,* Home office statistical Bulletin 25/05 (December 2005), *http://www. homeoffice.gov.uk/rds/pdfs05/hosb2505 pdf.* 6-2-2006.

of males were between 18 and 20 while females were70.1%. 51.4% of males were above 35 and 43.2% of females.

The reconviction study[4] of 856 final warnings by Jeane Hine and Anne Celinick reveals that 30% reoffend. 42% has previous conviction history. Males commit more crime than females. Age has been shown to be related to the likelihood of offending and reoffending particularly the age at first offence[5]. For offenders having no previous convictions at the time of their first court appearance only 15% had a subsequent conviction whereas for those with one previous conviction, 47% had a further court appearance. The largest category for reoffending was for property offence[6].

In this study 11,056 offenders were anlysed from July 2000 Cohort[7]. The July 2000 reconviction rates for first time offenders were 19.1%, repeat offenders were 44.2%. Rate of recidivism increased with number of previous crime. In the year 2004, the rate of reoffending was 59%[8] of those prisoners released in 1997[9], 58% were convicted of another crime within two years. 36% were back inside on another prison sentence. The system struggles particularly to reform younger offenders. 18-20 years old male prisoners were reconvicted at a rate of 72%

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4 Jeane Hine , Anne Celnick,*(et.al). One year reconviction study of final warnings* (2001), University of Sheffield. *http://www.homeoffice.gov.uk/rds/pdfs/reconvicts study warn.pdf.22-7-2005*

5 Julian Prime, Steve White Sarah Liriano and Kinnari Patel, *Criminal Careers of those Born between 1953 and 1978,* (2001) Home office statistical bulletin 4/01. London HMSO. *http://www.homeoffice.gov.uk/rds.*28-5-2005

6 Sumon Hold Way; Norman Davidson, Jim Dignan, Richard Hammersley, Jean Hine and Peter Marsh *New Strategies to Address Youth Offending: The National Evaluation of the piolet youth offending teams.* (2001), RDS Occasional Paper No.69, London HMSO. *http://www.homeoffice.gov.uk/rds* 12-3-2005

7 Debbie Jennings, one year Juvenile reconviction rates July 2000 Cohort, Home office Research Development and Statistics Directorate (July 2002), *http://www.homeoffice.gov.uk/rds.*28-5-2005

8 *http://www.homeoffice.gov.uk/rds/crime 0506.html.* 18-5-2006.

9 Report by the Social Exclusion Unit, *Reducing reoffending by ex-prisoners* (July 2002) office of the Deputy Prime Minister, England. *http:www.socialexclusionunit.gov.uk/download..doc. asp?id=64,* 9-8-2005.

over the same period. 47% received another prison sentence. 60 to 70% of prisoners were using drug before imprisonment. Only 50% had reading skills.

Nearly 6 out of every 10 prisoners are convicted for one or more offences within two years of being released[10]. 58% of prisoners are reconvicted within two years of being released, while for those serving sentences for burglary and theft the figures are higher, 78 and 73% respectively.

United States

In United States 650,000 are released from prisons and over seven million from jails annually about 2 out of 3 offenders are re-arrested within three years[11]. 108,580 prisoners were released from 11 States in 1983 and 62.5% were re-arrested within three years. 272,111 prisoners were released from prison in 15 States in 1994 and 67.5% of prisoners were re-arrested within three years[12]. The re-arrest rate for property offenders, drug offenders and public order offenders increased significantly from 1983 to 1994 - from 68.1% to 73.8% for property offenders, from 50.4% to 66.7% for drug offender, from 54.6% to 62.2% for public order offenders. The re-arrest rate for violent offenders remained relatively stable (59.6% in 1983 compared to 61.7% in 1994).

Data from the Bureau of Justice Statistics Special Report, on Recidivism[13] indicates that in January 2001, nearly one out of every ten inmates had a prior felony conviction within the first six months of their release. 29.9% of the 272,111 offenders were re-arrested, within the first year the cumulative total grew to 44.1% and within the first two years 59.2%, within three years of release, 67.5% of released prisoners were re-arrested, 46.9% were reconvicted for new crimes,

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[10] Select Committee on Public Accounts 53 report, *Reducing prisoner reoffending*, HM Prison Service National Audit Office. *http://www.nao.org.uk/publications/nao. Reports/01-02/0102548.pdf*,7-4-2004.

[11] International Association of Rentry, *http://www.reentrypolicy.org*.15-4-2006.

[12] U.S.Department of Justice, Bureau of Justice Statistics, Reentry *trends in the U.S: Recidivism, http://www.ojp.usdoj.gov/bjs/reentry/recidivism.htm.* 21-4-2006.

[13] Bureau of Justice Statistics Special Report, *Recidivism of Prisoners released in 1994 June 2002, http://ww.ojp.usdoj.gov. bjs/pub/pdf/rpr94.pdf.* 21-4-2006.

25.4% were re-sentenced for new crimes and 51.8% were back in prison, serving time for a new prison sentence or for a technical violation of their release, like failing a drug test, missing an appointment with their parole officer or being arrested for a new crime.

Released prisoners with the highest re-arrest rates were against property[14] and the lowest were against person[15]. The 272,111 offenders discharged in 1994 had accumulated 4.1 million arrest charges before their most recent imprisonment and another 7, 440, 00 charges within three years of release. A small fraction of offenders were responsible for a large number of 4.9 million crimes. An estimated 6.4% of the prisoners were each charged with 45 or more offences before and after their release in 1994. These high rates of offenders accounted for nearly 14% of all arrest charges. Offenders with 25 or more charges represented nearly 24% of all offenders but about 52% of all charges. By contrast, released prisoners with fewer than five arrest charges represented nearly 14% of all prisoners but accounted for about 6.4% of the 4.9 million arrest charges. What these high rates of offenders have in common is that they were all in prison for what were generally thought of as crimes for money.

Men were more likely than women to be rearrested (68.4% versus 57.6%) reconvicted (47.6% versus 39.9%) re-sentenced to prison for a new crime (26.2% versus 17.3%) returned to prison with or without a new prison sentence (53.0% versus 39.4%).

The younger the prisoner when released, the higher the rate of recidivism. For over 80% of those under age 18 were rearrested, compared to 45.3% of those 45 or older.

The number of times a prisoner has been arrested in the past is a good predictor of whether that prisoner will continue to commit crimes after being

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[14] Robbers (70.2%) burglars (74.0%), larcenists (74.6%), motor vehicle thieves (78.8%), possessing or selling stolen property (77.4%).

[15] Homicide (40.7/%) rape 46%) other sexual assault (41.4%). Over a third of the released prisoners had been in prison for a property offence (73.8%).

released. Prisoners with just one prior arrest have a 40.6% re-arrest rate within three years. With two priors the percentage rearrested is 47.5% with three it goes up to 55.2% with additional priors, it continues to rise reaching 82.1% among released prisoners with more than 15 prior arrests in their criminal history record. Here the pattern is clear, the longer the prior record, the greater the likelihood that the recidivating prisoner will commit another crime soon after release.

For 56% of the 272,111, the prison sentence they were serving when released in 1994 was their first ever prison sentence. Of these first times, 63.8% were rearrested following their release. Among those who had been in prison at least once before, a higher percentage, 73.5% were rearrested.

75% of America's State prison inmates are high school drop outs, 59% of America's Federal Prison inmates did not complete high school[16]. High school drop outs are 3.5 times more likely than high school graduates to be arrested in their life time. A 1% increase in high school graduation rates would save approximately 1.4 billion dollars in incarceration costs, or about $2100 per each male high school graduate. A one year increase in average education levels would reduce arrest rates by 11%[17].

In 1997, the Correctional Education Association conducted "The Three State Recidivism Study" for the United States Department of Education. Over 3600 persons released more than three years earlier were involved in a longitudinal study in Maryland, Minnesota and Ohio. Using education participation as the major variable, the study shows that "simply attending school behind bars reduces the likelihood of re-incarceration by 29%. Translated into

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[16] National Center for Education Statistics (2002) *http://nccs.ed.gov/pubsearch/ pubsnfo.asp? pubid = 2002 114.* 17-8-2005.

[17] National Dropout Prevention Centre/Network United State, Quick Facts. *http://www.dropoutprevention.org/stats/quick_facts/econ_impact.htm.* 18-7-2005.

savings, every dollar spent on education returned more than two dollars to the citizens in reduced prison costs[18].

Study by Ulmer involved a stratified random sample of 528 offenders in Indiana[19]. All offenders were released between 1991 and 1995 and were tracked for re-arrests and probation revocations until August 1997. The strongest predictor of re-arrest was prior criminal record. This effect was cumulative, each increase in the prior record scale was associated with a 32% increase in the odds of re-arrest other predictors of re-arrest (in descending order). (1) Gender: Males were more likely to re-offend, (2) type of offence: those convicted of property crimes had odds of re-arrest that were two and a half times greater than other offences and had a 74% probability of re-arrest. Education was a determining factor and was found to be associated with moderately decreased odds of re-arrest for each year achieved. Also found that intermediate sanctions of any type may potentially reduce recidivism but only to the extent that they include a rehabilitative emphasis.

In the State of Minnesota (U.S.A.) [20] the research conducted by the office of the Legislative Auditor tracked 1879 offenders released from prison in 1992 and 6,791 offenders sentenced to probation in 1992. For each offender they examined recidivism for three years from a prisoner's date of release or from a probationer's date of sentencing. Taking the offender's prior criminal history as an indicator of likelihood of re-offending on average prisoners have longer prior criminal histories than probationers. 59% of offenders were rearrested, 45% were reconvicted and 28% were imprisoned for a new offence and an additional 12% for technical violations of release conditions.

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[18] Steurer, Smith and Tracy, *The Three State Recidivism Study*, U.S.Department of Education (1997),*http://www.bard.edu/bpi/images/crime_report.pdf.* 9-5-2004.

[19] J.T.Ulmer, "Intermediate Sanctions: a Comparative analysis of the probability and severity of recidivism". Vol.71 No.2, *Sociological Inquiry,* p.164-93.

[20] Office of the Legislative Auditor 1997. *Recidivism of Adult Felons: a program of adult felons.* Office of the Legislative Auditor State of Minnesota. *http://www.cga.ct.gov/priarchieves/2001 rireport append. htm* 5-5-2005.

42% of probationers were rearrested, 28% were reconvicted and 11% were imprisoned for new offences. Prisoners and probationers with similar prior criminal records had similar rates of recidivism. Property offenders were more likely to be rearrested than violent offenders.

The study conducted on 1984 by Klein and Caggiano[21] on the offenders who had been released from prison for at least 12 months. More than 50% of inmates that were followed for at least 36 months were arrested after their release from prison. The study found that certain variables correlated with recidivism: extent of prior record, age at first arrest, first commitment and release from prison, history of substance abuse, education and extent of employment.

The study[22] evaluates the deterrent effect of imprisonment on felons convicted in 1993 in Missouri. Recidivism rates for offenders placed on probation and those sentenced to prison are compared in terms of their recidivism rates. Offenders who were sentenced to prison had higher rates of recidivism and recidivate more quickly than do offenders placed on probation. Imprisonment had a more pronounced criminogenic effect on drug offenders than on other types of offences.

During the calendar year 2004 Washington Courts[23] entered 28,076 adult felony sentences. 61.5% of the sentences involved offenders who had a history of one or more prior offences. The overall rate of recidivism for men was 64.6% compared to 50.5% among women. The average age of repeat offenders is 31.7. Women tended to become repeat offenders at a later age averaging 32.7 compared to men at 31.5 years old. Offenders between the

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21 S.Klein & M.Caggiano, *The Prevalence, Predictability and Policy Implications of Recidivism* (1986) R and Corporation, R.3413-BJS.

22 C.Spoh & D.Holleran, "The effect of imprisonment on recidivism rates of felony offenders: a focus on drug offenders" (2002), Vol.40 n.2, *Criminology*, p.329-357.

23 Sentencing Guidelines Commission, State of Washington, *Recidivism of Adult Felons, 2004.* (2005) *http://www.sgc.wa.gov.pubs/Recidivism/Adbult_Recidivism_ cy04, pdf.* 28-12-2005.

ages of 35 and 44 years old received 26% of sentence and had the highest percent of recidivism at 66%. They were followed closely by offenders between 25 and 34 years old who received 31% of sentences and experienced a recidivism rate of 65.6%. The highest recidivism rate is for property offence and drug crimes. Property offences were the most likely to have been committed by repeat offenders among men with recidivism at 72%. 55% of women recidivists were convicted of other felonies.

Table 1[24]

Recidivism rate for the period 2000 -2004

Year	First Offence	Sentence with prior offence	Total Sentence	percentage of Recidivism
2000	10,274	14,817	25,091	59.1%
2001	10,776	15,645	26,421	59.2%
2002	11,548	16,663	28,211	59.1%
2003	10,874	16,548	27,422	60.3%
2004	10,807	17,268	28,075	61.5%

During the period 2000 to 2004, the sentences given to recidivists increased by 2.4% (Table 1). Although the percentage of recidivism appears to be rising slightly there is no clear trend. The overall average of recidivism for these five years was 59.4%.

The study is made on prisoners who were released from July 1995 through June 2001 in Florida[25], who committed a new offence (re-offence rate) or returned to prison for a new offence (re-imprisonment rate) within the specified time following their release. Data was collected on 106, 167 prison releases during the six year study period. After 12 months of follow up period

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[24] *Ibid.*

[25] Florida Department of Corrections, *Recidivism Report: Inmates released from Florida Prisons July 1995 to June 2001*, (July 2003) Bureau of Research and data analysis, *http://www.dc.state.fl.us/pub/recidivism/2003/index.html.* 8-5-2005.

21.5% males and 15.2% females were committed for re-offence and 6.4% males and 3% female for re-imprisonment. After sixty months, 48.7% male and 42.8% female for re-offence and 38.1% male and 24.6% female for re-imprisonment. Most influential factors on recidivism are prior recidivism, age at release education level, property and drug offences, ethnicity, gender.

Females re-offend less than males. Males under 18 years have re-offence rate of 48% after 18 months and 73.4% after 60 months. Age between 18 and 24 have 32.5% and 54.3% after 18 and 60 months respectively for persons between 50 and 60 is 12.3% and 21.3% for above 60 it is 4.9% and 10%.

Recidivism rate decreases with the time spent in prison for offenders released after 1-12 months the rate of re-offence after 60 months is 50.3%, for 13-24 months it is 51.1%, for 25-36 it is 49.7%, 37-48 it is 47.6%, 49-60 it is 44.1% and 61plus it is 36.5%.

Recidivism rate increases with each prior recidivism event. Those who had no prior recidivism event the rate of re-offence is 41% after 60 months for one it is 49.8%, for 2 it is 57.8% for 3 it is 64.2% for 4 it is 70.1% for 5 plus it is 72.8%.

For offence against person the rate of re-offence after 60 months is 29.7% for property and for drug offence it is 58.3%.

The review committee[26] analysed the re-arrest, reconviction and sentencing data for convicted felons discharged from prison or sentenced to probation during 1997. The committee tracked their criminal activity till the end of December 2000. Within three years of discharge from prison 70% felony inmates were rearrested at least once for a new crime. Almost half (46%) of the discharged inmates were convicted of a new crime. About one

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[26] The Connecticut General Assembly Legislative Program Review and Investigations Committee, *Recidivism in Connecticut*, (2001). *http://www.cga.ct.gov/pri/archives/ 2001 ricre portchap4.htm* 8-5-2005.

quarter (22%) of the inmate group was reincarcerated and an additional third (18%) sentenced to another alternative sanction as a result of a new crime. Within three years of being sentenced to probation for a felony conviction, more than half (58%) of probationers were rearrested at least once for a new crime. One third of the probationers were reconvicted of a new crime. Inmates who were in prison for a property offence (74%) or a violation of probation (75%) were the most likely to be rearrested. These offenders also had the highest reconviction and reincarceration rates. More than half were reconvicted for a new crime, and as a result almost 30% were sent back to prison. Of the inmates who were rearrested during the three year period 78% were rearrested more than once. Inmates who committed certain violent crimes like homicide, sexual assault had the lowest re-arrest and reconviction rates. As a group these inmates had less than 30% reconviction rate. Only property and drug offenders showed likelihood to be rearrested for new property crimes they are more likely to specialize, while violent offenders were less likely to recommit another violent crime.

About 80% of inmates between the ages of 16 and 21 were rearrested, more than half were reconvicted, and almost 30% reincarcerated for new crime. Inmates over 40 were less likely to recidivate only less than half were rearrested. Almost 40% of inmates between 16 and 21 years were rearrested five or more times in three years. Male inmates had a higher re-arrest rate than females. Measuring recidivism by the racial groups, offenders in a minority group had higher rates of re-arrest, reconviction and reincarceration. When race and age at discharge distributions were analysed together, an inmate's age and race were strong predictors of recidivism. Lower the educational grade level the higher the overall rate of re-arrest and reconviction. Among the illiterates, 81% re-arrest, 60% reconvict, 31% re-imprisoned. Those who have gone to college have 53% re-arrest, 36% reconvict and 14% re-imprisoned. High School have 66%, 45% and 21% eighth grade have 73%, 49% and 25% re-arrest, reconvict and re-imprisoned recidivism rate respectively. Serious mental illness and substance abuse

problem were also strong predictors of recidivism. Community supervision lowered the rate of re-arrest among inmates.

The study conducted in Texas[27] by the Criminal Justice Data Analysis Team within the Legislative Budget Board on offenders released from prison during fiscal year 2000 and 2001. They were monitored to determine the percent that were reincarcerated within three years of release. Among the 2000 cohort the recidivism rate is 31.2% among 2001 cohort the recidivism rate is 28.3%. In both cohorts male (above 92%) shows most recidivistic tendencies. Females showed only below 10%. The younger the age of release the more chances of having high recidivism rate. Property and drug offenders made up the majority of offenders returning to prison within three years of release for both cohorts.

In this study[28] the data was composed of stratified random sample of 6,062 U.S. citizens who were sentenced under the federal sentencing guidelines in the fiscal year 1992. Recidivism rate increased with each offence. Offenders who had more past crime history are more likely to re-offend within two years of release from prison. As time passes, one or another offender recidivates. The longer the time at risk, the greater the total number of offenders recidivating. Over all, women recidivate at a lower rate than men. Recidivism rates decline relatively consistently as age increases. Generally, the younger the offender, the more likely the chances of the offender recidivating. Among the offenders under age of 21 the recidivism rate is 35.5%, while offenders over age 50 have a recidivism rate of 9.5%; race and ethnicity of the offender is associated with recidivism rates. Those with stable employment in the year prior to their instant offence are less likely to recidivate (19.6%) than are those who are unemployed (32.4%). Offenders

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[27] Legislative Budget Board, *State-wide criminal justice recidivism and revocation rates*, State of Texas, U.S.A. (January 2005), *http://www.lbb.tate.tx.us/public safety crime justice/3 reports/recidivism_report_2005.pdf*. 12-11-2005.

[28] United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (May 2004), *http://www.ussc. Gov/publicat/recivism_General.pdf*. 18-11-2005.

with less than a high school education are most likely to recidivate (31.4%) than offenders with college degrees (8.8%).

Offenders using illicit drugs within one year prior to their instant offence have a higher recidivism rate (31.0%) than those not using illicit drugs (17.4%). Offenders having short term sentence have high rate of recidivism.

Sweden

In Sweden the Statistics[29] shows that an average of 22% of those convicted for offences between 1991 and 2000 re-offended within a year of the initial conviction.

Table 2[30]

Persons found guilty of criminal offences 1991 to 2000

Year	Persons found guilty of offences net	Percentage of release into crime within		Persons found guilty of offences gross	Percentage of release into crime within	
		1 year	3 year		1 year	3 year
1991	113,017	22	34	134,143	28	41
1992	112,400	2	34	133,594	28	40
1993	112,455	21	32	113,019	27	39
1994	103,353	20	32	122,247	27	39
1995	92,404	22	35	111,897	29	42
1996	79,981	22	36	95,634	29	43
1997	82,219	23	36	99,083	31	44
1998	81,502	23	35	98,315	30	43
1999	76,732	23	36	91,643	30	43
2000	75,473	24	37	93,837	32	46

[29] The Swedish National Council for Crime Prevention, *Recidivism, http://www.bra.se/extra/pod/> action=pod_show.id.19& module_instance=11.* (Last updated 21-9-2006).8-11-2006

[30] *Ibid.*

The proportion of re-offending within a three year follow up period was approximately one-third (an average of 35%). Here mainly half of the recidivists have committed their crime within one year. The recidivism rate is higher among men convicted of offences than it is among convicted women. Of all the women convicted in 2000, only 16% re-offended within a year by comparison with 26% of men. The proportion of women that re-offend within three years lies at 26% whereas the corresponding proportion is 40% among the men. Recidivism rate is higher for young offenders. After the age of 50 the recidivism risk declines with increasing age. The rate of recidivism increases with levels of prior involvement in crime among persons convicted of offences. 19% of first time offenders re-offend within a period of three years, among convicted persons with one or two prior convictions amount to 36% where as 89% of those with more than ten prior convictions over the previous ten years re-offended.

Finland

In Finland[31] the total data collected from the central prisoner register 1993-2002 include 30,000 separate persons and their 1, 00,000 prison terms. The follow up time taken is different for prisoners released in different years. The follow up time is from the release to the starting of a new prison sentence. The longest possible follow-up time (max) is 6-9 years and the shortest at least one year. The total recidivism rate for the maximum follow up period is 62.2%. Of the first timers released 40% started to serve a new unconditional prison sentence during five years after release. After a maximum period 44.9% new offenders re-offend. Two time offenders have 59.1% recidivism. Those persons having 3-9 previous offences have 70.5% recidivism rate and those having more than 10 previous offences have 79.1%.

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[31] The released from prison in Finland 1993-2001 and the re-entered. *http://www.riskossevaraamus.fi/25234.htm.* 17-9-2005

Table 3[32]

Recidivists (%) during follow-up times of different lengths

Year	Age	Time	Gender	N	Recidivists (%) during follow-up times of different lengths					
					1	2	3	4	5	Max
-	-	-	-	40096	26.5	44.7	52.8	56.7	58.8	62.2
-	-	-	Male	38586	26.8	45.1	53.3	57.2	59.4	62.8
-	-	-	Female	1510	7.5	32.1	39.6	42.6	44.9	48.4
-	-	1	-	11385	17.1	29.7	36.0	39.4	41.5	44.9
-	-	2	-	6719	24.3	41.7	49.4	53.0	55.4	59.1
-	-	3-9	-	17878	30.4	51.5	60.8	65.0	67.2	70.5
-	-	10-	-	4114	38.9	61.6	70.4	74.3	76.3	79.1
-	15<18	-	-	125	68.8	90.4	92.0	93.6	95.2	96.8
-	18<21	-	-	2080	50.9	72.3	78.7	81.8	83.2	84.6
-	21<30	-	-	13307	31.6	52.1	60.7	64.5	66.6	69.9
-	30<40	-	-	12868	24.4	42.9	5.7	55.6	58.0	61.6
-	40<50	-	-	8658	19.5	35.0	42.2	46.1	48.5	52.2
-	50<60	-	-	2563	13.5	24.8	31.8	35.7	37.5	40.2
-	60	-	-	495	2.4	21.8	25.4	28.0	29.8	31.6
1993	-	-	-	6042	23.1	41.3	50.8	54.6	57.0	64.0
1994	-	-	-	5557	22.8	40.2	48.2	52.9	56.2	63.6
1995	-	-	-	4686	25.2	41.7	49.6	54.2	57.3	63.0
1996	-	-	-	4413	24.2	42.1	51.2	56.5	60.,1	64.5
1997	-	-	-	3843	26.2	44.4	53.8	59.1	62.3	64.6
1998	-	-	-	3884	27.8	47.2	57.0	62.9	65.5	-
1999	-	-	-	3829	29.5	49.6	59.1	63.4	-	-
2000	-	-	-	3881	32.8	51.8	60.0	-	-	-
2001	-	-	-	3961	30.4	48.2	-	-	-	-

Young offenders return to the prison more often. 96.8% of the prisoners in the age group of 15 to 18 re-offend, those in the 18 to 21 group have 84.6% recidivism at the same time for those between 50 to 60 have 40.2% and those above 60 have 31.6% recidivism. Men re-offend more often

[32] *Ibid.*

than women. 62.8% men re-offend while only 48.4% of women re-offend. Persons sentenced for homicides and sexual offences re-offend more rarely than others. Property offences were more prevalent among recidivists. The share of offenders receiving a new prison sentence barely increased after five follow up years even if the follow up time was continued to last nearly ten years at most. After maximum period the recidivism rate for 1993 cohort was 64% for 1994 it was 63.6 for 1995, 63%. For 1996 it was 64.3% for 1997 it was 64.6% for 1998 after five years it was 65.5%, for 1999 after 4 years it was 63.4% for 2000 after 3 years it was 60%, for 2001 after 2 years it was 48.2%.

Canada

In Canada[33] the reconviction rate after 2 years for inmates released from prison during 1994-95 is 44%, for 1995-96 is 42.8% and for 1996-97 is 40.6%. Violent reconvictions were less frequent (13.8%, 13.1% and 13% for each respective cohort). About 44% of men recidivate while for women it is about 30%. That means men recidivate more often than women. Age of release is an important factor as majority of recidivists are below thirty years.

Australia

As on 30th June 2005, 60% of prisoners in custody in Australia had previously served a sentence in an adult prison[34]. As on 2006 July, the persons who re-offend within two years of being release depending on the crime is between 40%-75%[35]. The productivity commission in its Report on

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[33] James Bonta, Tanya Rugge Mia Dauvergne, *The Reconviction Rate of Federal Offenders 2003-02*.Public Works and Government servvices, Canada (2003) *http://ww2.psepc_sppcc.gc.ca/publications/corrections/200302_c.asp*.14-5-2006.

[34] Australian Bureau of Statistics, *Prisoners in Australia, 2005, http://www.abs.gov.au/ ausstats/abs.pdf*. 21-5-2006.

[35] Prison Fellowship Western Australia, *http://www.pfi.orgau/wa/about/index_htmal*. 21-9-2006.

Government Services 2006 found that more than 38% of Australian prisoners who were released in 2002-03 returned to prison within two years[36].

The 2004-2005 Statistical Report by the NSW Department of Corrective Services[37] shows that the recidivism of prisoners who were discharged in 2002-2003 within two years, those who have at least two previous incarcerations have 53% recidivism while first timers have only 27%. Recidivism rate is higher for property offence and drug offence.

Jones studied the re-offending patterns of offenders released on parole during 2001-02 for a minimum of 27 months and maximum 39 months follow up period[38]. The study revealed that 23% re-offended within three months of release, 52% re-offended within a year, and 64% re-offended within two years. 68% had a finalized court appearance for committing one or more offences, 64% were reconvicted for committing an offence and 41% were re-imprisoned for offending. Most offenders were less than 35 years at the time of release (72%). Only 28% were above 35 years. Offenders with more prior convictions re-offended more quickly than those with relatively few prior convictions. Offenders for property offence tended to re-offend more quickly. Offenders with one prior custody episode were estimated to be 1.59 times more likely to re-offend at any time than those with no prior custodial history. Those with two or three prior custody episode were two times as likely as those with no prior custody episodes to re-offend, while those with four or more prior custody episodes were estimated to be 2.84 times more likely to re-offend at any time than offenders with no prior episodes of custody. After 12 months, 42% of first time prisoners had re-offended, compared with 58% of

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[36] Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, Productivity Commission 2006, p.12, *http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/02*. 7-5-2005.

[37] Simon Corben, *Statistical Report 2004/2005*, NSW Department of Corrective Services (November 2005) p.31. *http://www.dcs.nsw.gov.au/information/research_and_statistical/other*. 21-5-2006.

[38] Craig Jones *et.al*, "Risk of re-offending among Parolees", (January 2006) No.19 *Crime and Justice Bulletin*, *http://www.lawlink,nsw.gov.au/lawlink/bocsar.nsf/vwfiles/cft Jan. 2006* 3/3/2006.

those with one prior custody episode, 67% of those with two or three prior custody episode and 79% of those with four or more custody episodes. Only 9% of those with four or more prior custody episodes were estimated to have survived beyond two years without re-offending. This compares with 43% of those with no prior custodial episodes. Indigenous offenders were estimated to be 1.4 times more likely than non-indigenous offenders to re-offend at any time following release. Offenders who had served less than six months or six months to eighteen months in custody were both 1.18 times more likely at any given time to have re-offended than those who had served more than eighteen months. Compared with the re-offending rate for non-indigenous offenders after one year (58%), 71% of indigenous offenders had re-offended. Only 16% of indigenous offenders were estimated to have survived beyond two years without committing one or more offences while 26% of non-indigenous offenders survived after two years of follow-up. Property offenders tend to re-offend more quickly.

Makkai, Lisa Collins and others have analysed the criminal histories of those arrested for property offences during the first half of 2001 shows that 77% of those arrested had at least one recorded prior offence[39] . These repeat offenders had an average of eight offending episodes. 18% of offenders had 15 or more prior offending episodes. The most significant factor found to re-offending was being a high volume offender, being a heroin user, being male.

In the Northern Territory of Australia[40], out of the 717 prisoners released during 2001-02, a total of 288 prisoners returned to prison giving an overall recidivism rate of 40%. The indigenous rate of recidivism was 45% three times the non-indigenous rate of 15%. Of the total 288 recidivists, 271

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[39] T.Makkai, J.Ratcliffe, K.Veraar and Lisa Collins "ACT Recidivist Offenders", (2004) No.54 *Research and Public Policy Series*, Australian Institute of Criminology, *http://www.aic.gov.au/publications/rpp/54.pdf*, 6-4-2005.

[40] Office of Crime Prevention, *Recidivism in the Northern Territory: Adult Prisoners Released in 2001-02*, Nothern Territory of Australia, Office of Crime Prevention (2005), 12-1-2006.

(or 94%) were indigenous compared to 17 (or 6%) non-indigenous. Prisoners aged 25-34 at the time of release was the most prominent age group comprising 51% of recidivist. Of the recidivists 77% were less than 35 years of age. Prisoners with prior imprisonment returned at higher rates than those without prior imprisonment. Prisoners who have no prior imprisonment, recidivates only by 26% but those having two or more prior imprisonment recidivates by 61%. Prisoners who served between 6 months to 12 months have 52% recidivism, those who served longer than twelve months had 48%. Property offences have the most recidivism rate.

More than 60% of offenders in prison at the time of the 1994 census had been imprisoned at some time previously[41]. Male prisoners had a higher rate of prior imprisonment (61%) than females (56%). The largest proportions of type of offence are for break and enter offences 78%.

Ross and Guarnieri examined the recidivism patterns of 838 offenders for 7.5 years following their release from Victorian prisons between May 1985 and December 1986[42]. 74% were reconvicted for at least one offence. More than a quarter were reconvicted for a further offence within three months of release, one third was reconvicted within five months and one half was reconvicted within one year. 54% were re-imprisoned at least once over the seven year period. Releases who committed their first offence when aged 14 years or younger were much more likely to be reconvicted and re-imprisoned than those whose criminal careers started after they were 18. Releases with many prior offences were much more likely to be reconvicted and re-imprisoned than those who had only a few prior convictions. Offenders convicted of property offences were much more likely to be reconvicted and re-imprisoned than those who had been convicted for homicide.

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41 Australian Bureau of Statistics, *Crime & Justice Corrective Services: Prioners in Australia4102.0 – Australian Social Trends,* 1997. *http://ww.abs.gov.au/ausstats/abs@nsf/2f762595845417.aec a 2570,* 28-11-2004.

42 S.Ross and T.Guarnieri, *Recidvism rates in a custodial population : The influence of criminal history, offence and gender factors* (February 1996.) *http://aic.gov.au/publications /rpp/54/06_section3.html,*26-5-2005

Barbara Thompson in a study for the NSW Department of Corrective Services measured the recidivism rate of those discharged in 1990-91 from a full-time custodian episode[43]. After two years the total recidivism rate for men was 35% and for women 38%. Out of first time offender's rate of recidivism was 24% and among repeaters it was 44%. For property offence recidivism rate was 47%. In the case of homicide it was 13%. Recidivism was lowest for older people with no prior imprisonment and highest for people who returned to custody quickly after prior imprisonment.

New Zealand

Prior and post conviction histories of the 22,340 inmates who were released from prison between 1995 and 1998 were studied[44]. Over two-thirds (70%) of the inmates had more than 10 convictions prior to being imprisoned. 21,154 (i.e., 94.7%) inmates have prior convictions. Only 1,186 (5.3%) of the released inmates had no prior convictions. However, for nearly one-fifth (18%) of these "first offenders", while they had no prior convictions, they had prior proved offences in the Youth Court.

For all people released from prison in the period 1995 to 1998, over a third (37%) of inmates were reconvicted including 23% of inmates who were reconvicted for more than one offence, within six months of release. While over half (58%) were reconvicted, including 44% of inmates who were reconvicted for more than two offences within a year. Nearly three-quarters (73%) of inmates were reconvicted, including one third (33%) of the inmates who were reconvicted for more than five offences, within two years of their release, and most inmates (86%) were reconvicted within five years.

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[43] Barbara Thompson, *Recidivism in NSW: General Study Research Publication No.31 May 1995,* NSW Department of Corrective Services. *http://dcs.nsw.gov.au/information/research_and_statistics/reseach_publication/rp031.pdf.20-8-2004*

[44] Ministry of Justice, Reconviction and reimprisonment rates for released prisoners, *http://wwwjustice.govt.nz/pubs/reports/2002/reconviction_imprison_rates Chapter-1 html#1.* 22-3-2004.

Female inmates were less likely than male inmates to be reconvicted. Within two years of their release from prison, 74% of male inmates were reconvicted compared with 64% of female inmates. After five years the percentage was 86.4 and 75.7.

Younger inmates were considerably more likely than old inmates to be reconvicted. Within two years of their release from prison, 91% of teenage inmates were reconvicted compared with 43% of inmates aged 40 or more. Nearly all (97%) of the teenage inmates were reconvicted within five years.

The more often people had been convicted previously; the more likely they were to be reconvicted following their release from prison. Within two years of their release from prison, 41% of first time offenders were reconvicted compared with 85% of inmates with more than 20 previous convicted cases. Within five years of their release from prison, just over half (52%) of first time offenders were reconvicted compared to nearly all (95%) of the inmates with more than 20 previous convicted cases. The number of previous convictions together with age was found to be most strongly associated with the likelihood of being reconvicted within two years.

There appears to be some relationship between the seriousness of the offence and period of imprisonment. Inmates released from prison after serving a sentence for an offence of 'low' or 'low to moderate' seriousness were more likely than other inmates to be reconvicted within two years of an offence. In general, inmates released after serving shorter prison sentences were more likely to be re-imprisoned than inmates released after serving longer prison sentences. Over half (57%) of the inmates released from corrective training and over a third (38%) of the people released from imposed sentenced of one year or less were re-imprisoned within two years, compared to only 17% of the inmates with determinate sentences of more than five years. None of the 43 inmates released after serving a life imprisonment sentence were re-imprisoned within two years.

India

From the study conducted among the prisoners in the jails of Kerala, out of 150 prisoners studied, 105 were recidivists (70%). Majority of the recidivists were committed for property offence (48.6%)[45]. Only 18.1% committed offences against person. 33.3% committed offence against local and special laws. 84.76% of the recidivists were below forty years of age, only 15.4% were above forty[46]. 56.19% have committed their first offence before they had attained the age of majority, i.e., 18 years of age. 41.90% were Hindus, 36.2% were Muslims, and 21.9% were Christians. Considering the total population, the Muslims showed a very high rate of recidivism. 53.33% belong to backward castes[47]. No one among the recidivists has gone to College. 8.57% were illiterates, 36.19% up to 4th standard, 40.95% up to VIII Standard and 14.29% up to 10th Standard[48]. No recidivist is a Government employee. 25.72% were unemployed, 29.52% were self employed, 44.76% working for daily wages[49].

The statistical analysis of recidivism in all these aforesaid countries reveal that age, gender, type of offence, the number of prior convictions, and the age of first offence, type of sentence, lack of education or occupation are the common factors. From these we can come to the conclusion that recidivism rate is very high.

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45 See Table VI of Chapter III.

46 See Table XI of Chapter III.

47 See Table VIII of Chapter III.

48 See Table XIII of Chapter III.

49 See Table XVI of Chapter III.

Incidence of Recidivism among Convicts Admitted in Various Prisons of India

The State and Union Territory wise number and percentage of recidivism among convicts admitted during 2002 and 2003 is shown in Table (Appendix-1)[50]. The percentage of recidivism among all offenders increased to 7.3% during 2003 as compared to 5.6% in 2002. In absolute terms the number of past offenders involved in repeating and being admitted to prisons during 2003 was 16,798 as compared to 12,264 in 2002. The highest percent of recidivism was noticed during 2003 was in Meghalaya (75.9%) followed by Sikkim (58.6%), Tamil Nadu (51.8%), Bihar (38.8%) Mizoram (31.9%), Kerala (25.3%), Uttar Pradesh (10.9%). Among the U.Ts, Pondicherry recorded highest (9.4%) followed by Delhi (8.1%), Chandigarh (7.1%) and A&N Islands (4.3%). This phenomenon has eluded Jammu & Kashmir, Manipur, Nagaland, Tripura, Uttaranchal, D&N Haveli, Daman & Diu and Lakshadweep. As many as seven states and two Union Territories recorded higher percentage of recidivism than the all India average of 7.3%.

The State of Bihar which recorded only 2.1% of recidivists in 2002, showed percentage at 38.8% in 2003 showing average high increase in the tendency of recidivism. Likewise Meghalaya which only showed 7.1% in 2002 showed a very high increase at 75.9% in 2003. In the case of Sikkim also this is the case as there was an increase from 2.1% in 2002 to 58.6% in 2003. In Kerala the recidivism rate has increased from 22.2% in 2002 to 25.3% in 2003.

In Jharkand the recidivism rate has decreased from 13.2% in 2002 to 2.4% in 2003, in Punjab from 10.8% in 2002 to 3.8% in 2003, in Uttaranchal from 2.1% in 2002 to a situation where there are no recidivists. This is also the case of Jammu & Kashmir from 1% to nil. In the case of Rajasthan,

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[50] See Prison Statistics India (2002, 2003). The Statistics used to prepare this table are based on the data of incidence of recidivism among convicts published in this Government publication by National Crime Records Bureau, Ministry of Home Affairs, Government of India.

Maharashtra, Madhya Pradesh, Himachal Pradesh, Gujarat the decline is only of 0.1 or 0.2%.

From this table we can see that in the majority of States the rate of recidivism has increased from 2002 to 2003. The national level also has increased. If this tendency continues the recidivism rate will go up in the future also.

In order to find out the recidivism rate in India, it is proposed to analyse the recidivism for the offences committed under the Indian Penal Code, committed in India, during the period from 1995 to 2004[51]. It should be borne in mind hat all crimes are not reported. There may thus be many more recidivists in the community than estimated, unless they are caught for the crime, they are unlikely to appear in the statistics. But one has to depend upon the statistics for purpose of analysis.

Table 4

Recidivism amongst persons arrested under I.P.C. crimes (At all India level)

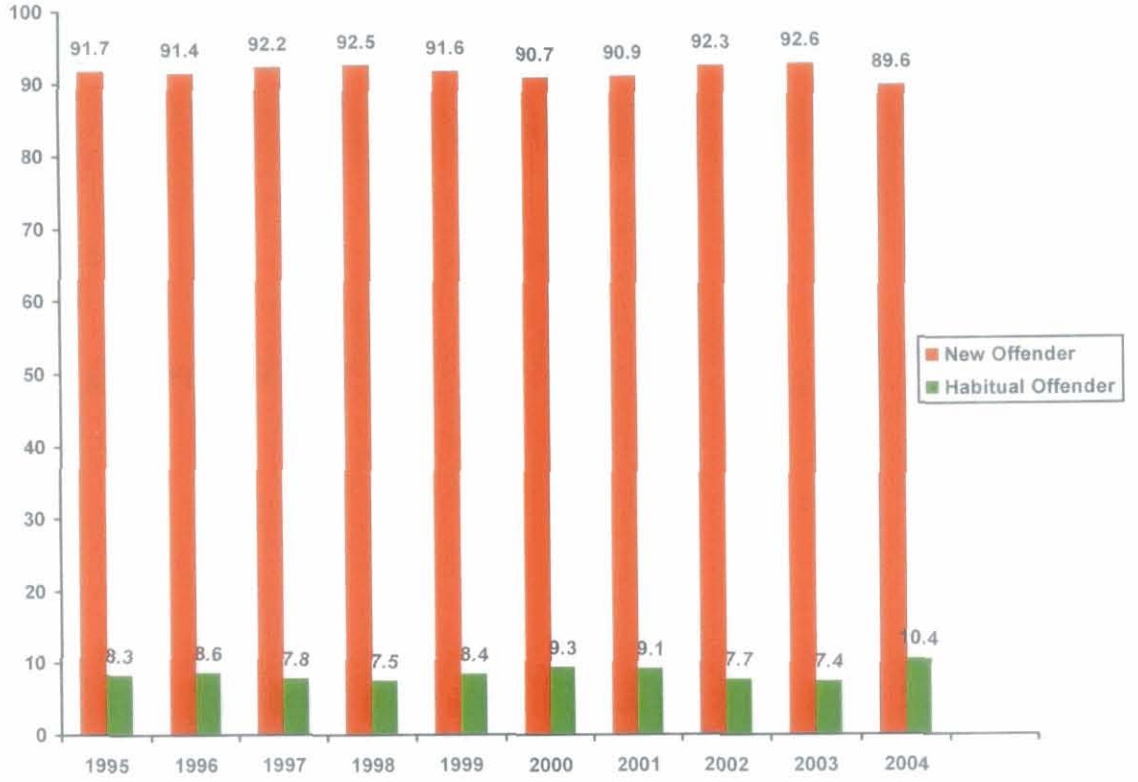
Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	25,87739	23,73,779	91.7	2,13,960	8.3	25,87,739	100
1996	25,88246	23,65,415	91.4	2,22,831	8.6	25,88,246	100
1997	25,75,827	23,75,872	92.2	1,99,955	7.8	25,75,827	100
1998	26,57,879	2,45,242	92.5	1,99,637	7.5	26,57,879	100
1999	26,00,876	23,81915	91.6	2,18,96	8.4	26,00,876	100
2000	26,75,923	24,25,885	90.7	2,90,038	9.3	26,75,923	100
2001	26,71,540	24,29,456	90.9	2,42,084	9.	26,71,540	100
2002	26,96,543	24,96376	92.6	2,00,167	7.4	26,96,543	100
2003	25,10,892	23,16,462	32.3	1,94,430	7.7	25,10,892	100
2004	26,60,910	23,82,906	89.6	2,78,004	10.4	26,60,910	100

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[51] See *Crime in India* (1995-2004). The statistics used for analyzing the recidivism of all the States and Union Territories are based on the data published in this Government publication by National Crime Records Bureau, Government of India.

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Chart 1



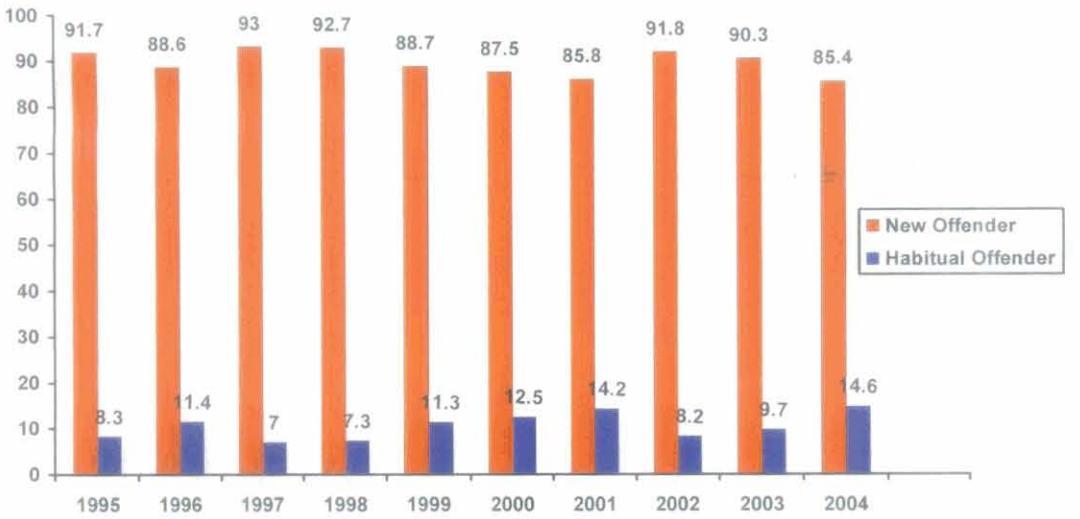
From the above table and chart we can see that the recidivism rate among I.P.C. criminals in India in 1995 is 8.3%. In 1996 it slightly increased to 8.6%. It shows a slight downward trend 7.8% in 1997 and 7.5% in 1998. Then it started to increase and reached 8.4% in 1999. 9.3% in 2000. Again started to go down 9.1% in 2001, 7.4% in 2002 then started increasing to 7.7% in 2003 to 10.4% in 2004. So we can say that the rate of recidivism has increased from 8.3% in 1995 to 10.4% in 2004.

Table 5

Recidivism amongst persons arrested under I.P.C. crimes In Andhra Pradesh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,74,489	1,60,051	91.7	14,438	8.3	1,74,489	100
1996	1,88,883	1,67,370	88.6	21,513	11.4	1,88,883	100
1997	1,93,333	1,79,872	93	13,461	7	1,93,333	100
1998	1,97,815	1,83,309	92.7	14,506	7. 3	1,97,815	100
1999	1,84,758	1,63,789	88.7	20,969	11.3	1,84,758	100
2000	1,86,307	1,62,946	87.5	23,361	12.5	1,86,307	100
2001	1,88,419	1,61,688	85.8	26,731	14.2	1,88,419	100
2002	1,96,661	1,80,552	91.8	16,109	8.2	1,96,661	100
2003	2,04,553	1,84,704	90.3	19,849	9.7	2,04,553	100
2004	2,14,763	1,83,483	85.4	31,280	14.6	214,763	100

Chart 2



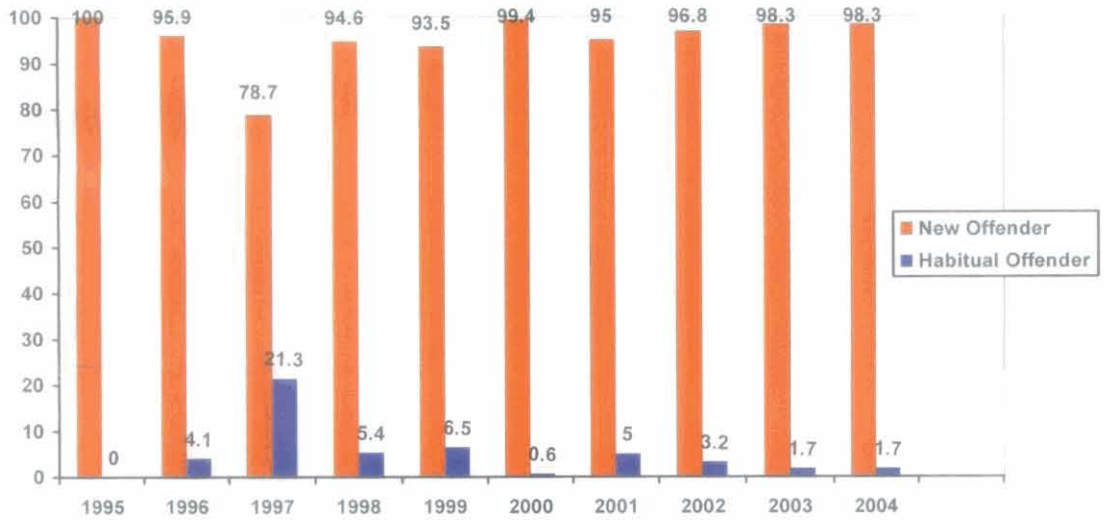
In Andhra Pradesh from the above table we can see that even though recidivism rate has increased from 8.3% in 1995 to 14.6% in 2004 it shows a mixed trend. In 1996 it increased to 11.4% but it decreased to 7% in 1997, then it started to show an upward trend in 1998, 7.3% in 1999, 11.3% in 2000, 12.5% in 2001, and 14.2% it decreased to 8.2% in 2002 then it increased to 9.7% in 2003 and 14.6% in 2004.

Table 6

Recidivism amongst persons arrested under I.P.C. crimes In Arunachal Pradesh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,275	2,275	100	0	0	2,275	100
1996	2,247	2,155	95.9	92	4.1	2,247	100
1997	2,144	1,687	78.7	457	21.3	2,144	100
1998	2,280	2,158	94.6	122	5.4	2,280	100
1999	3,001	2,805	93.5	196	6.5	3,001	100
2000	2,846	2,830	99.4	16	0.6	2,846	100
2001	2,965	2,817	95	148	5	2,965	100
2002	2,613	2,529	96.8	84	3.2	2613	100
2003	2,446	2,404	98.3	42	1.7	2,446	100
2004	2,788	2,740	98.3	48	1.7	2,788	100

Chart 3



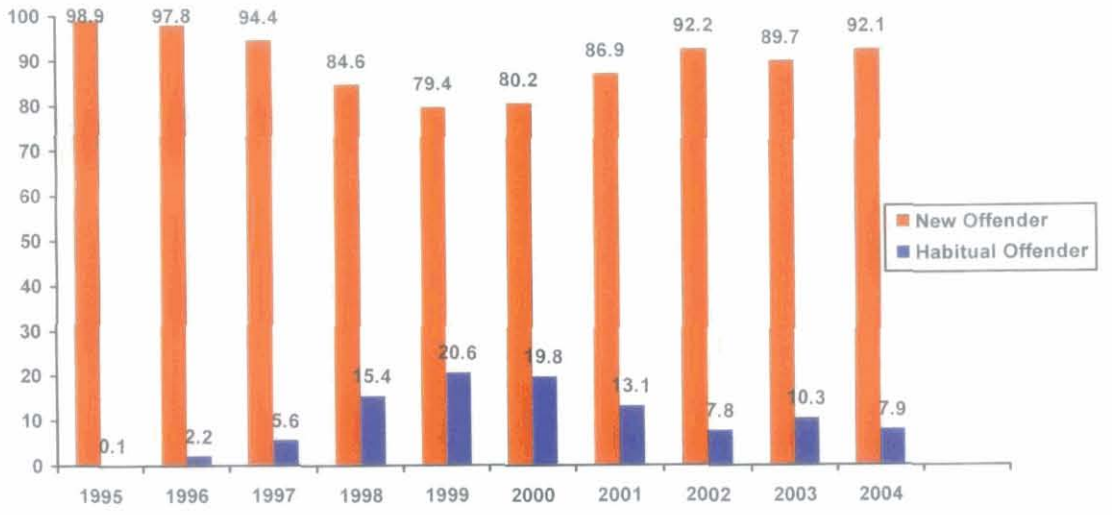
From the Table above we can see that in Arunachal Pradesh in 1995 there were no recidivists. In 1996 the rate of recidivism was 4.1%. In 1997 it showed a very high increase of 21.3%, in 1998 it was 5.4%, in 1999 it was 6.5% then it decreased to 0.6% in 2000 again increased to 5% in 2001, decreased to 3.2% in 2002 and 1.7% in 2003 and 2004. Except in 1997 the recidivism rate was below national rate.

Table 7

Recidivism amongst persons arrested under I.P.C. crimes In Assam

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	48,231	47,689	98.9	542	0.1	48,231	100
1996	47,436	46,378	97.8	1,058	2.2	47,436	100
1997	47,071	44,423	94.4	2,648	5.6	47,071	100
1998	52,230	44,176	84.6	8,054	15.4	52,230	100
1999	53,215	42,230	79.4	10,985	20.6	53,215	100
2000	50,870	40,782	80.2	10,088	19.8	50,870	100
2001	53,500	46,466	86.9	7,034	13.1	53,500	100
2002	54,588	50,357	92.2	4,231	7.8	54,588	100
2003	63,979	57,379	89.7	6600	10.3	63,979	100
2004	66,762	61,512	92.1	5,250	7.9	66,762	100

Chart 4



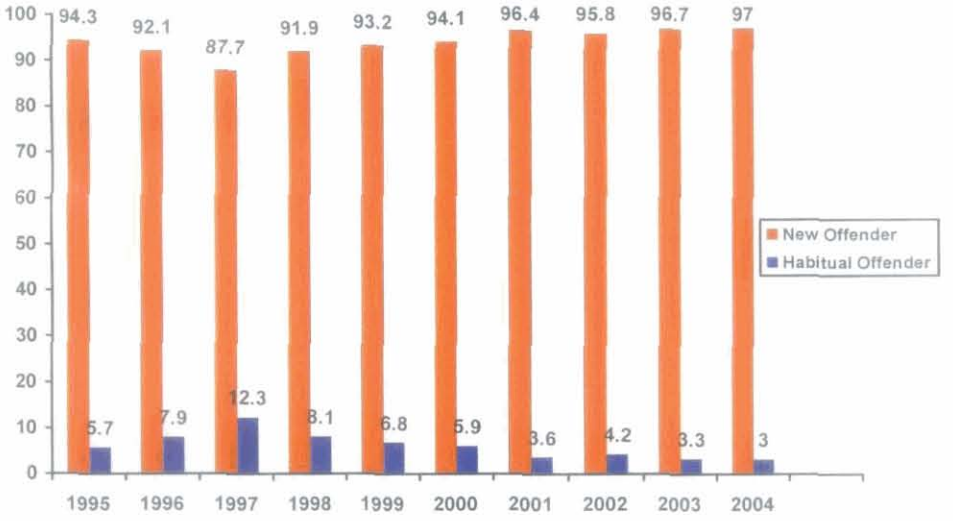
In Assam from the above table we can see that there were only 0.1% recidivists in 1995. It increased to 2.2% in 1996, 5.6% in 1997, 15.4% in 1998, 20.6% in 1999,it started a decline 19.8% in 2000, 13.1% in 2001, 7.8% in 2002 then increased to 10.3% in 2003 and decreased to 7.9% in 2004. The rate of recidivism shows a mixed trend.

Table 8

Recidivism amongst persons arrested under I.P.C. crimes In Bihar

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,43,109	2,29,360	94.3	13,749	5.7	2,43,109	100
1996	2,35,966	2,17,364	92.1	18,602	7.9	2,35,966	100
1997	2,26,429	1,98,627	87.7	27,802	12.3	2,26,429	100
1998	2,38,613	2,19,237	91.9	19,376	8.1	2,38,613	100
1999	2,07,761	1,93,691	93.2	14,070	6.8	2,07,761	100
2000	2,37,623	2,23,545	94.1	14,078	5.9	2,27,623	100
2001	2,02,285	1,95,055	96.4	7,230	3.6	2,02,285	100
2002	2,14,448	2,05,335	95.8	9,113	4.2	2,14,448	100
2003	1,99,132	1,92,469	96.7	6,663	3.3	1,99,132	100
2004	2,20,666	2,14,077	97.0	6,589	3.0	2,20,666	100

Chart 5



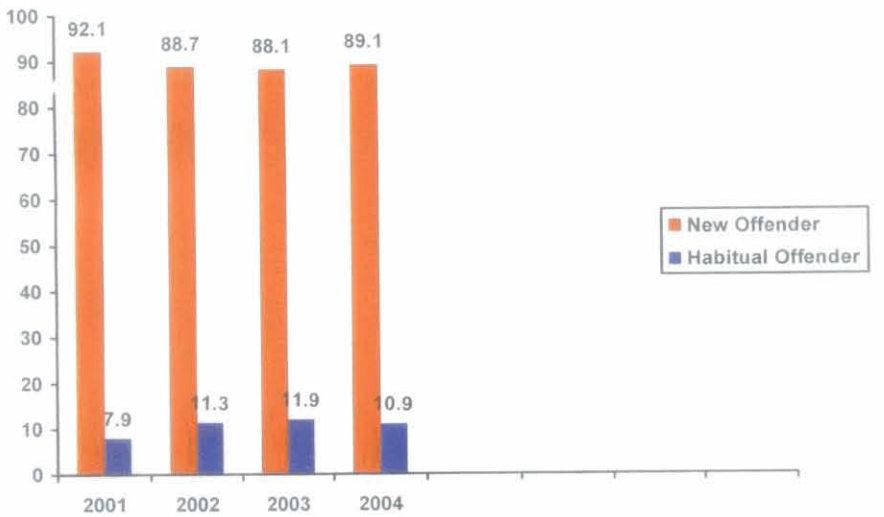
In Bihar from the above table the rate of recidivism in 1995 was 5.7%, 1996 it was 7.9%, in 1997 it increased to 12.3% then decreased to 8.1% in 1998 6.8% in 1999, 5.9% in 2000, 3.6% in 2001 then slightly increased to 4.2% in 2002 again decreased to 3.3% in 2003 and 3% in 2004. Overall the rate of recidivism in Bihar is very low compared to other states and mostly it shows a downward trend.

Table 9

Recidivism amongst persons arrested under I.P.C. crimes In Chattisgarh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
2001	50,839	46,811	92.1	4,028	7.9	50,839	100
2002	52,004	46,134	88.7	5,870	11.3	52,004	100
2003	49,923	43,989	88.1	5,934	11.9	49,923	100
2004	56,559	50391	89.1	6,168	10.9	56,559	100

Chart 6



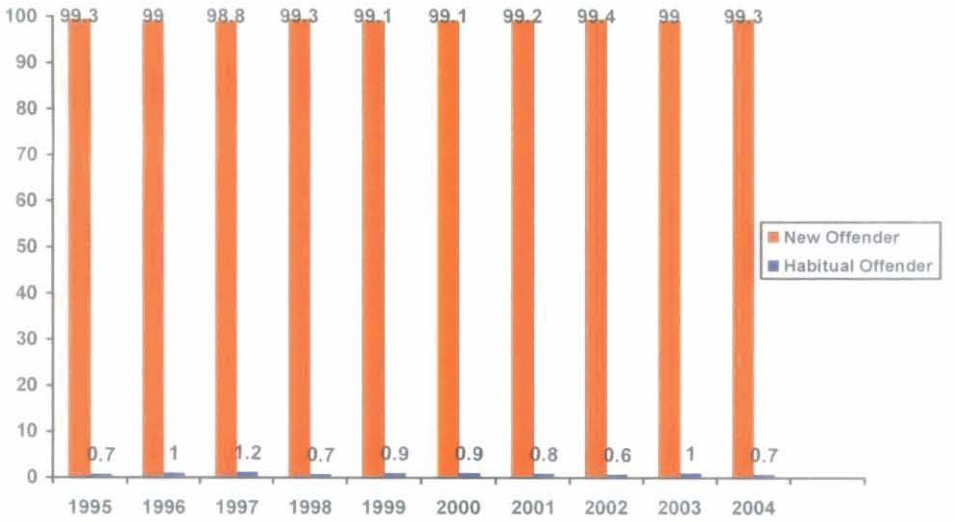
Data available for Chattisgarh is only from 2001 onwards as it is a new State. In 2001 it had 7.9% recidivism it increased to 11.3% in 2002 and 11.9% in 2003 then slightly decreased to 10.9% in 2004.

Table 10

Recidivism amongst persons arrested under I.P.C. crimes In Goa

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	3,676	3,650	99.3	26	0.7	3,676	100
1996	3,486	3,451	99	35	1.0	3,451	100
1997	3,538	3,494	98.8	44	1.2	3,538	100
1998	3,618	3,591	99.3	27	0.7	3,618	100
1999	3,201	3,173	99.1	28	0.9	3,201	100
2000	3,055	3,029	99.1	26	0.9	3,055	100
2001	2,898	2,876	99.2	22	0.8	2,898	100
2002	2,734	2,717	99.4	17	.6	2,734	100
2003	2,740	2,713	99	27	1.0	2,740	100
2004	2,376	2,359	99.3	17	0.7	2,376	100

Chart 7



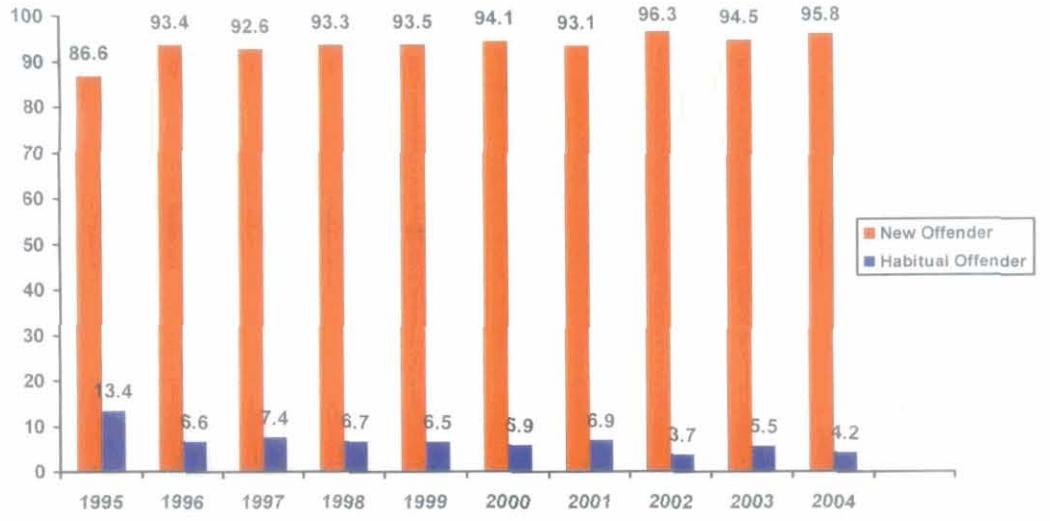
From the above table we can see that the rate of recidivism is 0.7% in 1995, 1% in 1996, 1.2% in 1997, 0.7% in 1998, 0.9% in 1999, 0.9% in 2000, 0.9% in 2001, 0.6% in 2002, 1% in 2003 and 0.7% in 2004. From this we can see that in Goa there is only very few recidivists, the rate of recidivism is very low.

Table 11

Recidivism amongst persons arrested under I.P.C. crimes In Gujarat

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,57,461	1,36,283	86.6	21,178	13.4	1,57,461	100
1996	1,61,744	1,51,114	93.4	10,660	6.6	1,61,774	100
1997	1,64,973	1,52,695	92.6	12,278	7.4	1,64,973	100
1998	1,77,126	1,65,180	93.3	11,946	6.7	1,77126	100
1999	1,76,261	1,64,741	93.5	11,520	6.5	1,76,261	100
2000	1,66,519	1,56,680	94.1	9,839	5.9	1,66,519	100
2001	1,53,251	1,42,722	93.1	10,529	6.9	1,53,251	100
2002	1,73,200	1,66,815	96.3	6,385	3.7	1,73,200	100
2003	1,41,361	1,33,523	94.5	7,838	5.5	1,41,361	100
2004	1,42,866	1,36,831	9.58	6,035	4.2	1,42866	100

Chart 8



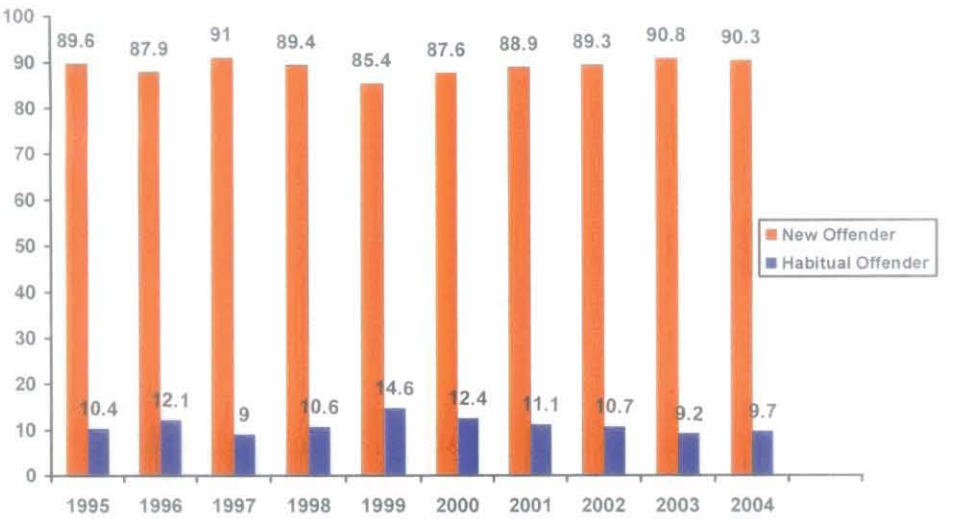
In Gujarat the rate of recidivism had decreased from 13.4% in 1995 to 4.2% in 2004. In 1996 the rate of recidivism was 6.6%; it was 7.4% in 1997, 6.7% in 1998, 6.5% in 1999, 5.9% in 2000, 6.9% in 2001, 3.7% in 2002, 5.5% in 2003 and 4.2% in 2004. Even though there was a slight increase in recidivism in 1997 and 2003 than the previous year, the overall rate of recidivism showed a downward trend.

Table 12

Recidivism amongst persons arrested under I.P.C. crimes In Haryana

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	53,211	47,671	89.6	5,540	10.4	53,211	100
1996	48,910	43,001	87.9	5,909	12.1	48,910	100
1997	52,371	47,646	91.0	4,725	9.0	52,371	100
1998	58,875	52,618	89.4	6,257	10.6	58,875	100
1999	62,483	53,335	85.4	9,148	14.6	62,483	100
2000	61,176	53,560	87.6	7,616	12.4	61,176	100
2001	59,977	53,344	88.9	6,636	11.1	59,977	100
2002	60,867	54,359	89.3	6,508	10.7	60,867	100
2003	57,406	52,105	90.8	5,301	9.2	57,406	100
2004	54,546	49,265	90.3	5,281	9.7	54,546	100

Chart 9



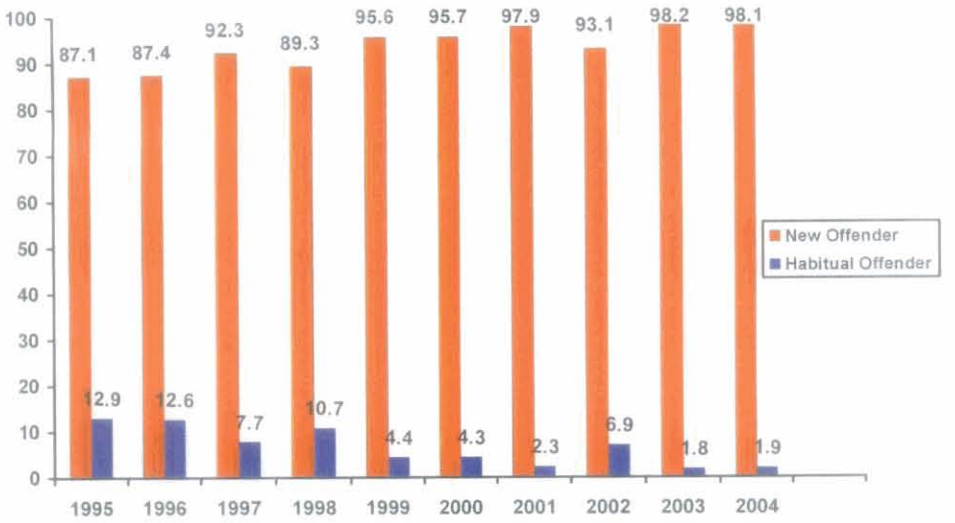
There is not that much difference in the rate of recidivism among the prisoners in Haryana. In 1995 it was 10.4%, 12.1% in 1996, 9% in 1997, 10.6% in 1998, 14.6% in 1999, 12.4% in 2000, 11.1% in 2001, 10.7% in 2002, 9.2% in 2003 and 9.7% in 2004. Except for 2004, the rate of recidivism was above national mark

Table 13

Recidivism amongst persons arrested under I.P.C. crimes In Himachal Pradesh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	17,171	14,959	87.1	2212	12.9	17,171	100
1996	16,767	14,659	87.4	2,108	12.6	16,767	100
1997	17,105	15,784	92.3	1,321	7.7	17,105	100
1998	16,925	15,111	89.3	1,814	10.7	16,925	100
1999	16,143	15,434	95.6	709	4.4	16,143	100
2000	17,108	16,365	95.7	743	4.3	17,108	100
2001	17,217	16,827	97.9	390	2.3	17,219	100
2002	18,214	16,959	93.1	1,255	6.9	18,214	100
2003	18,091	17,767	98.2	324	1.8	18,091	100
2004	18,168	7,818	981	350	1.9	18,168	100

Chart 10



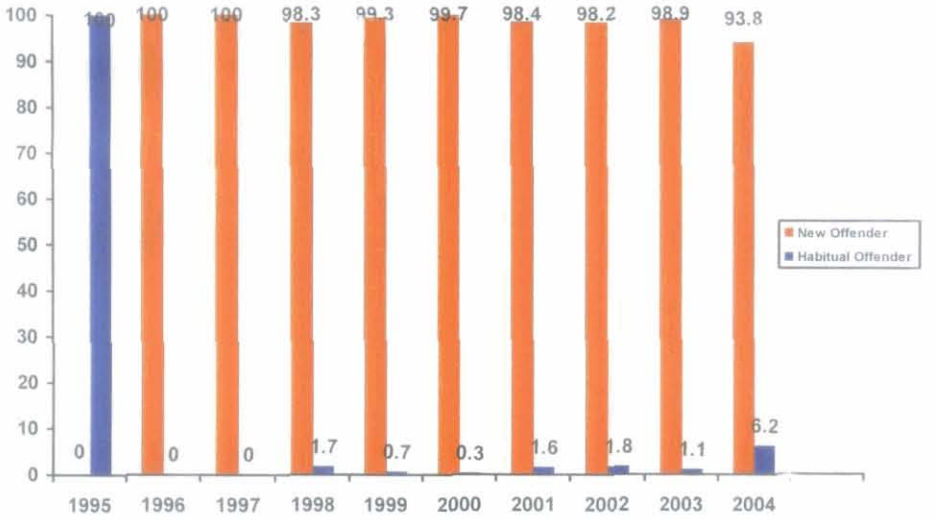
In Himachal Pradesh, there is a very remarkable decrease in the rate of recidivism from 12.9% in 1995 to 1.9% in 2004. In 1996 it was 12.6%, 7.7% in 1997, 10.7% in 1998, 4.4% in 1999, 4.3% in 2000, 2.3% in 2001, 6.9% in 2002, 1.8% in 2003 and 1.9% in 2004.

Table 14

Recidivism amongst persons arrested under I.P.C. crimes In Jammu & Kashmir

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	15,543	0	0	15,543	100	15,543	100
1996	16,805	16,805	100	0	0	16,805	100
1997	22,027	22,027	100	0	0	22,027	100
1998	20,950	20,595	98.3	355	1.7	20,950	100
1999	26,584	26,469	99.3	175	0.7	26,584	100
2000	21,177	21,115	99.7	62	0.3	21,177	100
2001	24,423	24,034	98.4	389	1.6	24,423	100
2002	24,892	24,452	98.2	440	1.8	24,892	100
2003	29,182	28,868	98.9	314	1.1	29,182	100
2004	28,288	26,524	93.8	1,764	6.2	28,288	100

Chart 11



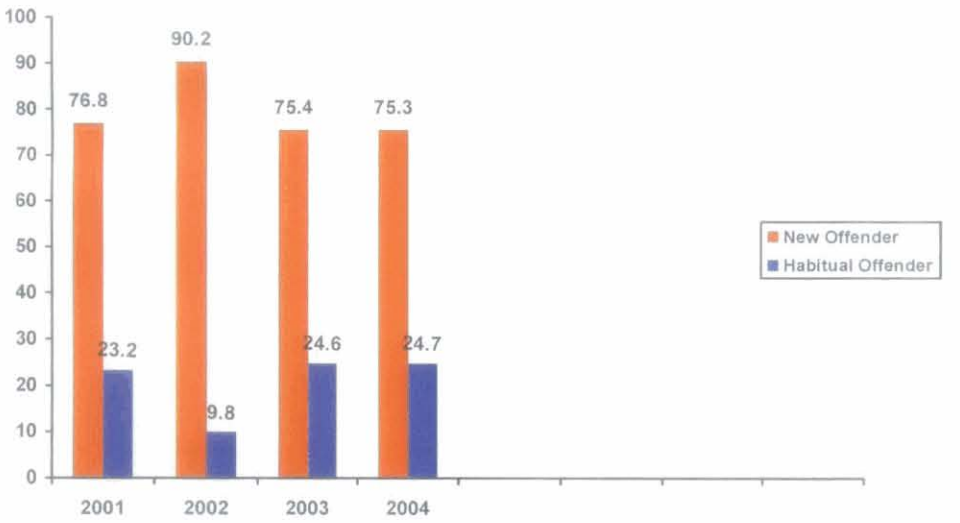
In 1995 Jammu & Kashmir showed 100% recidivism rate. By 1996 this trend has swing to the other extreme and showed 0% recidivism. In 1997 also it was 0%. In 1998 it was 1.7%, again it decreased to 0.7% in 1999 and 0.3% in 2000. It started to increase slightly to 1.6% in 2001 and 1.8% in 2002. In 2003 it decreased to 1.1% and again increased to 6.2% in 2004.

Table 15

Recidivism amongst persons arrested under I.P.C. crimes In Jharkhand

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
2001	41,607	31,960	76.8	9,647	23.2	41,607	100
2002	38,827	35,023	90.2	3,804	9.8	38,827	100
2003	37,709	28,445	75.4	9,264	24.6	37,769	100
2004	37,709	28,405	75.3	9,304	24.7	37,709	100

Chart 12



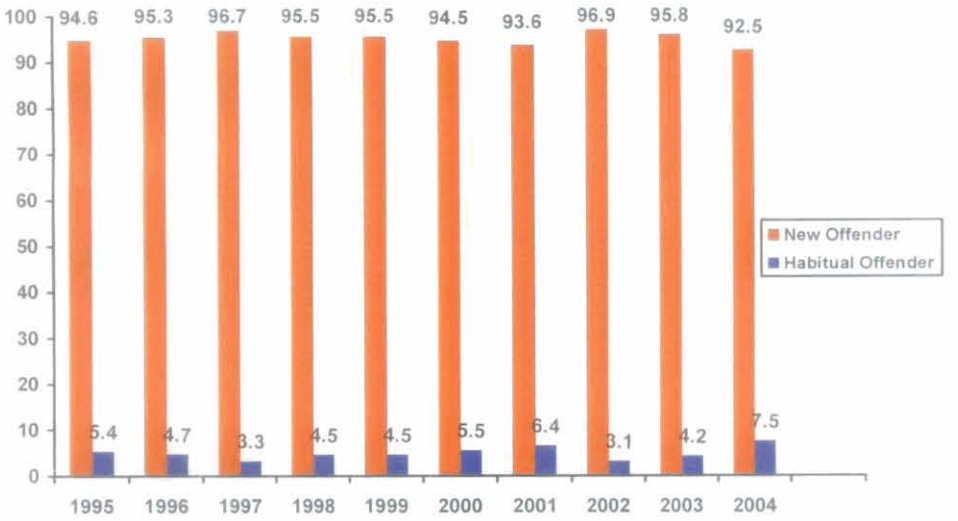
As Jharkhand is a new State data available is only from 2001. The recidivism rate for that year was 23.2%. It decreased to 9.8% in 2002 then increased to 24.6% in 2003 and 24.7% in 2004. The recidivism rate in Jharkhand was very high, long way above the national mark.

Table16

Recidivism amongst persons arrested under I.P.C. crimes In Karnataka

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,74,930	1,65,456	94.6	9,474	5.4	1,74,930	100
1996	1,72,135	1,63,967	95.3	8,168	4.7	1,72,135	100
1997	1,61,577	1,56,256	96.7	5,321	3.3	1,61,577	100
1998	1,74,657	1,66,850	95.5	7,807	4.5	1,74,657	100
1999	1,54,369	1,47,388	95.5	6,981	4.5	1,54,369	100
2000	1,63002	1,53,982	94.5	9,020	5.5	1,63,002	100
2001	1,60,150	1,49,903	93.6	10,247	6.4	1,60,150	100
2002	1,56,502	1,51,698	96.9	54,804	3.1	1,56,502	100
2003	1,41,444	1,35,520	95.8	5,924	4.2	1,41,444	100
2004	1,39,785	1,29,358	92.5	10,427	7.5	1,39,985	100

Chart 13



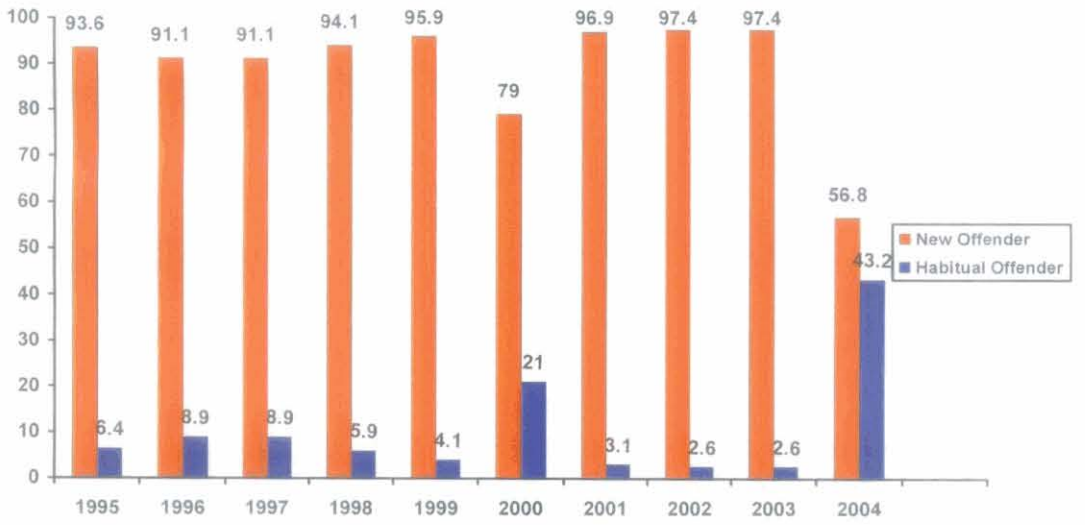
In Karnataka the rate of recidivism was below national mark in all the years studied. In 1995 it was 5.4%, in 1996 it slightly decreased to 4.7% again to 3.3% in 1997 then increased to 4.5% in 1998, remained there 4.5% in 1999 also then increased to 5.5% in 2000 to 6.4% in 2001. Then decreased to 3.1% in 2002, again increased to 4.2% in 2003 and reached maximum at 7.5% in 2004.

Table 17

Recidivism amongst persons arrested under I.P.C. crimes In Kerala

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,37,881	1,28,998	93.6	8,883	6.4	1,37,881	100
1996	1,39,543	1,27,135	91.1	12,408	8.9	1,39,543	100
1997	1,38,492	1,26,113	91.1	12,379	8.9	1,38,492	100
1998	1,37,778	1,29,717	94.1	8,061	5.9	1,37,778	100
1999	1,42,512	1,36,618	95.9	5,894	4.1	1,42,512	100
2000	1,45,890	1,15,275	79	30,615	21.0	1,45,890	100
2001	1,47,522	1,42,951	96.9	4,571	3.1	1,47,522	100
2002	1,48,925	1,45,125	97.4	3,800	2.6	1,48,925	100
2003	1,52,429	1,48,416	97.4	4,013	2.6	1,52,429	100
2004	1,52,093	86,333	56.8	65,760	43.2	1,52,093	100

Chart 14



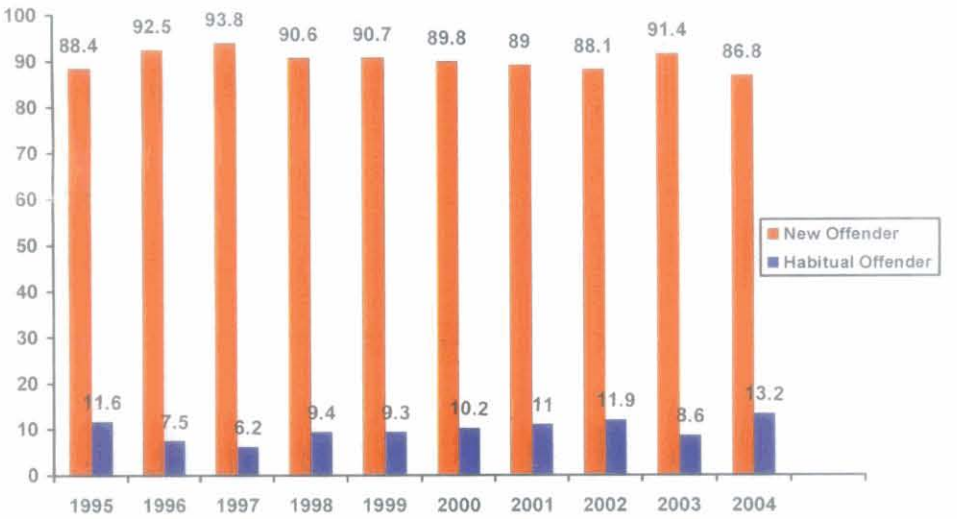
In Kerala from the above table we can see that in 1995 the rate of recidivism was 6.4%. It increased to 8.9% in 1996 and 1997. Then it decreased to 5.9% in 1998 and 4.1% in 1999. Suddenly it increased to 21% in 2000, and then decreased to 3.1% in 2001 and 2.6% in 2002 and 2003. Then it increased to an all time high of 43.2% in 2004.

Table 18

Recidivism amongst persons arrested under I.P.C. crimes In Madhya Pradesh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	3,03,700	2,68,591	88.4	35,109	11.6	3,03,700	100
1996	2,96,566	2,74,452	92.5	22,114	7.5	2,96,566	100
1997	3,06,162	2,87,197	93.8	18,965	6.2	3,06,162	100
1998	3,04,023	2,75,502	90.6	28,521	9.4	3,04,023	100
1999	3,12,758	2,83,523	90.7	29,235	9.3	3,12,758	100
2000	3,33,083	2,99,236	89.8	33,847	10.2	3,33,083	100
2001	2,85,193	2,53,856	89	31,337	11	2,85,193	100
2002	3,17,436	2,79,775	88.1	37,661	11.9	3,17,436	100
2003	3,03,605	2,77,369	91.4	26,236	8.6	3,03,605	100
2004	3,22,078	2,79,621	86.8	42,457	13.2	3,22,078	100

Chart 15



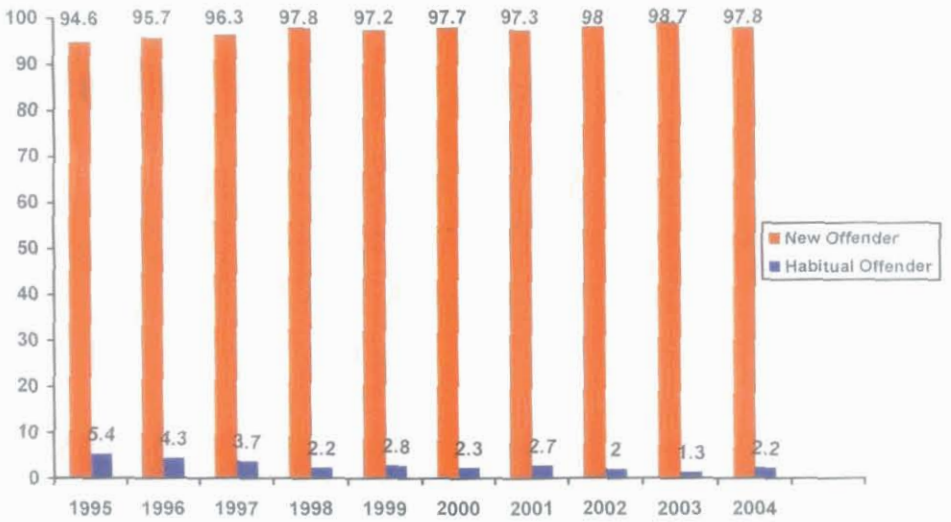
The rate of recidivism in Madhya Pradesh except for 1996 and 1997 was above national mark. In 1995 it was 11.6%. It decreased to 7.5% in 1996 and to 6.2% in 1997 then increased to 9.4% in 998, 9.3% in 1999, 10.2% in 2000, 11% in 2001, and 11.9% in 2002. Then it decreased to 8.5% in 2003 again increased to 13.2% in 2004.

Table 19

Recidivism amongst persons arrested under I.P.C. crimes In Maharashtra

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,69,517	2,54,840	94.6	14,677	5.4	2,69,517	100
1996	2,62,750	2,51,445	95.7	11,305	4.3	2,62,750	100
1997	2,76,826	2,66,666	96.3	10,160	3.7	2,76,826	100
1998	2,56,290	2,50,544	97.8	5,746	2.2	2,56,290	100
1999	2,54,181	2,47,051	97.2	7,130	2.8	2,54,181	100
2000	2,62,568	2,56,406	97.7	6,162	2.3	2,62,568	100
2001	2,80,202	2,72,756	97.3	7,446	2.7	2,80,202	100
2002	2,67,551	2,62,081	98	5,470	2	2,67,551	100
2003	2,60,231	2,56,911	98.7	3,320	1.3	2,60,231	100
2004	2,69,712	2,63,646	97.8	6,066	2.2	2,69,712	100

Chart 16



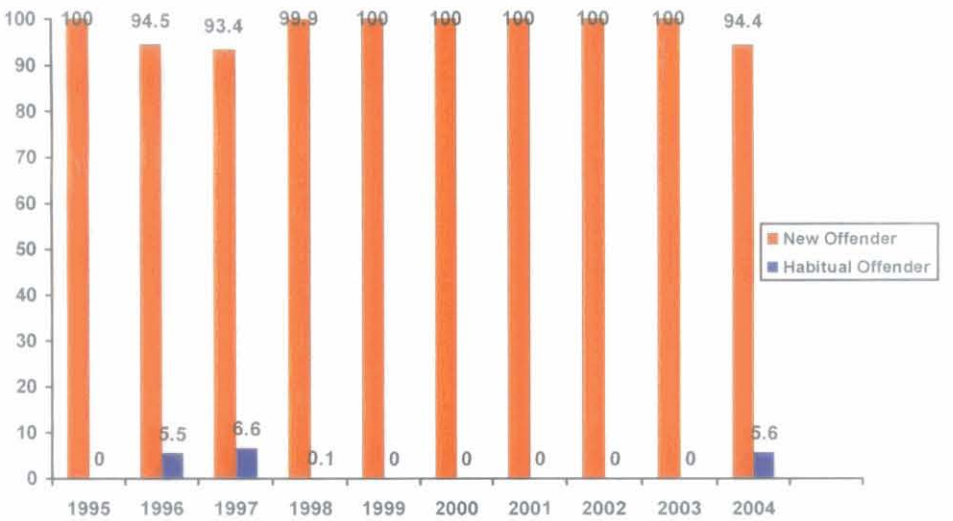
Maharashtra showed a very low rate of recidivism. In 1995 it was 5.4%; in 1996 it was 4.3%, 3.7% in 1997, 2.2% in 1998, 2.8% in 1999, 2.3% in 2000, 2.7% in 2001, 2% in 2002, 1.3% in 2003 and 2.2% in 2004.

Table 20

Recidivism amongst persons arrested under I.P.C. crimes In Manipur

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,337	1,337	100	0	0	1,337	100
1996	1,933	1,827	9.45	106	5.5	1,933	100
1997	1,189	1,111	93.4	78	6.6	1,189	100
1998	1,100	1,099	99.9	1	0.1	1,100	100
1999	1,249	1,249	100	0	0	1,249	100
2000	1,198	1,198	100	0	0	1,198	100
2001	1,525	1,525	100	0	0	1,525	100
2002	1,431	1,431	100	0	0	1,431	100
2003	1,502	1,502	100	0	0	1,502	100
2004	1,566	1,479	94.4	87	5.6	1,566	100

Chart 17



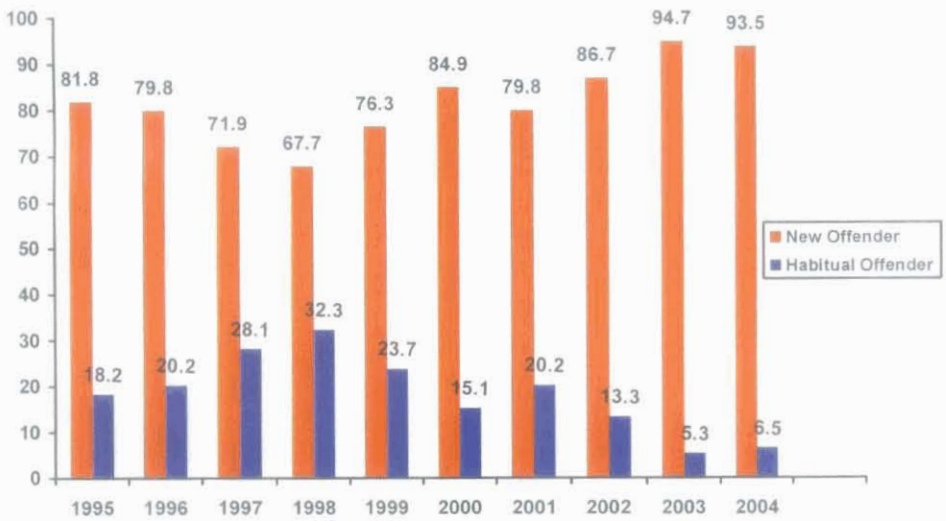
In Manipur during the years 1995, 1999, 2000, 2001, 2002, 2003 there was no incidence of recidivism. In 1996 the rate of recidivism was 5.5%, in 1997 it was 6.6% and in 1998 it was 0.1%. In 2004 it was 5.6%.

Table 21

Recidivism amongst persons arrested under I.P.C. crimes In Meghalaya

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,184	1,786	81.8	398	18.2	2,184	100
1996	2,023	1,615	79.8	408	20.2	2,023	100
1997	2,201	1,583	71.9	618	28.1	2,201	100
1998	1,783	1,207	67.7	576	32.3	1,783	100
1999	2,045	1,561	76.3	484	23.7	2,045	100
2000	1,548	1,314	84.9	234	15.1	1,548	100
2001	1,643	1,311	79.8	332	20.2	1,643	100
2002	1,544	1,339	86.7	205	13.3	1,544	100
2003	1,604	1,519	94.7	85	5.3	1,604	100
2004	1,501	1,403	93.5	98	6.5	1,501	100

Chart 18



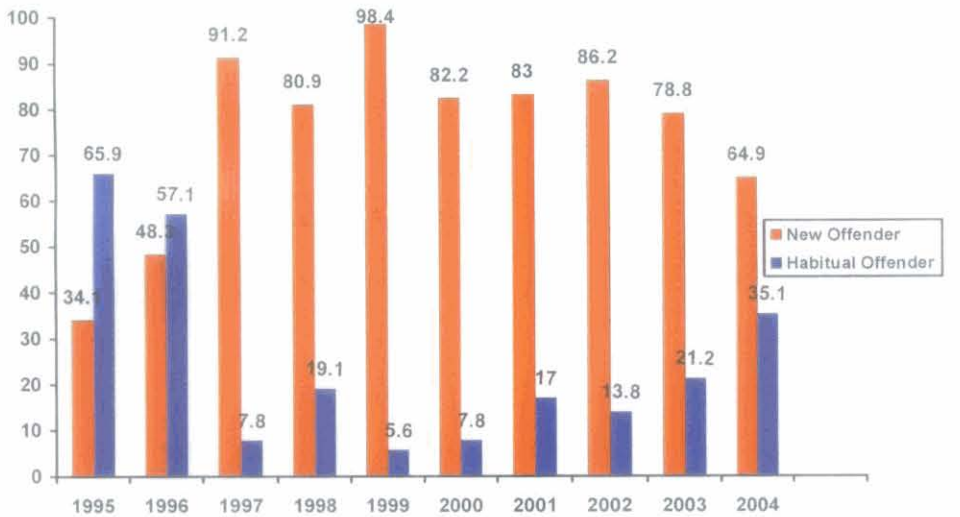
In Meghalaya the rate of recidivism was above the national mark except in 2003 and 2004. In 1995 the rate of recidivism was 18.2% it increased to 20.2% in 1996, to 28.1% in 1997 and to 32.3% in 1998. Then it decreased to 23.7% in 1999 and to 15.1% in 2000. It increased to 20.2% in 2001 and decreased to 13.3% in 2002, 5.3% in 2003, then slightly increased to 6.5% in 2004.

Table 22

Recidivism amongst persons arrested under I.P.C. crimes In Mizoram

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,229	419	34.1	810	65.9	1,229	100
1996	1,743	842	48.3	901	57.1	1,743	100
1997	2,049	1,869	91.2	180	7.8	2,049	100
1998	2,321	1,877	80.9	444	19.1	2,321	100
1999	2,097	1,980	98.4	117	5.6	2,097	100
2000	4,766	3,916	82.2	849	17.8	4,766	100
2001	2,358	1,957	83	401	17	2358	100
2002	3,292	2,839	86.2	453	13.8	3,292	100
2003	3,762	2,965	78.8	797	21.2	3,762	100
2004	1,424	924	64.9	500	35.1	1,424	100

Chart 19



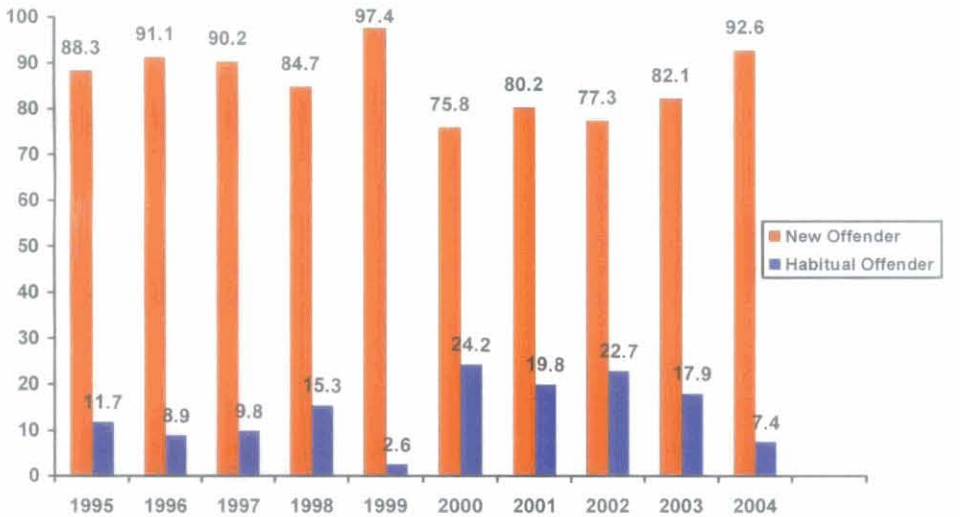
Comparatively Mizoram shows a high rate of recidivism. In 1995 the rate of recidivism was very high 65.9%. In 1996 it was 57.1%. From there it has gone down to 7.8% in 1997. Again increased to 19.1% in 1998 then decreased to 5.6% in 1999. Increased to 17.8% in 2000, 17% in 2001, slightly decreased to 13.8% hen increased to 21.2% in 2003 and 35.1% in 2004. Except in 1999 the rate of recidivism is very high above the national recidivism rate.

Table 23

Recidivism amongst persons arrested under I.P.C. crimes In Nagaland

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,210	1,068	88.3	142	11.7	1,210	100
1996	1,085	988	91.1	97	8.9	1,085	100
1997	1,606	1,449	90.2	157	9.8	1,606	100
1998	1,114	944	84.7	170	15.3	1,114	100
1999	1,088	1,060	97.4	28	2.6	1,088	100
2000	1,159	878	75.8	281	24.2	1,159	100
2001	1,129	905	80.2	224	19.8	1,129	100
2002	991	766	77.3	225	22.7	991	100
2003	821	674	82.1	147	17.9	821	100
2004	816	756	92.6	60	7.4	816	100

Chart 20



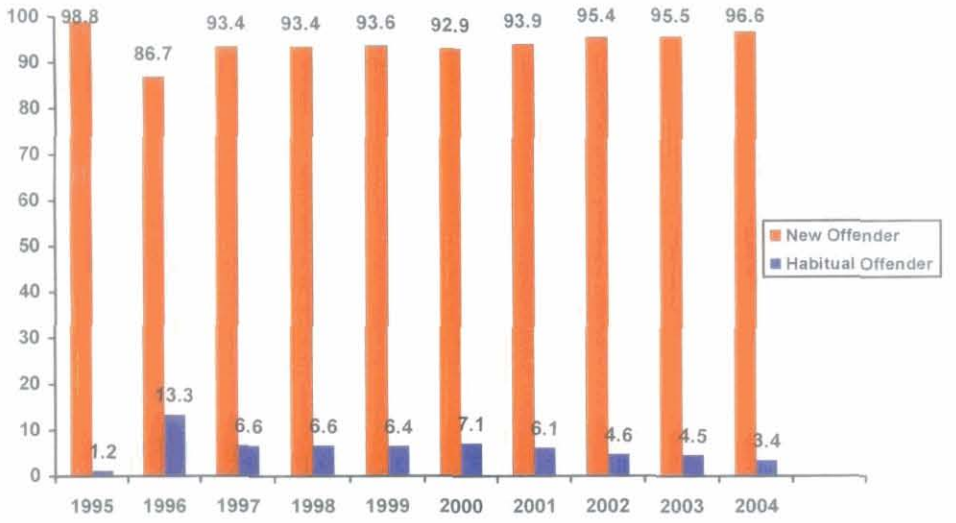
From the table we can see that in 1995 the recidivism rate was 11.7% it decreased to 8.9% in 1996. Slightly increased to 9.8% in 1997 then increased to 15.3% in 1998. In 1999 there is a huge decrease in the rate of recidivism to 2.6%, then increased heavily to 24.2% again decreased to 19.8% then increased to 22.7%, decreased to 17.9% in 2003 and to 7.4% in 2004. The rate of recidivism in Nagaland shows a mixed trend comparatively in some years there was a high rate of recidivism.

Table 24

Recidivism amongst persons arrested under I.P.C. crimes In Orissa

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	91,035	89,969	98.8	1,066	1.2	91,035	100
1996	84,889	73,573	86.7	11,316	13.3	84,889	100
1997	83,151	77,649	93.4	5,502	6.6	83,151	100
1998	83,151	77,649	93.4	5,502	6.6	83,151	100
1999	74,562	69,800	93.6	4,762	6.4	74,562	100
2000	78,206	72,664	92.9	5,542	7.1	78,206	100
2001	79,741	65,506	93.9	4,235	6.1	69,741	100
2002	76,676	73,163	95.4	3,513	4.6	76,676	100
2003	79,481	75,888	95.5	3,593	4.5	79,481	100
2004	77,058	74,401	96.6	2,657	3.4	77,058	100

Chart 21



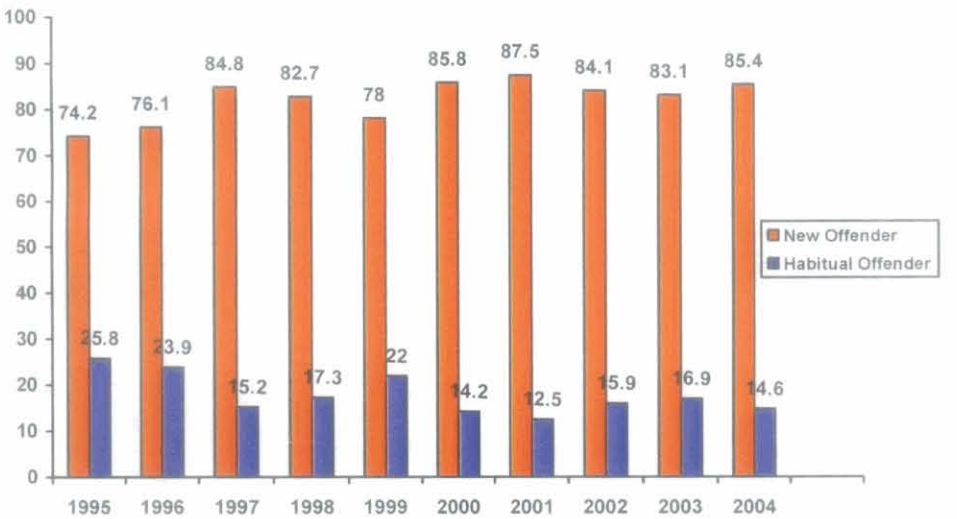
We can see from the table that except in 1996 the rate of recidivism in Orissa is below the national rate. In 1995 the rate of recidivism was 1.2% in 1996 it was 13.3% in 1997 and in 1998 it was 6.6%. In 1999 it was 6.4% in 2000 it was 7.1%, in 2001 it was 6.1%, in 2002 it was 4.6%, 2003 it was 4.5% and in 2004 it was 3.4%. Comparatively the recidivism rate of Orissa is very low.

Table 25

Recidivism amongst persons arrested under I.P.C. crimes In Punjab

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	16,709	12,393	74.2	4,316	25.8	16,709	100
1996	21,065	16,040	76.1	5,025	23.9	21,065	100
1997	23,678	20,081	84.8	3,596	15.2	23,678	100
1998	28,504	23,562	82.7	4,942	17.3	28,504	100
1999	31,620	24,672	78	5,948	22	31,620	100
2000	36,685	31,492	85.8	5,193	14.2	36,685	100
2001	39,794	34,827	87.5	4,967	12.5	39,794	100
2002	45,835	38,531	84.1	7,304	15.9	45,835	100
2003	39,705	32,982	83.	6,723	16.9	39,705	100
2004	36,974	31,575	85.4	5,399	14.6	36,974	100

Chart 22



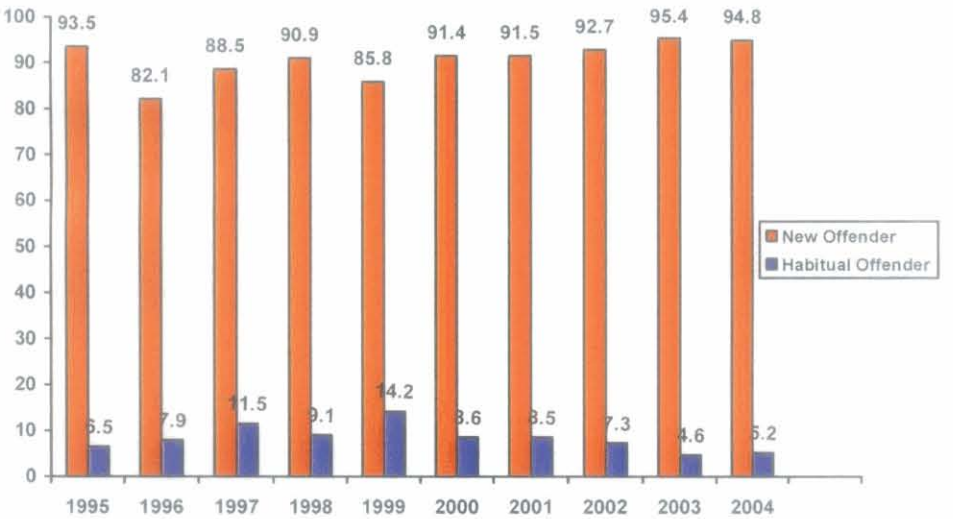
The rate of recidivism is very high than the national rate in every year. In 1995 it was 25.8% in 1996 it was 23.9%. In 1997 it was 15.2% in 1998 it was 17.3% in 1999 it was 22%, in 2000 it was 14.2% in 2001 it was 12.5% in 2002 it was 15.9% in 2003 it was 16.9% and in 2004 it was 14.6% even though the recidivism rate have decreased from 25.8% in 1995 to 14.6% in 2004, that also is way above the national mark.

Table 26

Recidivism amongst persons arrested under I.P.C. crimes In Rajasthan

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,13,024	1,99,243	93.5	13,781	6.5	2,13,024	100
1996	2,21,408	1,81,721	82.1	39,687	17.9	2,21,408	100
1997	2,29,038	2,02,585	88.5	26,453	11.5	2,29,038	100
1998	2,21,068	2,00,987	90.9	20,081	9.1	2,21,068	100
1999	2,24,656	1,92,779	85.8	31,876	14.2	2,24,656	100
2000	2,18,987	2,00,204	91.4	18,783	8.6	2,18,987	100
2001	199,980	1,82,922	91.5	17,058	8.5	199,980	100
2002	1,88,929	1,75,191	92.7	13,738	7.3	1,88,929	100
2003	1,79,807	1,71,453	95.4	8,354	4.6	1,79,807	100
2004	1,94,547	1,84,345	94.8	10,202	5.2	1,94,547	100

Chart 23



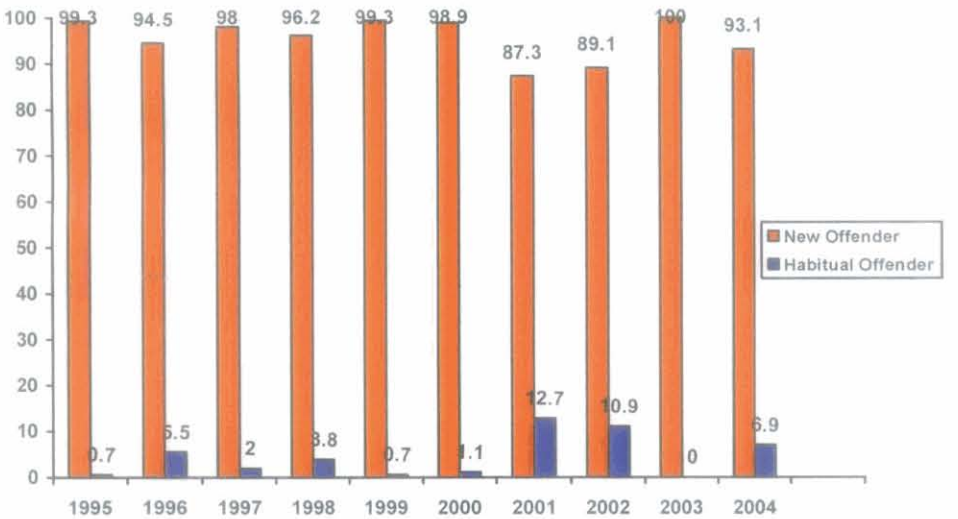
In Rajasthan we can see from the data that in 1995 the rate of recidivism was 6.5%. It had increased to 17.9% in 1996 then showed a decreasing trend to 11.5% in 1997 and 9.1% in1998. Then it increased to 14.2% in 1999 and again decreased to 8.6% in 2000, 8.5% in 2001, 7.3% in 2002, and 4.6% in 2003. In 2004 it slightly increased to 5.2%.

Table 27

Recidivism amongst persons arrested under I.P.C. crimes In Sikkim

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	740	735	99.3	5	.07	740	100
1996	688	650	94.5	38	5.5	688	100
1997	815	799	98	16	2	815	100
1998	497	478	96.2	19	3.8	497	100
1999	1,413	1,403	99.3	10	0.7	1,413	100
2000	544	538	98.9	6	1.1	544	100
2001	411	359	87.3	52	12.7	411	100
2002	276	246	89.1	30	10.9	276	100
2003	401	401	100	0	0	401	100
2004	914	851	93.1	63	6.9	914	100

Chart 24



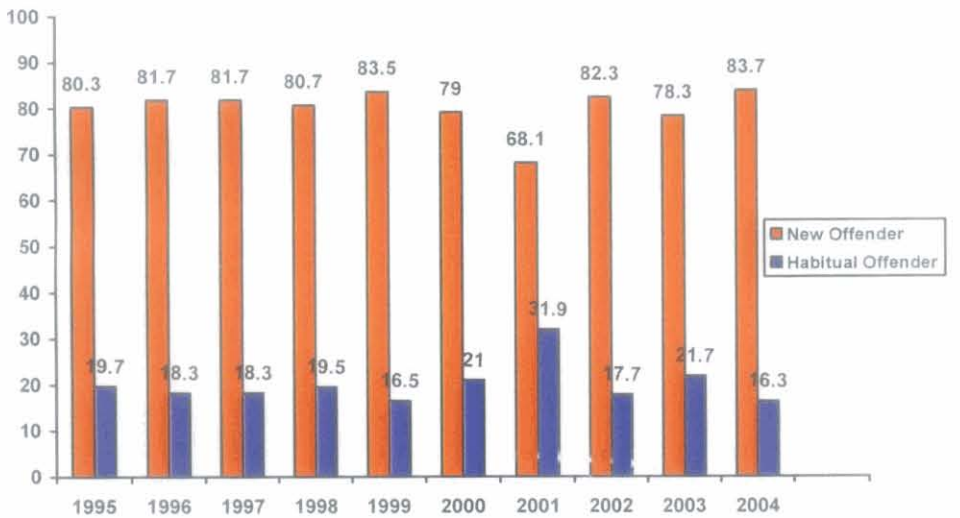
In 1995 the rate of recidivism in Sikkim was 0.7% by 1996,it had raised to 5.5% then declined to 2% then increased to 3.8%, decreased to 0.7% then increased to 1.1%, then to 12.7% slightly decreased to 10.9% then to 6.9%. In 2004 there was no recidivism.

Table 28

Recidivism amongst persons arrested under I.P.C. crimes In Tamil Nadu

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,95,859	1,57,202	80.3	38,657	19.7	1,95,859	100
1996	2,02,298	1,65,356	81.7	36,942	18.3	2,02,298	100
1997	2,05,642	1,68,060	81.7	37,582	18.3	2,05,642	100
1998	2,13,482	1,72,239	80.7	41,243	19.3	2,13,482	100
1999	2,02,294	1,68,970	83.5	33,324	16.5	2,02,294	100
2000	2,22,498	1,75,831	79	46,667	21	2,22,498	100
2001	2,06,590	1,40,725	68.1	65,865	31.9	2,06,590	100
2002	2,17,590	1,79,116	82.3	38,474	17.7	2,17,590	100
2003	1,98,431	1,55,287	78.3	43,144	21.7	1,98,431	100
2004	2,06,002	1,72,389	83.7	33,613	16.3	2,06,002	100

Chart 25



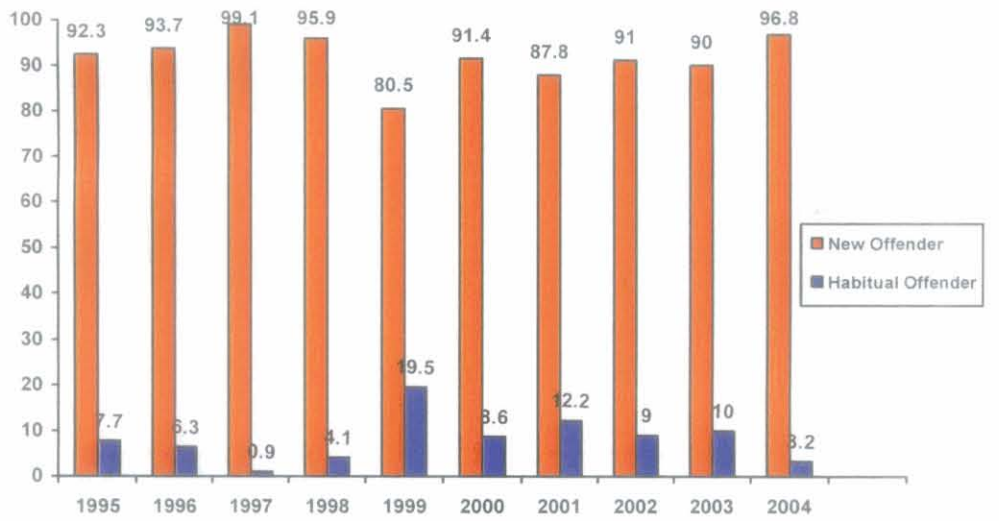
We can see from the table that the rate of recidivism in Tamil Nadu is very high. Even though the recidivism rate has decreased from 19.7% in 1995 to 16.3% in 2004, the over all recidivism rates are always above the national mark. In 1996 and 1997 the rate was 18.3%, in 1998 it was 19.3% in 1999 it was 16.5% in 2000 it was 21%. It reached its maximum 31.9% in 2001. In 2002 it was 17.7% in 2003 it was 21.7% and in 2004 it was 16.3%.

Table 29

Recidivism amongst persons arrested under I.P.C. crimes In Tripura

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	4,111	3,795	92.3	316	7.7	4,111	100
1996	5,339	5,005	93.7	334	6.3	5,339	100
1997	4,422	4,382	99.1	40	0.9	4,422	100
1998	5,110	4,900	95.9	210	4.1	5,110	100
1999	3,853	3,100	80.5	753	19.5	3,853	100
2000	4,218	3,857	91.4	361	8.6	4,218	100
2001	3,465	3,044	87.8	421	12.2	3,465	100
2002	4,076	3,710	91.0	366	9.0	4,076	100
2003	4,754	4,279	90.0	475	10	4,754	100
2004	4,212	4,078	96.8	134	3.2	4,212	100

Chart 26



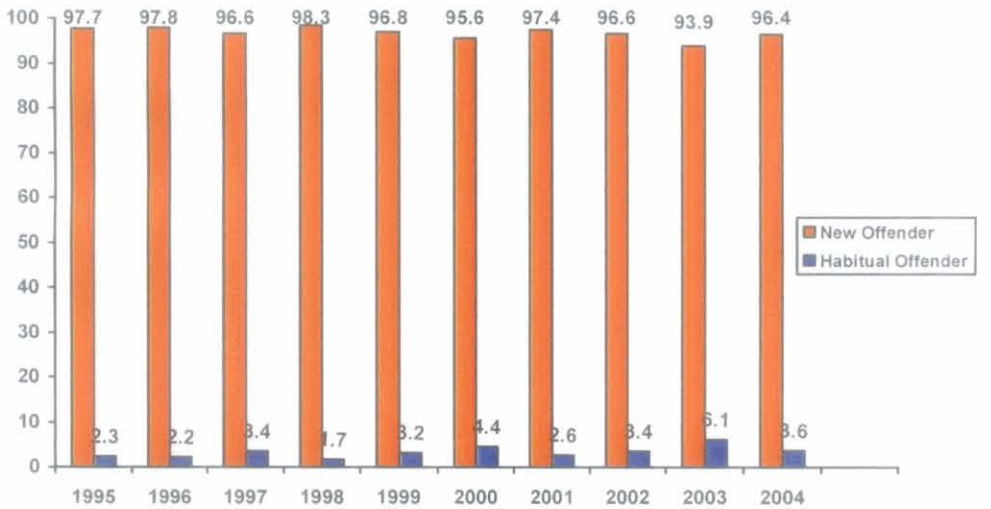
In Tripura from the table we can see that the rate of recidivism was 7.7% in 1995. It decreased to 6.3% in 1996 then to 0.9% in 1997. After that it increased to 4.1% in 1998 and 19.5% in 1999. In 2000 it decreased to 8.6% then increased to 12.2% in 2001 again to 9% in 2002, 10% in 2003 and to 3.2% in 2004.

Table 30

Recidivism amongst persons arrested under I.P.C. crimes In Uttar Pradesh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,90,789	2,84,194	97.7	6,595	2.3	2,90,789	100
1996	2,78,833	2,72,703	97.8	6,130	2.2	2,78,833	100
1997	2,70,862	2,32,730	96.6	8,132	3.4	2,70,862	100
1998	3,03,475	2,98,354	98.3	5,120	1.7	3,03,475	100
1999	2,99,059	2,89,574	96.8	9,485	3.2	2,99,059	100
2000	3,01,628	2,88269	95.6	13,359	4.4	3,01,628	100
2001	3,14,055	3,05,811	97.4	8,244	2.6	3,14,055	100
2002	2,61,054	2,52,226	96.6	8,828	3.4	2,61,054	100
2003	1,60,015	1,50,196	93.9	9,819	6.1	1,60,015	100
2004	2,19,313	2,11,329	96.4	7,984	3.6	2,19,313	100

Chart 27



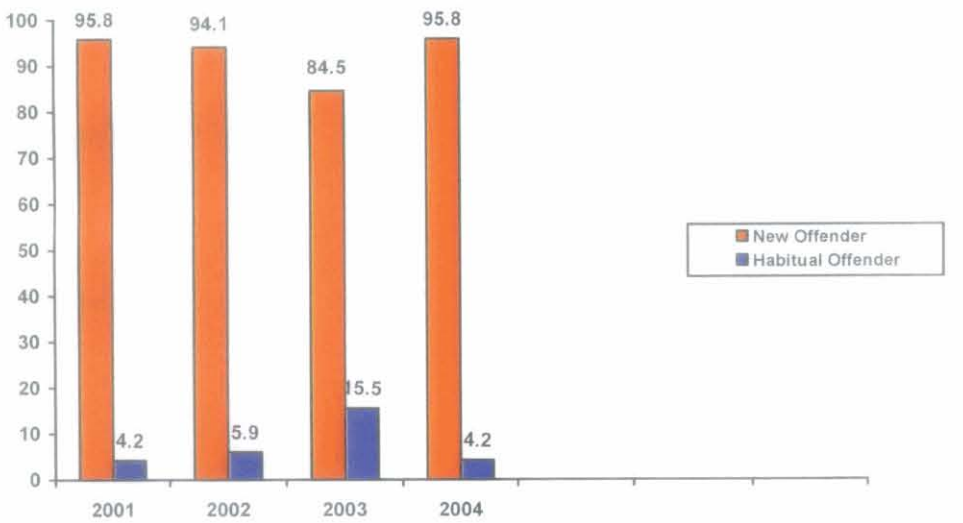
In Uttar Pradesh the rate of recidivism is very low comparing the national mark in every year of the study. In 1995 it was 2.3%, in 1996 it was 2.2%, in 1997 it was 3.4%, in 1998 it was 1.7%, in 1999 it was 3.2%, in 2000 it was 4.4%, in 2001 it was 2.6% in 2002 it was 3.4% in 2003 it was 6.!% and in 2004 it was 3.6%.

Table 31

Recidivism amongst persons arrested under I.P.C. crimes In Uttaranchal

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
2001	12,120	11,606	95.8	514	4.2	12,120	100
2002	12,799	12,049	94.1	750	5.9	12,799	100
2003	12,231	10,339	84.5	1,892	15.5	1,231	100
2004	14,618	14,000	95.8	618	4.2	14,618	100

Chart 28



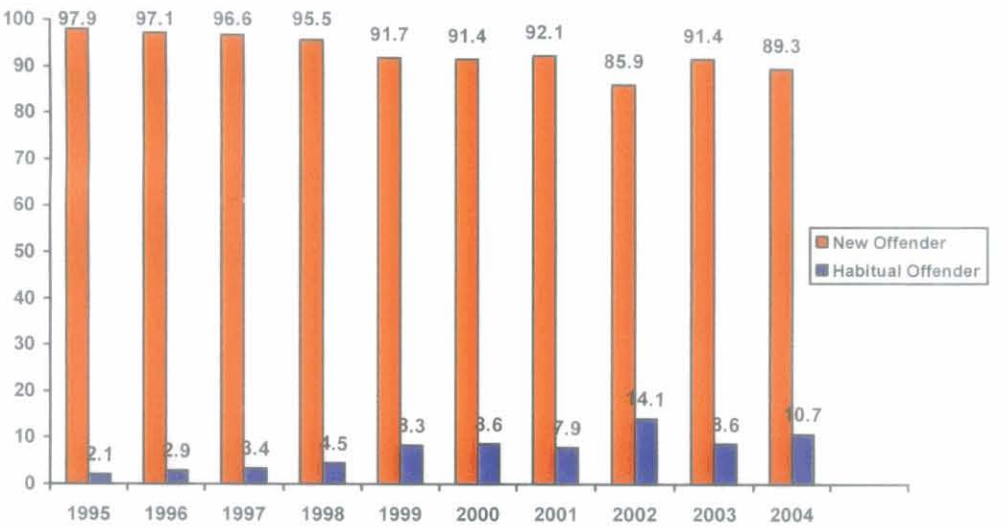
As Uttaranchal is a new State the data available about recidivists is only from 2001. It was 4.2% for 2001, 5.9% for 2002, 15.5% in 2003 and 4.2% in 2004. Only in 2003 the rate of recidivism has gone beyond the national mark.

Table 32

Recidivism amongst persons arrested under I.P.C. crimes In West Bengal

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	1,18,584	1,16,135	97.9	2,449	2.1	1,18,584	100
1996	1,13,349	1,10,050	97.1	3,299	2.9	1,13,349	100
1997	1,09,233	1,05,517	96.6	3,716	3.4	1,09,233	100
1998	1,00,998	96,478	95.5	4,520	4.5	1,00,988	100
1999	1,02,039	93.609	91.7	8,430	8.3	1,02,039	100
2000	94,254	86,146	91.4	8,108	8.6	94254	100
2001	91,422	84,199	92.1	7,223	7.9	91,422	100
2002	97,027	83,305	85.9	13,722	14.1	97,027	100
2003	1,12,850	1,03,129	91.4	9,721	8.6	1,12,850	100
2004	1,14,528	1,02,311	89.3	12,217	10.7	1,14,528	100

Chart 29



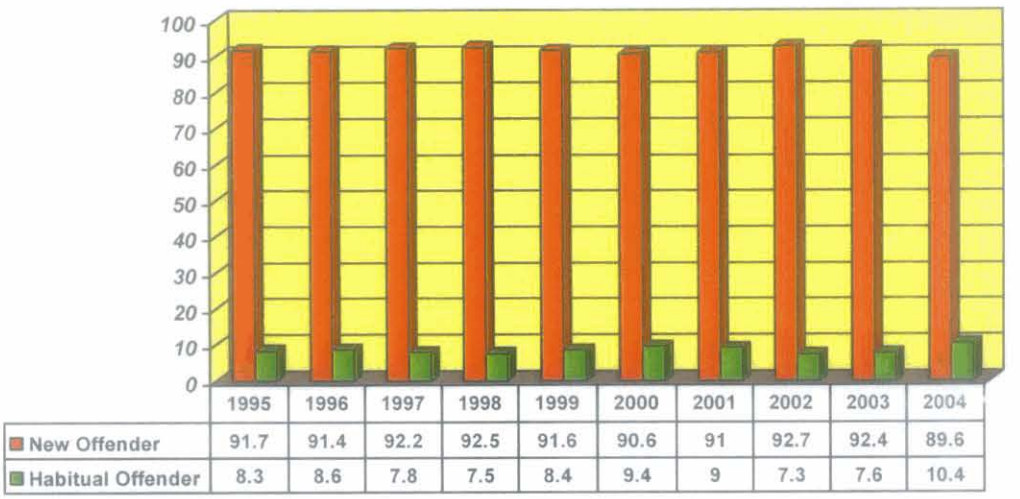
We can see from the table that the recidivism rate for 1995 is 2.1% for 1996 is 2.9% for 1997 is 3.4%, for 1998 is 4.5% for 1999 is 8.3%, for 2000 is 8.6%. From 1995 to 2000 the rate of recidivism slows a gradual increase. In 2001 it decreased to 7.9% again increased to 14.1% in 2002. In 2003 it decreased to 8.6% then increased to 10.7% in 2004.

Table 33

Recidivism amongst persons arrested under I.P.C. crimes For all States

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	25,38,005	23,28,099	91.7	2,09,906	8.3	25,38,005	100
1996	25,27921	23,09,666	91.4	2,18,255	8.6	25,27,921	100
1997	25,15,934	23,20,302	92.2	1,95,632	7.8	25,15,934	100
1998	26,03,783	24,08,362	92.5	1,95,421	7.5	26,03,783	100
1999	25,43,202	23,29,944	91.6	2,13,258	8.4	25,43,202	100
2000	26,16,915	23,72,059	90.6	2,44,856	9.4	26,16,915	100
2001	26,14,681	23,78,763	91.0	2,35,918	9.0	26,14,681	100
2002	26,40,982	24,47,823	92.7	1,93,159	7.3	26,40,982	100
2003	24,59,596	22,73,196	92.4	1,86,400	7.6	24,59,596	100
2004	26,02,632	23,32,204	89.6	2,70,428	10.4	26,02,632	100

Chart 30



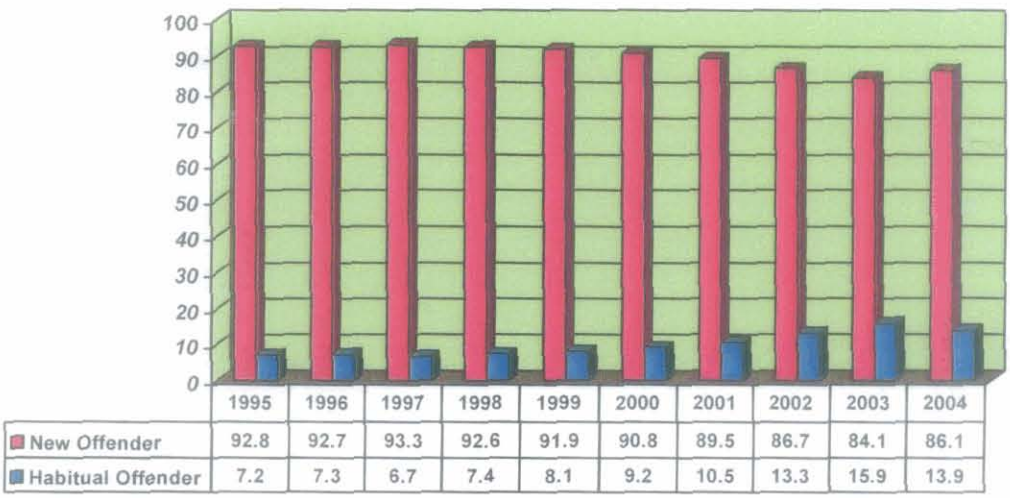
The rate of recidivism for all the states shows that there were not much sharp variations. Even though there is slight decrease and increase in the rate of recidivism it has increased from 8.3 in 1995 to 10.4% in 2004.

Table 34

Recidivism amongst persons arrested under I.P.C. crimes In Delhi

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	42,014	38,969	92.8	3,045	7.2	42,014	100
1996	52,676	48,840	92.7	3,836	7.3	52,676	100
1997	52,130	48,663	93.3	3,467	6.7	52,130	100
1998	46,208	4,2805	92.6	3,403	7.4	46,208	100
1999	47,702	43,849	91.9	3,853	8.1	47,702	100
2000	48,123	43,717	90.8	4,406	9.2	48,.23	100
2001	47,020	42,106	89.5	4,915	10.5	47,020	100
2002	44,572	38,648	86.7	5,924	13.3	44,572	100
2003	40,855	34,342	84.1	6,513	15.9	40,855	100
2004	47,902	41,245	86.1	6,657	13.9	47,902	100

Chart 31



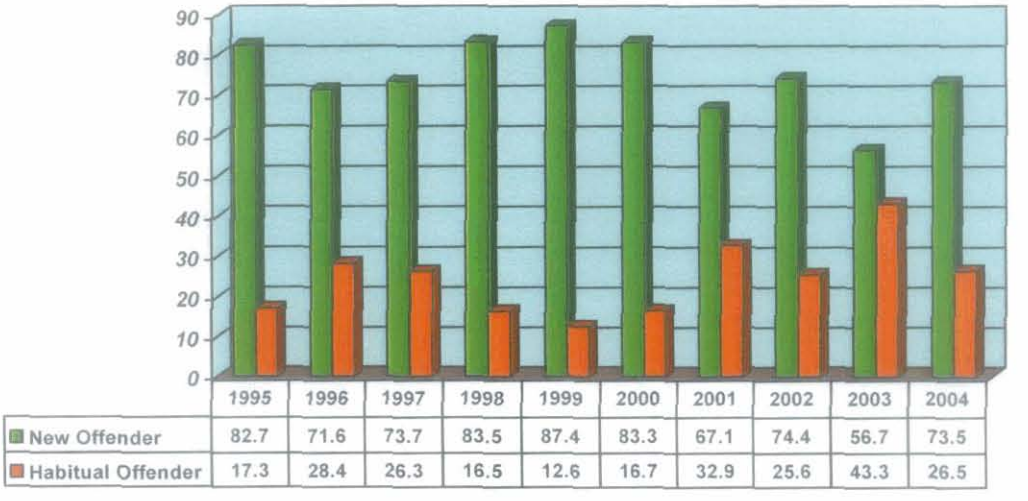
Analysing the recidivism of Delhi it can be seen that there is only a gradual increase in the recidivism rate. From 1995 the rate recidivism (7.2%) has increased to 13.9% in 2004. In 2003 it reached its maximum at 15.9%.

Table 35

Recidivism amongst persons arrested under I.P.C. crimes In Chandigarh

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	2,939	2,430	82.7	509	17.3	2,939	100
1996	2,146	1,537	71.6	609	28.4	2,146	100
1997	1,913	1,409	73.7	504	26.3	1,913	100
1998	1,856	1,550	83.5	306	16.5	1,856	100
1999	3,285	2,872	87.4	413	12.6	3,285	100
2000	3,686	3,070	83.3	616	16.7	3,686	100
2001	2,863	1,920	67.1	943	32.9	2,863	100
2002	2,876	2,140	74.4	736	25.6	2,876	100
2003	2,762	1,567	56.7	1,195	43.3	2,762	100
2004	2,451	1,801	73.5	650	26.5	2,451	100

Chart 32



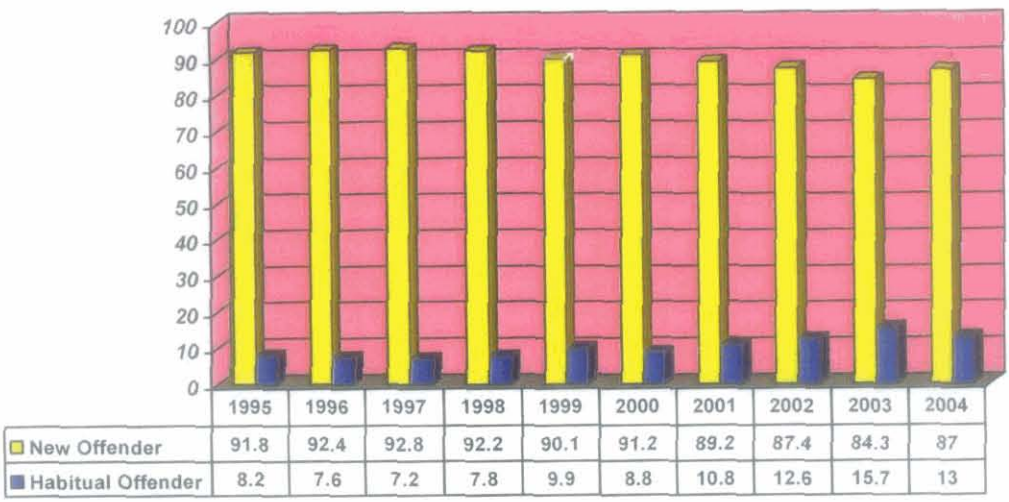
Analysing the table we can see that the recidivism rate in Chandigarh is very high. From 17.3% in 1995 it has gone upto 26.5% in 2004. In 2003 it has gone up to 43.3%.

Table 36

Recidivism amongst persons arrested under I.P.C. crimes For all Union Territories

Year	Total Number of persons arrested	New Offender		Habitual Offender		Total	
		No.	%	No.	%	No.	%
1995	49,734	45,680	91.8	4,054	8.2	49,734	100
1996	60,325	55,749	92.4	4,576	7.6	60,325	100
1997	59,893	55,570	92.8	4,323	7.2	59,893	100
1998	54,096	49,880	92.2	4,216	7.8	54,096	100
1999	57,674	51,971	90.1	5,703	9.9	57,674	100
2000	59,008	53,826	91.2	5,182	8.8	59,008	100
2001	56,859	50,693	89.2	6,166	10.8	56,859	100
2002	55,561	48,553	87.4	7,008	12.6	55,561	100
2003	51,296	43,266	84.3	8,030	15.7	51,296	100
2004	58,278	50,702	87	7,576	13.0	58,278	100

Chart 33



From the above table and chart we can see that from 8.2% in 1995 the recidivism rate has gone up to 13% in 2004. In 2003 it has gone up to 15.7%. So in the union territories there is a gradual increase in the recidivism rate.

Recidivism in Kerala

To find out the recidivism amongst the prisoners male and female admitted to the Central Prisons in Kerala, the recidivism data from the administrative report during 1996 to 2002 was studied[52].

Table 37

Recidivism amongst prisoners admitted in Central Prison, Thiruvananthapuram

Year	Total prisoners admitted			New Offenders			Offenders convicted in the past		
	Male	Fem ale	Total	Male	Female	Total	Male	Female	Total
				No.	No.	No.	No.	No.	No.
				%	%	%	%	%	%
1996	1336	161	1497	1212	149	1361	124	12	136
				80.96	9.95	90.91	8.28	0.8	9.08
1997	1670	327	1997	351	29	380	1319	298	1617
				17.58	1.45	19.03	66.05	14.92	80.97
1998	1359	194	1553	285	36	321	1074	158	1232
				18.35	2.32	20.67	69.16	10.17	79.33
1999	1089	86	1175	801	12	813	288	74	362
				68.17	1.02	69.19	24.51	6.3	30.81
2000	978	64	1042	750	14	764	228	50	278
				71.98	1.34	73.32	21.88	4.8	26.68
2001	574	52	626	520	10	530	54	42	96
				83.06	1.6	84. 66	8.63	6.7	15.34
2002	748	48	796	548	24	572	200	24	224
				68.84	3.02	71.86	25.12	3.01	28.14

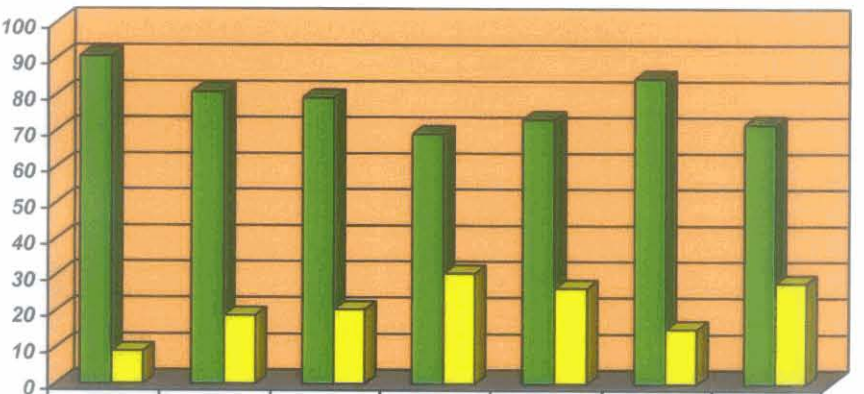
[52] See the Administrative Report (1996-2002). The statistics used to analyse the recidivism rate among the prisoners admitted to the central jail are based on the data published in the Government publication by the prison Department, State of Kerala.

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In the year 1996, 1497 prisoners were admitted. Out of which 1361 were new offenders and 136 were habitual offenders. There is surprisingly a high increase in the number of recidivists in 1997. Among the 1997 prisoners admitted, only 380 were new offenders and 1617 were habitual offenders. In1998 the total prisoners admitted was 1553 among them the new offenders were 321and habitual offenders 1232. In 1999, among 1175 offenders 813 were new offenders and 362 recidivists. In 2000, among 1042 prisoners admitted, 764 were new offenders and 278 recidivists. In 2001, among 626, 530 were new and 96 recidivists. In 2002 among 796, 572 were new and 224 recidivists. From this we can see that in 1997 there is a sharp increase in the rate of recidivism after that it shows a gradual decline. In 2002 it again shows an increase.

Percentage of Recidivists admitted

Chart 34



	1996	1997	1998	1999	2000	2001	2002
New Offender	90.92	80.97	79.33	69.19	73.32	84.66	71.86
Recidivists	9.08	19.03	20.67	30.81	26.68	15.34	28.14

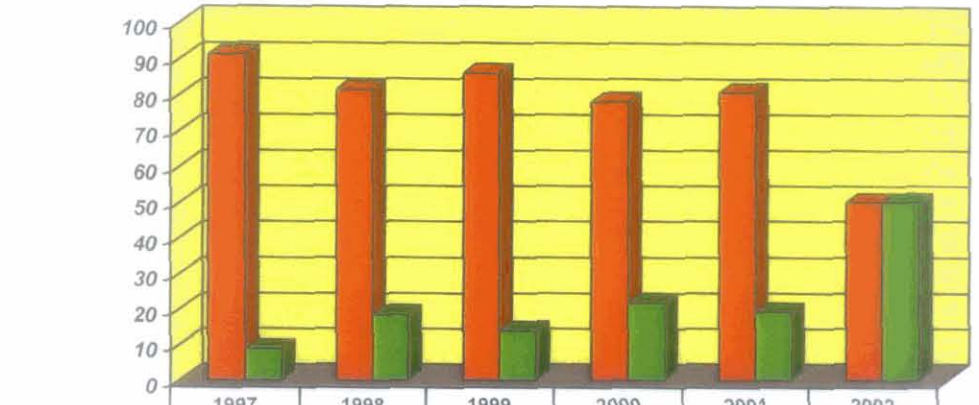
We can see that from 9.08% in 1996 it has increased to 80.97% in 1997 and slightly deceased to 79.33% in 1998 then decreased to 30.81% in 1999, 26.68% in 2000, and 15.34% in 2001 and increased to 28.14% in 2002.

From the Table (37) we can see that in 1997 out of 327 female prisoners admitted, only 29 were new and 298 were recidivists. In 1998 out of

194 prisoners, 36 were new and 158 recidivists. In 1999, among 86 prisoners, 12 were new and 74 were recidivists. In 2000, among 64 prisoners, 14 were new and 50 were recidivists. In 2001 among 52 offenders, 10 were new and 42 were recidivists. In 2002 among 48 prisoners, 24 were new and 24 were recidivists.

Female Recidivism among prisoners admitted in Central Prison, Thiruvananthapuram

Chart 35



	1997	1998	1999	2000	2001	2002
New Offender	91.13	81.44	86.04	78.13	80.77	50
Recidivists	8.87	18.56	13.96	21.87	19.23	50

We can see that recidivism among female offenders admitted to Central Prison, Thiruvananthapuram is very high. Chart (35) shows a very high percent of female recidivism. We can see that in Kannur and Viyyur Central Jails the number of female recidivists admitted is very few. The reason for this high rate of female recidivism in Central Jail, Thiruvananthapuram may be that Thiruvananthapuram is a city. It can be seen that going to north the recidivism rate decreases. It is high in Thiruvananthapuram and low in Kannur Central Jail.

Table 38

Recidivism amongst prisoners admitted in Central Prison, Viyyur

Year	Total prisoners admitted			New Offenders			Offenders convicted in the past		
	Male	Fem ale	Total	Male	Female	Total	Male	Female	Total
				No.	No.	No.	No.	No.	No.
				%	%	%	%	%	%
1996	313	35	348	291	30	321	22	5	27
				83.62	8.62	92.24	6.32	1.44	7.76
1997	346	22	368	305	17	322	41	5	46
				82.88	4.62	87.5	11.14	1.36	12.5
1998	411	11	422	340	5	345	71	6	77
				80.57	1.18	81.75	16.82	1.42	18.25
1999	622	-	622	329	-	329	293	-	293
				52.89		52.89	47.11		47.11
2000	558	89	647	434	80	514	124	9	133
				67.08	12.36	79.44	19.17	1.39	20.56
2001	580	-	580	457	-	457	123	-	123
				78.9		78.9	21.21		21.21
2002	544	30	574	367	15	382	177	15	192
				63.94	2.61	66.55	30.84	2.61	33.45

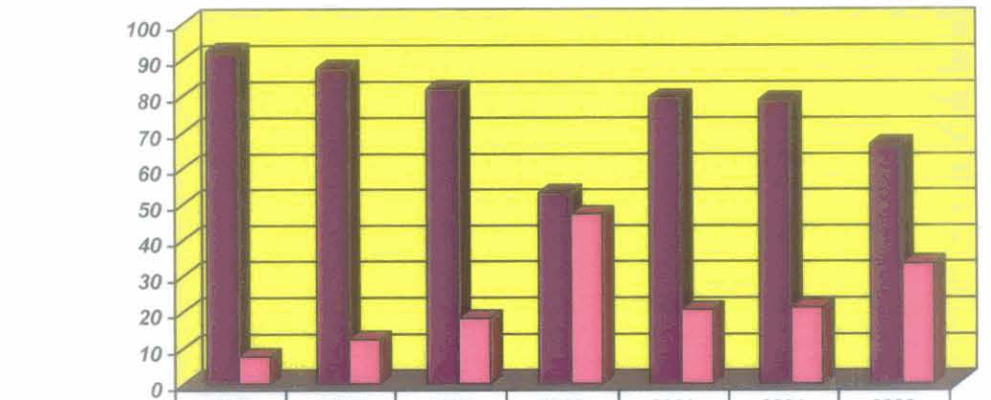
From the above table we can see that in 1996, out of 348 persons admitted only 27 were recidivists. In 1997 out of 368, 46 were recidivists. In 1998 out of 422, 77 were recidivists. In 1998 out of 422, 77 were recidivists. In 1999 among 622 admitted 293 were recidivists. In 2000 among 647, 133

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were recidivists. In 2001 out of 580, 123 were recidivists. In 2002 out of 574, 192 were recidivists.

Rate of recidivism in Central Prison Viyyur

Chart 36



	1996	1997	1998	1999	2000	2001	2002
First Offender	92.24	87.5	81.75	52.9	79.44	78.8	66.55
Recidivists	7.76	12.5	18.25	47.11	20.56	21.21	33.45

From this chart we can see that from 1996, the rate of recidivism gradually increased from 7.76% and in 1999 it reached the zenith of 47.1% after that it started to decline to 20.56% in 2000 again it shows a slight upward trend. In 2002 it is 33.45%. In Central Prison Viyyur the rate of female recidivism is very low.

Table 39

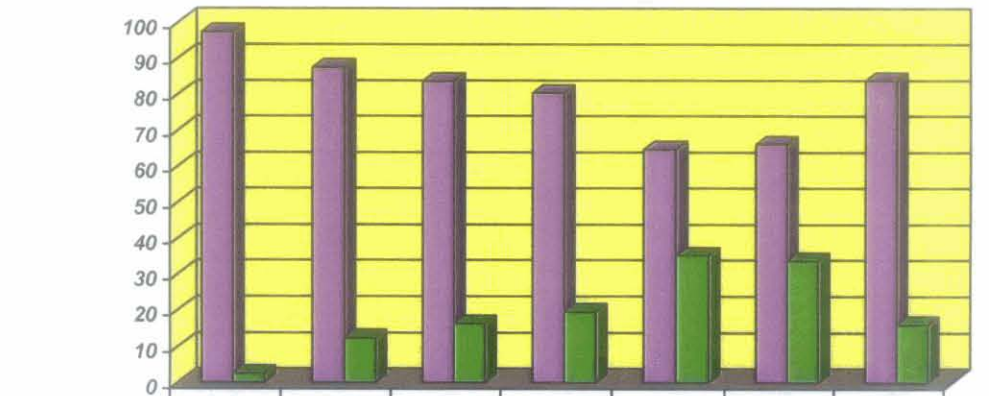
Recidivism amongst prisoners admitted in Central Prison, Kannur

Year	Total prisoners admitted			New Offenders			Offenders convicted in the past		
	Male	Fem ale	Total	Male	Female	Total	Male	Female	Total
				No.	No.	No.	No.	No.	No.
				%	%	%	%	%	%
1996	701	18	719	683	18	701	18	-	18
				94.99	2.5	97.49	2.51		2.51
1997	683	35	688	573	29	602	80	6	86
				83.28	4.22	87.5	11.63	0.87	12.5
1998	663	36	699	553	32	585	110	4	114
				79.11	4.58	83.69	15.74	0.57	16.3
1999	749	62	811	596	56	652	153	6	159
				73.49	6.91	80.4	18.86	0.74	19.6
2000	851	30	881	549	22	571	302	8	310
				62.31	2.5	64.81	34.28	0.91	35.19
2001	811	30	841	531	25	556	280	5	285
				63.14	2.97	66.11	33.29	0.6	33.89
2002	773	24	797	649	20	669	124	4	128
				81.43	2.51	83.94	15.56	0.5	16.01

From the above table we can see that in 1996, out of 719 prisoners admitted only 18 were recidivists. In 1997 among 688 prisoners, 86 were recidivists. In 1998 among 699 prisoners, 114 were recidivists. In 1999 among 811 prisoners 159 were recidivists. By 2000 out of 881 prisoners, 310 were recidivists. In 2001 among 841,285 were recidivists and in 2002 among 797prisoners, 128 were recidivists.

Rate Recidivism among prisoners admitted in Central Prison, Kannur

Chart 37



	1996	1997	1998	1999	2000	2001	2002
First Offender	97.49	87.5	83.69	80.4	64.81	66.11	83.94
Recidivists	2.51	12.5	16.31	19.6	35.19	33.89	16.06

From the Chart were can see that from 1996 the rate of recidivism has increased and it has reached its maximum in 2000 (35.18%). Then it started slowly to decrease and reached 16.01 in 2002. The rate of female recidivism in Kannur Central Jail is very low.

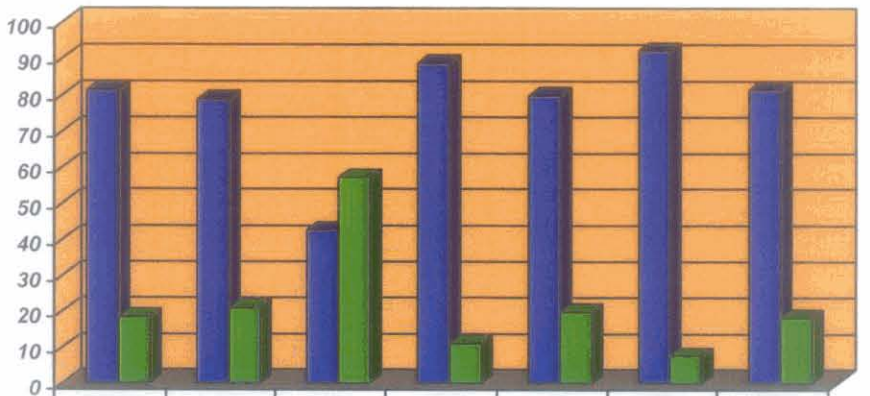
Table 40

Recidivism amongst prisoners admitted in District Prisons

Year	Total prisoners admitted			New Offenders			Offenders convicted in the past		
	Male	Fem ale	Total	Male	Female	Total	Male	Female	Total
				No.	No.	No.	No.	No.	No.
				%	%	%	%	%	%
1996	761	165	926	613	140	753	148	25	173
				66.2	15.12	81.32	15.98	2.7	18.68
1997	796	127	923	633	96	729	163	31	194
				68.58	10.40	78.98	17.66	3.36	21.02
1998	448	73	521	200	23	223	248	50	298
				38.39	4.41	42.80	47.6	9.6	57.2
1999	541	134	675	500	100	600	41	34	75
				74.07	14.82	88.89	6.07	5.04	11.11
2000	828	107	935	687	61	748	141	46	187
				73.48	6.52	80	15.08	4.92	20
2001	1053	153	1206	959	153	1112	94	-	94
				79.52	12.69	92.21	7.79		7.79
2002	800	60	860	641	60	701	159	-	159
				74.53	6.98	81.51	18.49		18.49

Rate of Recidivism among Prisoners admitted in District Prisons

Chart .38



	1996	1997	1998	1999	2000	2001	2002
New Offender	81.32	78.98	42.8	88.89	80	92.21	81.51
Recidivists	18.68	21.02	57.2	11.11	20	7.79	18.49

In Kerala there are three District Jails, Kozhikode, Kollam and Thiruvananthapuram[53].

From the above table and chart we can see that the percentage of recidivism shows a fluctuating tendency from 18.68% in 1996 it has increased to 21.02% in 1997, they very high increase to 57.2% in 1998 then decreased to 11.11% in 1999 again increased to 20% in 2000 then decreased to 7.79% in 2001 again increased to 18.49% in 2002.

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[53] Data is collected from Administrative Report of Prison Department, State of Kerala for the year 1996-2002.

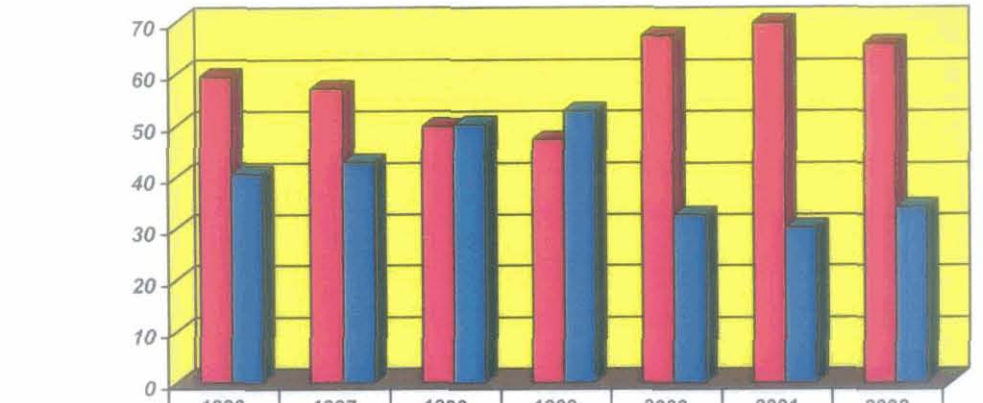
Table 41

Recidivism amongst prisoners admitted in Special Sub Jails and Sub Jails in Kerala

Year	Total prisoners admitted			New Offenders			Offenders convicted in the past		
	Male	Fem ale	Total	Male	Female	Total	Male	Female	Total
				No. %	No. %	No. %	No. %	No. %	No. %
1996	3406	298	3704	1986 53.62	217 5.86	2203 59.48	1420 38.33	81 2.19	1501 40.52
1997	3179	221	3400	1743 51.27	198 5.82	1941 57.09	1436 42.23	23 0.68	1459 42.91
1998	3112	305	3417	1500 43.90	200 5.85	1700 49.75	1612 47.18	105 3.07	1717 50.25
1999	2776	187	2963	1300 43.87	100 3.38	1400 47.25	1476 49.81	87 2.94	1563 52.75
2000	2348	136	2484	1569 63.16	103 4.15	1672 67.31	779 31.36	33 1.33	812 32.69
2001	2597	103	2700	1810 67.03	75 2.78	1885 69.81	787 29.15	28 1.04	815 30.19
2002	2840	107	2947	1853 62.88	85 2.88	1938 65.76	987 33.49	22 0.75	1009 34.24

Rate of recidivism among Prisoners admitted in Sub Jails

Chart 39



	1996	1997	1998	1999	2000	2001	2002
New Offender	59.48	57.09	49.75	47.25	67.31	69.81	65.76
Recidivists	40.52	42.91	50.25	52.75	32.69	30.19	34.24

Now there are 26 Sub Jails and five Special Sub Jails in Kerala. The rate of recidivism is very high in these Jails. In 1996 the recidivism rate was 40.52%, in 1997 it was 42.91%, in 1998 it was 50.25%, in 1999 it was 52.75%, and in 2000 it was 32.69%, in 2001 it was 30.19% and in 2002 it was 34.24%. The recidivism shows an increasing trend till 1999 where it was at the maximum of 52.75% then it started to decrease in 2000 and 2001 in 2002 it shows a slight upward trend.

Table 42
Recidivism amongst prisoners admitted in Women Prison, Neyyattinkara

Year	Total Prisoners admitted		New offenders		Offenders convicted in the past recidivists	
	No.	%	No.	%	No.	%
1996	19	100	18	94.74	1	5.26
1997	23	100	23	100	-	0
1998	23	100	23	100	-	0
1999	17	100	16	94.12	1	5.88
2000	23	100	23	100	-	0
2001	12	100	11	91.67	1	8.33
2002	10	100	9	90	1	10

In the Women's Prison the recidivism rate is very low. In 1997, 1998, 2000 there is no recidivism reported. 5.26% in 1996 the recidivism has increased to 10% in 2002.

Table 43

Recidivism amongst prisoners admitted in Open Prision, Nettukalthery

Year	Total Prisoners admitted			New Offenders			Offenders convicted in the past recidivists		
	Male	Female	Total	Male No.%	Female No.%	Total No.%	Male No.%	Female No.%	Total No.%
1996	167	-	167	167	-	167 100	-	-	0
1997	87	-	87	87	-	87 100	-	-	0
1998	90	-	90	90	-	90 100	-	-	0
1999	87	-	87	80	-	80 91.95	7 8.05	-	7 8.05
2000	35	-	35	35	-	35 100	-	-	0
2001	37	-	37	37	-	37 100	-	-	0
2002	59	-	59	59	-	59 100	-	-	0

In the open prison only in 1999, the recidivism was reported, i.e., 8.05%. In all other years studies not a single recidivist was admitted. The open prisons are a best method for the reformation and rehabilitation of recidivists. Unfortunately it has not been utilised in the case of recidivists.

From the statistical study conducted from among the convicts admitted to prison in all the States and union territories during 2002-2003, from the recidivism among the persons arrested under I.P.C. crimes during 1995-2004, from the convicts admitted to the Central Prisons in Kerala from 1996 to 2002 we can see that the rate of recidivism is definitely on the increase. If we do not try to find out the reason for this phenomenon of recidivism and try to curb this menace, all our prisons will be filled up with recidivists. This revolving door phenomenon in our nation's prison will result in escalating the prison population.

■

CHAPTER III

CHAPTER III

Factors Contributing to Recidivism

Criminal behaviour is an integral part of social behaviour that can be understood only in relation to the person's social situation. The personality of the offender, the social world in which he lives, and the previous experience growing out of interaction between the individual and the environmental situation play a vital part in the social process leading to criminal behaviour. Man and his environment influence each other so intricately that any attempt to prevent crime inevitably may require manipulation on both the sides[1]. Many kinds of inter-related background factors may push a person to the path of criminal proclivity. Social conditions like economic, political, recreational, family, neighbourhood, religious and school environments are of great influence in moulding a person's behaviour. Inherent tendencies in a person are modified by experiences and influenced by the social circumstances. In other words, one who ultimately turns out to be a delinquent or criminal is the product of the different socio – economic institutions of which he happens to be a member.

Once the specific causes of criminal behaviour within the individual is discovered, the reduction of offending is possible through treatment programmes by ameliorating or eliminating the causal agents[2]. Extension of investigation into individuals who are at risk of offending can be segregated and treated specially since offences may be prevented before they even occur. Defence is better than cure.

The thoughts of a person will be definitely reflected in his action. If this action continues for some time it will become a habit. After sometime this habit

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1 Hira Singh, "Planning for social defence", in N.K.Chakrabarti (ed.), *A social Defence In the Administration of Criminal Justice* (1999), p.16.

2 Rob Whita and Fiona Hains, *Crime and Criminology an Introduction* (1997), p.54.

will become part of his personality. The personality of a person surely determines his destiny[3]. From this we can see how even the thoughts of a person affect his destiny. Even the little day-to-day adjustments, incidents that seem uneventful to a casual observer are important in the development of both normal and abnormal personalities. Individuals seem to prepare themselves unconsciously for normality or abnormality, by their reactions to the usual, unpretentious adjustments of life.

The socio economic factors mainly depends on the density of population, public opinion, religion, family circumstances, system of education, employment, alcoholism, economic and political conditions, public administration, justice and police, and in general legislative, civil and penal institutions. In order to reduce levels of crime one should provide early intervention in an effort to help or divert those who appear more likely to adopt a criminal life style[4].

Xenophone, Plato and Aristotle have made attempts to explain criminal behaviour in terms of economic conditions that prevailed in society. Karl Marx believed that the economic system was the sole determinant of crimes in society and therefore he advocated that crime could be prevented only if a change in the economic system was effected[5].

In contrast to Marxian 'economic determinism' Frank Tannenbaun and William Bonger brought out 'Facilitating environment' as an explanation to criminal behaviour. Tannenbaun argued that criminals were as much a part of the community as are scholars, inventors, scientists and businessmen. The community must provide a facilitating environment for their behaviour to exist and

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3 This truth has been clearly expressed by Prof. Gillin, "sow a thought and reap an act; sow an act and reap a habit; sow a habit and reap a character (personality); sow a character (personality) and reap a destiny. John Lewis Gillin, *Criminology and Penology* (3rd ed., 1945), p.159.

4 Peter B. Ainsworth, *Offender Profiling and Crime Analysis* (2001), p.33.

5 James Vadakkumchery, *Criminology and Penology* (1983), p.25.

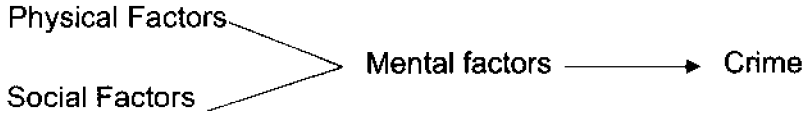
flourish. Hence a criminal is a product of the community. The community gives him the methods, ideals and goals[6].

The sociologists suggested that the crime causation depends much on the circumstances and at times persons are seen to violate the provisions of law even deliberately knowing fully well the consequences that are likely to follow from such lapses. This phenomenon is more conspicuous in times of political strategy.

Sutherland's theory is that criminal behaviour is not inborn, but is acquired. It is acquired from the society in which a person lives. If the society consists of persons who have no respect for the law, a person is quickly initiated into the path of crime.

Every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit it. Those factors may be social and economic, may be the result of value erosion or parental neglect may be because of the stress of circumstances or the manifestation of temptation.

The mentalistic approach to criminal behaviour is illustrated by Herman Mannheim's statement that "only by producing a certain state of mind can any of the other factors lead to a crime"[7]. Mannheim makes the point in a most graphic manner.



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6 Frank Tannenbaum, *Crime and the Community* (1938), p.148.

7 Cyril M. Franks and G, Terence Wilson, *Behaviour Therapy: Therapy and Practice* (1975), p.375.

Delinquent and criminal behaviour is shaped within the various institutions of society. In other words one who ultimately turns out to be a delinquent or criminal is the product of the different socio – economic institutions of which he happens to be a member. A purely legalistic approach to the study of crime may not be proper since it does not take into account the social economic and psychological factors behind criminality.

The socio–economic background affects the actions of even the normal persons. So from that we can assume how it will affect the recidivists, as they have once deviated from the path of law it will be easier for them to do it again if the same conditions prevail. So it is essential to study the socio – economic background to find out the possible solutions to prevent recidivism[8]. Some of the factors covered here are family, place of residence, religion, age, marital status, education, occupation, income etc.

Family

The first and most important social institution which determines the individual's behaviour towards society is the family of the individual. The family not only gives him the first social contact in the world i.e.; with other members of the family, but also determines his position vis-à-vis the larger world. The perception of environment by the child and his attitude towards it are, therefore, greatly influenced by the family. For the first few years of his life the home is his whole world and only gradually does he learn that this is only part of a larger sphere of activity.

Most individuals are raised within some kind of family environment and it is understandable that psychologists would look to the family as a possible

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[8] The period of study is from 1995 to 2005. The researcher have conducted an empirical study on the prisoners of Central Jail, Thiruvananthapuram, Viyyoor, Kannur, Women's Prison, Neyyattinkara, District Prison, Kozhikode, Ernakulam. The researcher has interviewed a total of 150 prisoners in a random fashion. Out of that 105 prisoners were recidivists. The researcher has studied prisoners as a whole and also recidivists specifically.

influence on an individual's tendency to commit or not to commit a crime. Freud believed that the first five years of a child's life were crucial in forming their personality. A child must successfully negotiate a number of stages of psycho – sexual development in his early years and that any disruption or difficulty would have a permanent effect on the individual's personality. Almost all problems in an individual's adult life could be traced back to some possibly traumatic event in early childhood[9].

In the adjustment to the extra familial world, the earlier experiences aid or hinder in the development of the personality as these home - made habit patterns are congruent with or divergent from those which the individual finds it expedient to make in order to fit into the larger cultural group. It is not to be forgotten that the home influence cannot be divorced from the community of which it is a part. In the main, the home is merely the vehicle whereby the social values and the habits that have been acquired in the larger community are transmitted to the younger generation.

Lack of affection, either actual or perceived by the child, is regarded as an important contributory factor in antisocial attitude. It is because the child is dependent on its parents for its physical as well as social needs. The lack of affection may arise due to different reasons like disharmonious relationship between the parents, big family, broken home, by death, divorce, illness etc

.Sutherland has stated[10] that the homes from which delinquent children come most frequently are characterized by one or more of the following conditions. (a) Other members of the family are criminalistic, immoral or alcoholic, (b) Parents separated (c) Crowded housing conditions (d) Big family (e) lack of parental control through ignorance or other sensory defect or absence of one or both parents (f) parental neglect (g) home uncongeniality (h) irritation at home (I) severity and harshness of parents (j) poverty.

The information collected by the Researcher from the prisoners about their family, is shown in Table1, 2 and 3

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9 Peter B.Ainsworth, *op.cit*,at 31.

10 E. H. Sutherland, *Principles of Criminology* (4th ed.1947), p. 159.

Table 1

Size of family of prisoners

Family members		Above 8	Below 8	No. Family	Total
Among prisoners	Frequency	107	20	23	150
	Percentage	71.33	13.33	15.34	100
Among recidivists	Frequency	76	9	20	105
	Percentage	72.38	8.57	19.05	100

In a small family, the parents can devote more time and resources in bringing up children; the parents may not be in a position to cater to all the needs of the children if the size of the family is large. The study revealed that overwhelmingly a large number (71.33%) of the offender's family consists of more members from what is desirable and that they could not therefore get proper care from their parents. Among recidivists this is 72.38%.

Table II

Broken Family

Nature of family	Among Total prisoners		Among Recidivists	
	No:	%	No:	%
Physically Broken family	78	52	52	49.52
Psychologically Broken family	56	37.33	49	46.67
Normal family	16	10.67	4	3.81
Total	150	100	105	100

The broken family is a family which is broken physically or psychologically. A family is designated as physically broken family if the children do not live with both the parents either because one or both the parents are missing, dead, divorced or deserted or committed to prison.

In a psychologically broken family, there is a constant bickering, little respect for the right of each individual and the child is "pushed around" or ridiculed. In such families the child is too often rejected, never having the genuine experience of belonging and as a result becomes desolate, anxious, restless or often hostile.

Lack of affection can result from broken families and many studies have established the obvious relationship between this factor and delinquent behaviour. The process may not however be as simple as it appears on the face of it. The reporting of delinquent behaviour of children from broken homes to the police and the follow – up action by the police and correctional service officers may be greater in magnitude as compared to corresponding reporting and action in case of delinquents from unbroken families[11].

From the study conducted it can be seen that a large number of prisoners (89.33%) are from broken families (See Table II). In a broken family a child does not get affection or parental supervision and also the child will feel he is an odd man out as the general social norm is of having both the parents. This will keep him out of the social set up. There is a high chance of being led to criminal tendencies from his feeling of frustration, rejection and jealousy towards children from normal family.

Study among the recidivists showed that astounding figures of 96.19% are from the broken families (see Table II). From this we can see that a broken family definitely leads to the formation of criminals especially the recidivists. It is mainly because during and after the prison sentence they don't have a loving and supportive family to go to. Their inherent hatred towards their own family and

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[11] Ahmad Siddique, *Criminology Problems and Perspectives* (1997), p.98.

society will be very deep rooted. It will be very difficult to reform them as they are coming from such a background.

Young People Released from Custody

Young people sentenced to custody represent some of the most vulnerable and excluded in society. More often the long time they spent in custody, they have been excluded from school, have poor education have severe mental health problems and often have the histories of abuse at the hands of adults.

Young people, who come out of custody without adequate education or any training to get employment, are not able to resettle into the society. [12] Even for ordinary children growing in good background the teenage is a period of rebellion. So for children coming out of the custody with a handicap of being branded as criminals by the society, will definitely rebel against the society. This will automatically get them into even deeper trouble. Most of the parents will not allow their children to mingle with these ex-convicts for fear of contaminating their own children. This will leave them with only one other option, i.e., to be with their own peers, whose company make them criminals once again as before.

The success of imprisonment whether for adults or children is generally measured by the recidivism rate, that is, the percentage of children who commit another crime after their release from prison. In England recidivism rate[13] for children leaving custody is over 80%, the prison seems to be failing. In the State of Washington, America the recidivism rate[14] for boys was 77% compared to 72% among girls during the Fiscal year 2005. Among the adult sentences 15.5% of those offenders had a history of juvenile offences.

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[12] In Kerala, there is a borstal school at Thrikkakara. Here, for the education of inmates classes are held from I Standard to VII Standard. But teachers are not appointed.The end result is that the inmates are not given any education at all.

[13] For details, see *Young People in prison – England and Wales.* Crimeinfo.*http.www crimeinfo.org.vk/servlet/factsheet servlet?command=views*, 25-3-2005.

[14] Sentencing guidelines commission State of Washington, *Recidivism of Juvenile Offenders* (2005), p.4. *http/www.sgewagovpubs/recidivism/Juvenile-Recidivism-cyoy pdf, 25-3-2005.*

From the study conducted it was found that among the recidivists 56.19% (59 out of 105) committed their first offence when they were below 18 years of age. Most of them said that when they were released from custody they were completely ostracized from society, at the same time there are many people who wanted to commit further crime, they put irresistible temptations before them. Coupled with this the negative attitude of the society, automatically force them to fall into the criminal way of life. From this we can see that if some strong motivation is put before them to lead an honest life they would not have become recidivists.

Criminality in the Family

If one or more members of a family are engaged in criminal activities, such family can be said to be a criminal family. The criminal behaviour on the part of parents or elder siblings is an important factor in pushing children towards misconduct.

On the basis of the information concerning convictions for indictable offence of parents or siblings obtained from the criminal records office at Scotland Yard, it was revealed that 34% have one or more relatives convicted[15].

If any member of the family is convicted or any member has a criminal background, the children brought up in such a family will not consider doing any crime as wrong. More importantly the family members will also have a lenient attitude towards crime. Such children will automatically turn towards crime. They will also have many opportunities to commit crimes.

Suppose a local family has been labelled by the police as 'trouble', they are perhaps more likely to focus on members of that family, when trying to solve petty crimes. Thus a visit to the family home may produce some evidence to implicate a youngster's involvement in criminal behaviour and result in a conviction. However, if the same act had been committed by a youngster from a family which was not known to the police, the finger of suspicion might never fall

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[15] See D.J.West, *Present Conduct and Future Delinquency* (1969), p.100-101.

on that person and they might never be identified. So the stigma of conviction will not be there for them and they will have a chance of reformation and never repeat such offences. Police are more likely to focus on persons who are already known to them in terms of having a criminal record. So they are in danger of false implication for offence which they have not committed.

Unlike ordinary children who have a normal background, these children with many members having criminal background find easy to lead a criminal life, for them to lead a straight life is very difficult. That requires lot of mental courage and strong will and luck in not getting falsely implicated in an offence.

Table III

Criminal Members in the Family

Family members	Among Recidivists			Among total prisoners		
	Criminal family Members	Non-criminal family members	Total	Criminal family Members	Non-criminal family members	Total
Number	57	48	105	58	92	150
Percentage	54.29	45.71	100	38.67	61.33	100

From the above table it can be seen that (38.67%) of total prisoners interviewed have at least one member of the family with criminal background. Many of the recidivists (54.29 %) have criminal members in the family. From this we can see that persons who have criminal members in the family are more likely to repeat the crime. Criminality must have imbibed into their blood stream through their birth and subsequent surrounding through out their growing up stage. So it will be very difficult to strain out the criminal tendency and to reform them and make them law-abiding citizen.

In America 31% of Jail inmates had grown up with a parent or guardian who used alcohol or drugs about 12% had lived in a foster home or institution 46% had a family member who had been incarcerated. More than 50% of the

women in jail said they had been physically or sexually abused in the past compared to more than 10% of the men[16].

The institution of family is expected to cater to the basic needs of children. The child should feel that he enjoys a certain privilege and protection in his family and that he is loved and liked by his parents and members of the family. This feeling of security, warmth and reliance makes children learn the virtues of love, respect and duty towards others. Thus it is through the institution of family that the child unconsciously learns to adjust himself to the environment and accepts the values of life such as respect for others, faith-fullness, trust-worthiness, honesty, and co-operation through his own life experiences. Such stable background will help him to come back to the normal life even though he may have fallen to criminal temptations. To pull back from criminal activities requires more courage and support from the family than to lead a criminal way of life.

Marital Status

A discussion of marital status of inmates is more than formal necessity to find out whether anti-legal behaviour is the consequence of social mal-integration. Married inmates are likely to face adjustment problems in jails. Not only would they be denied conveniences of married life, but also the thought of the plight of the spouse and other family members in their absence is likely to weigh them down. This may adversely affect their receptivity to correctional programmes. Sutherland has found from his studies that the marital status of the adult persons have considerable significance in relation to crimes. Divorced persons have the highest commitment rate[17].

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[16] Bureau of Justice Statistics (2002), *http/www.ofp.usdof.gov/bfs/crimoffhtm //.recidivism*, 25-9-2005.

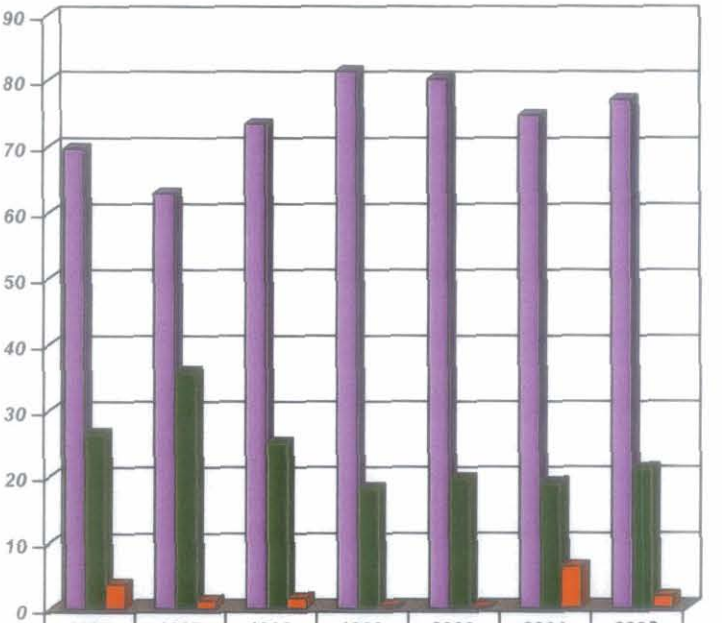
[17] E.H.Sutherland, *op.cit*, at 170.

TABLE IV

Marital Status of convict prisoners admitted to Central Jails in Kerala

Year	Central Jail, Thiruvananthapuramm						Central Jail, Viyyur						Central Jail, Kannur						Total									
	Married		Unmarried		Widow/ Widower	Total	Married		Unmarried		Widow/ Widower	Total	Married		Unmarried		Widow/ Widower	Total	Married			Unmarried			Widow/ Widower		Grand Total
	M	F	M	F			M	F	M	F			M	F	M	F			M	F	%	M	F	%		%	
1996	847	97	426	43	84	1497	167	21	146	12	2	348	640	15	54		10	719	1654	133	78.7	626	55	26.5	96	3.7	2564
1997	985	240	685	67	20	1997	145	9	201	10	3	468	50	19	130	14	15	718	1670	268	69.7	1916	91	35.9	38	1.2	3083
1998	869	115	490	57	22	1553	350	8	39	3	22	422	600	20	63	16		699	1819	143	62.9	592	76	25.0	44	1.6	2674
1999	1000	80	80	6	9	1175	296	-	326	-	-	622	700	47	49	14	1	811	1996	127	73.4	455	20	18.2	10	0.4	2608
2000	778	60	200	2	2	1042	380	67	178	22	-	647	748	26	103	1	3	881	1906	153	81.4	481	25	19.7	5	0.2	2570
2001	490	49	84	2	1	626	410		122		48	580	562	19	169	11	80	841	1462	68	80.1	375	138	19.0	129	6.3	2047
2002	607	41	141	5	2	796	422	13	106	12	21	574	565	23	191	1	17	797	1594	77	74.7	438	18	21.1	40	1.8	2167

CHART III.1



	1996	1997	1998	1999	2000	2001	2002
Married	69.7	62.9	73.4	81.4	80.1	74.7	77.1
Unmarried	26.5	35.9	25	18.2	19.7	19	21.1
Widow/widower	3.7	1.2	1.6	0.4	0.2	6.3	1.8

Table IV shows the marital status of convicted male and female prisoners admitted to Central Jail, Thiruvananthapuram, Viyyoor and Kannur for the years 1996 to 2002.

In the year 1996 there were 69.7% married convict prisoners admitted and 26.5% unmarried and 3.75% widow/widower prisoners. In 1997 the married prisoners were 62.9% unmarried prisoners 35.9% and widow/widower 1.2%. In 1998 the married prisoners were 73.4%, unmarried prisoners 25% and widow/widower 1.6%. In 1999 the married prisoners were 81.4%, unmarried prisoners 18.2% and widow/widower 0.4%. In 2000 the married prisoners were 80.1%, unmarried prisoners 19.7% and widow/widower 0.2%. In 2001 married prisoners were 74.7%, unmarried prisoners 19% and widow/widower 6.3%. In 2002 married prisoners 77.1%, unmarried prisoners 21.1% and widow/widower 1.8%.

Chart 1 show that compared to 1996, in 1997 married prisoners percentage slightly decreased. After that it shows a gradual increase till it reached its top in 1999. After that the trend is slightly downward. In 2002 it again started an upward trend.

From Chart 1 we can see that married prisoners monopolise the prison population. Mostly two third prisoners were married. Looking through this we can see that great care has to be given while administering correctional programmes as the married prisoners will have complex problems. They not only have to think about themselves but also their spouse and children. This majority of married prisoners show that their marital problems or situations arising out of marriage may lead to their criminality so while trying to reduce recidivism we have to think about their marital status and also try to incorporate their family members in their reformation process.

Table V

Offender's marital status and nature of offence

Marital status	No: %	Nature of offence				Grand Total No: %
		Offence against person No: %	Property offence No: %	Offence against local and other special law		
				No.	%	
Unmarried	48 32	4 8.33	28 58.33	16	33.54	48 100
Married	64 42.67	26 40.63	20 31.25	18	28.12	64 100
Widow/ Widower	11 7.33	3 27.28	4 36.36	4	36.36	11 100
Divorced/ Separated	27 18	3 11.11	14 51.85	10	57.03	27 100
Total	150 100	36 24	66 44	48	38.46	39 100

Total Number: 150 Total Percentage 100%

Table VI

Recidivist's marital status and nature of offence

Marital status	No. & %	Nature of offence			Grand Total
		Offence against person	Property offence	Local and Special Laws	
		No: %	No: %	No: %	No: %
Unmarried	36 34.28	3 8.33	25 69.45	8 22.22	36 100
Married	49 46.67	14 28.57	19 38.78	16 32.65	49 100
Widowed	3 2.86	1 33.33	--	2 66.67	3 100
Divorced	17 16.19	1 5.88	7 41.18	9 52.94	17 100
Total	105 100	19 18.1	51 48.06	35 33.5	105 100

Data in table V reveals that the single largest offenders consists of married persons 64out of 150 prisoners (42.67%) but among them 39 (60.94%) were separated or deserted. .48 (32%) prisoners were unmarried, 27 (18%) were divorced and 11 (7.33%) were widowed.

Data in table VI shows that among the recidivists 46.67% (49 out of 105 recidivists) were married. Out of this 28 persons were separated (26.67%). 34.28% were unmarried, 16.19% divorced and 2.86% widowed.

Considering the nature of offence by marital status (see table V and VI) unmarried persons mainly involved themselves in property offence i.e., 58.33% among total prisoners and 69.44% among recidivists. It is found from this study that recidivists mainly involved themselves in offences against property, against local and special laws.

It was found that among the recidivists after they had committed two or three offences they got either divorced or separated from their spouse. It is

interesting to note that among the majority of married recidivists their spouses are also involved in their crime. Some of them said that after their first conviction their spouse and children hesitated to accept them. This resulted in them going back to criminal life.

So, marital status does not have that much influence in the committing of first crime. Rejection of family members is a main factor in making of a recidivist. But it has got a considerable persuasive power in correction or reformation of a recidivist.

Place of Residence

Place of residence is an important factor in criminal behaviour as it produces opportunities to commit crime. This was aptly explained by Sutherland[18]. Immediate factors in criminal behaviour lie in the person- situation complex. Person and situation are not a factor exclusive of each other, for the situation, which is important, is the situation as defined by the person who is involved. The tendencies and inhibitions at the moment of the criminal behaviour are, to be sure, largely a product of the earlier history of the person, but the expression of these tendencies and inhibitions is a reaction to the immediate situation as defined by the person. The situation operates in many ways, of which perhaps the least important is the provision of an opportunity for a criminal act. A thief may steal from a fruit stand when the owner is not in sight; but refrain when the owner is in sight; for a bank burglar a bank is an easy target but one protected by burglar alarms is not. An individual may choose to commit a crime if they perceive that the chances of detection are small. On the other hand, the individual may refrain from exhibiting their criminal tendencies if it appears that the chances of their being caught are quite high[19].

The environment will be instrumental in determining which part of a person's genetic make up manifests itselves and which do not. Criminal act may

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[18] *Ibid.*,at p.5.

[19] Peter B. Ainsworth, *op.cit*, at p.37.

occur as a result of a complex interaction between a number of individual or internal factors and an interaction with the environment.

Environment in which one resides will influence the behaviour of a person to a greater extent. So the locality in which the home is situated is an important factor. If the home is located in a highly delinquent area, the probability that the child will encounter high rate of delinquent behaviour, than if the home is in a low delinquency area.

This relation between criminal behaviour and place of residence can be seen from looking into the offence and place of residence of respondents. All the respondents prosecuted for the violation of offences under local and special laws were residing in cities. It means that as generally expected, towns rather than villages provide more opportunities for immoral trafficking, smuggling, drug peddling etc.

At the time of becoming involved in the present offence 116 out of 150 (77.33%) respondents resided in towns and the other 34 (22.67%) were in rural areas. From this we can see that an opportunity to commit crime is more in towns than in villages.

The urban and rural districts have each their own specific type of criminality. The crimes in the country are more barbarous, having their origin in revenge, avarice, brutal sensuality. In the city the criminality is characterized by laziness, a more refined sensuality and by forgery[20].

One of the explanations of the persistence in crime is habit formation. Persistence in crime is merely persistence in habits. Some of the habits were formed prior to the official treatment; others during the course of the treatment, Drug addiction and drunkenness are illustrations of offences which persist after punishment as the result of habit formation.

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[20] Cesare Lombroso, *Crime its causes and Remedies* (1918), p.74, translated by Henry P. Horton.

The congested dwellings, slums, high costs of living and highly mechanised life in cities offer sufficient opportunities for the offenders to carry on the criminal activities quite unnoticed for years. Consequently, criminality becomes a habit with them and finally turns them into recidivists. On the other hand the rural dwellings which offer a comparatively cheap living and almost no chances of escape from detection are obviously unsuited for crime and recidivism.

Isolation from law abiding society for a considerable time during the term of their imprisonment renders them psychologically and sociologically misfit for leading a normal life after release from prison. They carry a sort of stigma with them which makes them shun and avoid the normal society. Therefore, the offender has no charm in the free life and prefers a routine life in prison to which he adapts himself. Moreover he will go to thickly populated, areas like slums where crime is proliferent. Here they will soon relapse into crime either falling prey to temptation or through inability to cover up the past.

The released inmate finds it difficult to adjust with the law-abiding members of the community because he always thinks that others are looking at him with suspicion, doubt and distrust. The result is that he always suffer from a feeling of inferiority and an anxiety to overcome the weakness, he repeats the crime which he considers as an adventurous task or joins with the other criminal associations.

A criminal by reason of his crime forms associations, loyalties and attitudes which tend to persist. The offender who talks of reformation is ridiculed by his associates and at times even violence, threats and other aggressive methods are used to prevent him for disassociating from the criminal group. Opportunities for crime convince him that he can make fortunes only in continuing with his criminal position. Besides that the continuous association of the offender with a particular criminal group develops a sense of faithfulness and loyalty in him for his fellow criminals. Therefore he naturally feels obliged to help those who had helped him earlier.

Ordinarily the offender acquires no facility in the manners of the law-abiding group and has no opportunity to come in contact with them after or during his punishment. If he lived previously in a law –abiding group he is likely to be ostracized, while if he lived previously in a criminal group he may acquire status by punishment.

Another explanation for the persistence of crime is found in the criminality and near criminality in the general society. The persons who undertake these activities very often adopt many of the criminal traits as a part of their business code, e.g., hoarding, black marketing, tax evasion, bribery etc. In India, political corruptions are widespread. Obviously these activities are so much mixed up with other lawful activities that the offender committing these offences loses no social status whatsoever, even if he is caught and punished for his act.

There is a general assumption that there is functional relationship between antisocial behaviour and the environment in which it occurs. Then it becomes clear that one way to change delinquent behaviour is to change the environment[21]. Many professional criminals were exposed to social and personal contingencies and opportunity structures during their formative years, which allowed them to associate easily with criminals[22].

A family environment with all varying but abnormal conditions present therein, becomes a cradle for delinquency; It could be said that bad family environment, bad company and improper social situation may adversely affect the personality of a growing child turning him into a psychopathic, abnormal and complex personality. There exists a perfect correlation between the social background and relationship patterns of a child with this form of behaviour. If one

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[21] John Burchard, "Behaviour Modification with the delinquent Offender", in Lynn M. Iruine Jr. and Terry B. Brelye (ed.), *Law Psychiatry and The Mentally disorders offender* (Vol.II, 1973), p.114.

[22] James A Inciardi, *Carriers in Crime* (1975), p.158.

wants to reform a child, he has first to reform the social institutional relationships related to him[23].

Among the recidivists interviewed at the time of committing their latest crime 92 out of 105 (87.62%) were living in towns only 13 out of 105 (12.38%) were living in villages. Some of them even though they were originally i.e., when they committed their crime was from villages they shifted to towns. From this we can see that recidivism is mainly in the urban areas. The crime often repeated by the recidivists are property offence and against local and special laws. The centers and opportunities for doing these crimes were mainly in cities. So we can certainly assume that the environment certainly effects recidivism.

Religion and Caste

Religion is important to human beings including inmates in jails. Religion is the unbroken link which unites the present with the past and is inherent in greater or less degree in all humanity, is one of our most important counter checks to criminal behaviour[24].

According to Malinowski[25], religion is a mode of action as well as a system of beliefs and a sociological phenomenon as well as a personal experience. Religious affiliation does not merely represent one's faith in the unknown, it also denotes his way of life depending upon the stimulus and situation, and it may greatly influence his thinking and behaviour. At times it may have a critical role in shaping his predispositions or prejudices[26].

It has been rightly said that morality can best be preserved in a society through the institution of religion. The bond of religion keeps persons within their limits and helps them to keep away from sinful and criminal acts. The declining influence of religion in modern times has tended to leave men free to do as they like without restraint or fear. Consequently they do not hesitate to resort to

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[23] Shipra Lavania, *Jurvenile Delinquency* (1993), p.161.

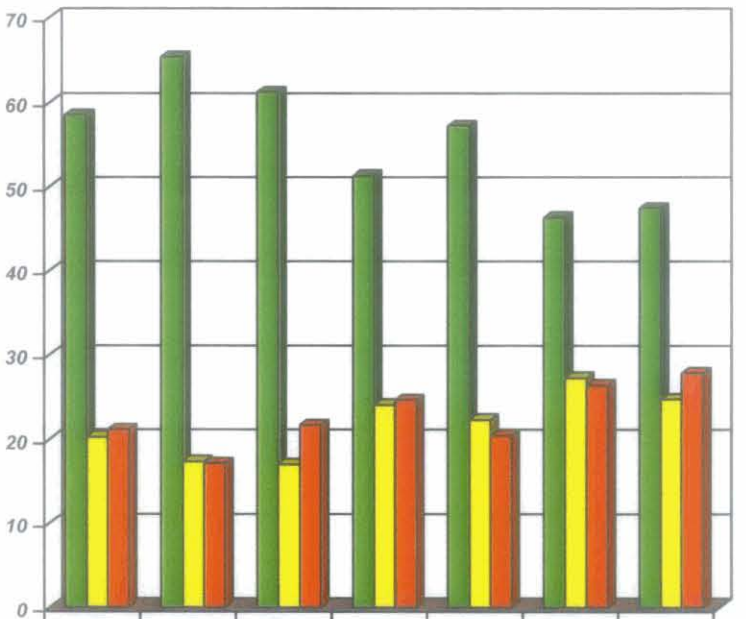
[24] Giriraj Shah, *Crime and Criminology* (Vol.1, 1999), p.3.

[25] B.Malinowski , *Crime and Custom in a Savage Society* (1926), p.38.

[26] Dr. B.V. Trivedi, *Prison Administration in India* (1987), p. 60.

criminality even for petty materialistic gains[27]. Since crime involves violation of a standard of morality, it is clear that there exists a close relationship between crime and religion.

CHART III.2



	1996	1997	1998	1999	2000	2001	2002
Hindu	58.54	65.42	61.26	51.27	57.24	46.36	47.44
Muslim	20.32	17.39	17.05	24.08	22.33	27.26	24.73
Christian	21.14	17.19	21.69	24.65	20.43	26.38	27.83

From Table VII we can see that the majority of prisoners were Hindus. This can be expected as the majority populations in Kerala are Hindus. From the Chart III.2 we can see that in 1996 out of prisoners admitted to Central Jail in Kerala 58.54% were Hindus, 20.32% were Muslims, 21.14% Christians. In 1997 65.42% were Hindus, 17.39% Muslims, 17.19% Christians. In 1998, 61.25% were Hindus, 17.05 Muslims and 21.69% Christians. In 1999, 51.27% were Hindus, 24.08% Muslims, 24.65% Christians. In 2000, 57.24% were Hindus, 22.33% Muslims, 20.43% Christians. In 2001, 46.36% were Hindus, 27.26% Muslims, 26.38 Christians. In 2002 47.44% were Hindus, 24.73% Muslims and 27.83% Christians.

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[27] Dr. N.V. Paranjape, *Criminology and Penology* (9th ed. 1997), p.56-57. .

TABLE VII

Religion of Prisoners admitted to Central Prisons in Kerala

Year	Central Jail, Thiruvananthapuram							Central Jail, Viyyur							Central Jail, Kannur							Total				
	Hindu		Muslim		Christian		Total	Hindu		Muslim		Christian		Total	Hindu		Muslim		Christian		Total	Hindu	Muslim	Christian	Grand Total
	M	F	M	F	M	F		M	F	M	F	M	F		M	F	M	F	M	F					
1996	870	96	141	23	325	42	1175	126	14	89	9	98	12	348	385	10	253	6	63	2	719	1501	521	542	2564
1997	1256	227	168	35	246	65	1197	128	7	106	7	112	8	368	383	16	210	10	90	9	718	2017	536	530	3083
1998	991	145	158	7	210	42	1553	166	8	101	-	144	3	422	312	16	180	10	171	10	699	1638	456	580	2674
1999	694	47	165	7	230	32	1175	231	-	208	-	183	-	622	338	27	226	22	185	13	811	1337	628	643	2608
2000	700	38	150	10	128	16	1042	290	65	133	10	135	14	647	364	14	262	9	225	7	881	1471	574	525	2570
2001	320	33	120	5	134	14	626	289	-	158	-	133	-	580	291	16	274	1	246	13	841	949	558	540	2047
2002	378	30	143	8	227	10	796	310	15	77	6	157	9	574	281	14	294	8	198	2	797	1028	536	603	2167

From the Chart III-2 we can see that even though there is a mixed trend in the rate of crime committed by Hindus the obvious one is a decreasing trend. In 1996 the rate was 58.54 in 1997 it increased to 65.42 by 1998 it decreased to 61.25 in 1999 to 51.27. Again in 2000 increased to 57.24 then decreased to 46.36 in 2001 then shows slight increase to 47.44 in 2002. In the case of Muslims also there is a mixed trend towards increase in the crime rate as in 1996 it is 20.32 by 2002 it is 24.73. While in the case of Christians from 21.14 in 1996 increased to 27.83 in 2002.

Religion and caste composition of the respondents (see table VIII) reveals that a majority of respondents i.e., 64 out of 150 prisoners or 42.67% were Hindus, while 38 (25.33%) and 48 (32%) respondents were Christians and Muslims respectively. Out of the Hindus, a major proportion, i.e.; 35.34% of the respondents belonged to backward castes. Among Christians also 17.33% are Nadar and Latin Catholics and 12% are Syrian Christians.

Table VIII

Offenders Religion and Caste

Religion		Muslim	Hindu			Christian			Grand total
		(1)	Nair	Ezhava,SC ,ST,OBC	Total (2)	Syrian	Nadar. LC	Total (3)	(1)+(2) + (3)
Total prisoners	No	48	11	53	64	12	26	38	150
	%	32	7.33	35.34	42.67	8	17.33	25.33	100
Recidivists	No	38	6	38	44	5	18	23	105
	%	36.2	5.71	36.19	41.90	4.76	17.14	21.9	100

Among the recidivists Hindus and Muslims were almost neck to neck. Out of 105 recidivists' 41.9 % were Hindus 36.2% were Muslims and 21.9% were Christians. Considering the minority status of Muslims in total population this high rate of recidivism is alarming. So we can say that recidivism among Muslims is very high.

According to sociologists[28], the influence of religion in the first sense plays a significant role in preventing criminal behaviour by moulding the individual's personality. In this sense, it can also be used as an instrument of reformation of a delinquent. In its negative aspect, religion is not only incapable of serving any useful purposes it may in fact promote delinquent behaviour among young persons as a result of their disillusionment with the system based on hypocrisy and dishonesty. The relationship of religion with delinquency may not be very different from that of any other social control with delinquency. Religion, may, therefore be a useful but not a necessary instrument in preventing crime[29].

Age

Age of persons committing crime is very relevant .Mostly people who commit crime when they are younger; there chance of becoming recidivists is very high. That can be accounted mainly due to the socio economic back grounds of the offenders as well as the sentence imposed on them when they first committed crime and also the rehabilitation they received then. Our prisons are over flooding with these young offenders.

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[28] According to Thomas M.Gannon, the effectiveness of religion depends upon the internalization of standards during the critical formative years of childhood and is developed through close identification with parents, family members and other significant primary groups. Much of this control is exercised unconsciously and depends largely upon behavioural examples and religious experience rather than on percept. Only later does it reach the level of conscious decision and personal commitment. Thomas M. Gannon, "Religious Control and Delinquent Behaviour", (July 1967) vol.51 *Sociology and Social Research*, p.418-413.

[29] Martin and Fitzpatrick, *Delinquent Behaviour* (1964), p.93,

TABLE IX

Age

Year	Central Jail, Thiruvananthapuramm						Central Jail, Viyyur						Central Jail, Kannur						Grand Total
	20 yrs.	21-30	31-40	41-60	Above 60	Total	20 years	21-30	31-40	41-60	Above 60	Total	20 yrs.	21-30	31-40	41-60	Above 60	Total	
1996	79	639	538	204	37	1497	20	169	104	55	0	328	209	223	164	88	35	719	2564
1997	340	668	577	357	55	1997	20	175	114	59	-	368	54	169	124	341	30	718	3083
1998	103	649	544	245	12	1553	19	220	144	39	-	422	80	128	189	249	53	699	2674
1999	85	555	383	135	17	1175	56	274	199	74	19	622	130	174	213	238	56	811	2608
2000	275	528	156	55	28	1042	144	225	113	147	18	647	14	319	266	256	26	881	2570
2001	105	275	147	72	27	626	66	223	92	187	12	580	4	319	270	237	11	841	2047
2002	131	350	187	80	42	796	86	253	98	118	19	574	73	233	349	96	46	797	2167

Table X

Age

Year	20 years	21-30 years	31-40 years	41-60 years	Above 60 years	Total
1996	308	1031	806	347	72	2564
1997	414	1012	815	757	85	3083
1998	202	997	877	533	65	2674
1999	271	1003	795	447	92	2608
2000	433	1072	535	458	72	2570
2001	175	87	509	496	50	2047
2002	290	836	634	294	107	2167

From Table IX and Table X we can see that the majority of the crime was committed by persons below the age of 40 years. Only very few persons commit crime after the age of 60. More than half of the convict prisoners admitted to the Central Prisons in Kerala was below 30 years of age from this we can see that age and committing crime are related.

Table XI

Offender's age and Nature of offence

Age Group Years	Nature of Offence						Total Prisoners	Recidivist
	Offence against person		Offence against property		Offence against local and special law			
	Total Prisoners	Recidivist	Total Prisoners	Recidivist	Total Prisoners	Recidivist		
20	1	0	2	1	5	2	8	3
21 to 30	9	6	33	22	27	16	69	44
31 to 40	13	9	24	21	11	12	48	42
41 to 60	11	3	6	7	4	4	21	14
Above 60	2	1	1	-	1	1	4	2
Total	36	19	66	51	48	35	150	105

Figures given in the table XI shows that, recidivists are mainly young people. Out of 150 prisoners interviewed 125 (83.33%) were below 40 years. Among recidivists 89 out of 105 (84.76%) were below 40 years of age. As age increases, their rate of involvement in crime declines. According to age, the crime pattern also changes. For example theft, burglary, motor vehicle theft, robbery, smuggling and vagrancy may be in the adolescent period. Homicide, rape, assaults, alcoholism, drug, prostitution, forgery counterfeiting etc, can be at the peak of twenties. Embezzlement, drunkenness, gambling and cheating may be in adulthood medium age. Even through there is no evidential correlation for age and crime at different levels with different patterns of crime, it is mainly because of the fear risk element of arrest, punishment, labelling, reputation, notoriety and fear in the eyes of the relatives, family members and in the public[30].

It can be supported that decline in criminality with age is maturation effect implying that the delinquency may be a result of physical or mental immaturity, and also the physical inability to commit crime due to ageing. The relations between age and crime have close connection to the place where they are living. Chances to commit crime, and proximity to other criminals are also a deciding factor which makes them have a 'don't care' attitude and also what is wrong in doing something which is seen around them by which they can easily make money without much effort. Mainly this is what makes them the recidivists. The younger the age they commit the crime the easier for them to become recidivists as before realizing the extent (the knowledge) of what they have committed, they will be branded as prisoners. After that it will be easier for them to commit crime again than lead an honest normal life, so they will automatically drift into becoming recidivists.

Education

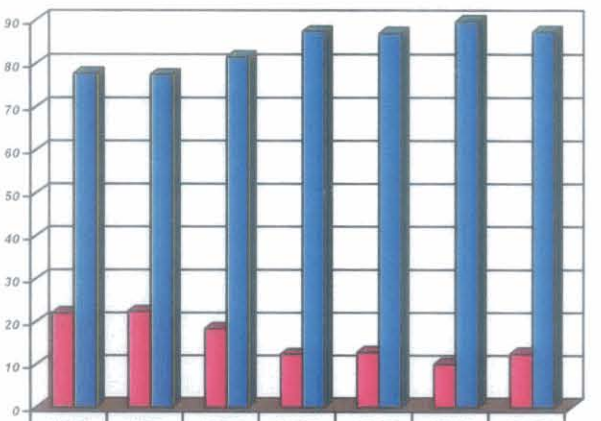
Education can contribute in an important way to the rehabilitation of the prisoner. It can strengthen his self-respect, give him a deeper insight into his own behaviour and that of others, help him to understand his country, history and its

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[30] M. Ponnaian, *Criminology and Penology* (3rd ed. 1992), p.46.

current problems, introduce him to fine literature, the loftiest thoughts of man, and the great works of art and music, teach him how to control himself and get along with others, provide him with skills and techniques so that he can earn an honest living for himself and his dependents, and revive his hope and his faith in future[31]. The relationship between school exclusion and offending is studied by David Berridge in 2001 have identified a link between school exclusion and the start of a criminal career. They found 65% of those permanently excluded from school were convicted at some time[32].

CHART III.3



	1996	1997	1998	1999	2000	2001	2002
literate	22.1	22.5	18.5	12.5	12.9	10.2	12.6
illterate	77.8	77.5	81.5	87.5	87.1	89.8	87.4

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31 Robert G. Caldwell, *Criminology* (1950), p.583.

32 Berridge David (*et.al*). *The independent effects of permanent exclusion from school on the offending careers of young people*. RDS occasional paper No.71 London HMSO, *http:/www.homeoffice.gov.uk/rds/pdfs/reconvicts.studywarn.pdf.*,28-10-2005.

TABLE XII

Education of convicted prisoners admitted to Central Jails in Kerala

Year	Central Jail, Thiruvananthapuram						Central Jail, Viyyur						Central Jail, Kannur						Total								
	Literate		Illiterate		Total		Literate		Illiterate		Total		Literate		Illiterate		Total		Literate				Illiterate				Grand Total
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	No.	%	M	F	No.	%	
1996	986	145	350	16	1136	161	192	24	121	11	313	35	634	14	67	4	701	18	1812	183	1995	77.8	538	31	569	22.1	2564
1997	1435	151	235	176	1670	327	168	7	178	15	346	22	600	28	83	7	683	35	2203	186	2389	77.5	496	198	694	22.5	3083
1998	1164	116	195	78	1359	194	234	5	177	6	411	11	629	32	34	4	663	36	2027	153	2180	81.5	406	88	494	18.5	2674
1999	1089	86	-	-	1089	86	622	-	-	-	622	-	448	36	301	26	749	62	2159	122	2281	87.5	301	26	327	12.5	2608
2000	850	50	128	14	978	64	474	66	84	23	558	89	779	19	72	11	851	30	2103	135	2238	87.1	284	48	332	12.9	2570
2001	520	45	54	7	574	52	503	-	77	-	580	-	749	22	62	8	811	30	1772	67	1839	89.8	193	15	208	10.2	2047
2002	652	40	96	8	748	48	459	21	85	9	544	30	701	21	72	3	773	24	1812	82	1894	87.4	253	20	273	12.6	2167

Analysing the total convict prisoners admitted to the Central Jails in Kerala (Table XII and Chart III.3) we can see that there are a lot of illiterate prisoners. The rate of illiteracy in 1996 is 22.1% in 1997 it is 22.5% in 1998 it is 18.5% in 1999 it is 12.5% in 2000 it is 12.9% in 2001 it is 10.2% and in 2002 it is 12.5%. From this it can be said that even though there are illiterate prisoners the rate of illiteracy is decreasing gradually, i.e., from 22.1% in 1996 to 12.6% in 2002. As education affects the reformation and rehabilitation of the prisoners, great stress has to be given to this area.

Table XIII

Educational qualification of prisoners

Educational qualifications		College	Up to X	Up to VIII	Up to IV	Illiterate	Total
Among total prisoners	No:	0	28	71	42	9	150
	%	0	18.67	47.33	28	6	100
Among Recidivists	No.	0	15	43	38	9	105
	%	0	14.29	40.95	36.19	8.57	100

Kerala is now a complete literate state. But contrary to this assertion, the researcher has found during this study that there are many illiterates inside the prison. Out of 150 prisoners 9 (6%) were found to be illiterate. Among the literates, about 50% knows only to read and write their name. So for all practical purposes they cannot be considered as literates. 42% have studied up to 4th standard, 71% have studied up to VIIIth standard, but the maximum education is X standard, that also only 18.67%.

Among the recidivists, out of 105, 9 (8.57%) are illiterates; the maximum education is up to X standard. From these figures, we can see that education or to say precisely lack of education and criminal behaviour has a direct contact. So recidivism can be said to be directly related to education. Therefore to reform the recidivist the best form of rehabilitative technique is education.

Occupation and Family Income

There cannot be any doubt that poverty contributes a great deal both directly and indirectly, to the commission of delinquent and criminal acts. But it is equally obvious that poverty alone cannot be made accountable for all the crimes committed. In spite of absolute poverty, thousands of people prefer to starve rather than indulging themselves in the commission of crimes.

Table XV

Occupation of offenders

Occupation		Working for daily wages	Doing small business or self employee	Unemployed	Total
Among total prisoners	No:	78	45	27	150
	%	52	30	18	100
Among Recidivists	No.	47	31	27	105
	%	44.76	29.52	25.72	100

From the table XV, we can see that 30% of the prisoners were engaged in some occupation and earned their livelihood independently, while the remaining 70% had no independent earnings. Majority are employed for daily wages, where the job is not secure and income is not fixed and they will not be able to secure work daily. This means they have to live in poverty

TABLE XIV

Employment of Prisoners among convicted plrisoners

Year	Central Jail, Thiruvananthapuramm						Central Jail, Viyyur						Central Jail, Kannur					Grand Total
	Govt . empl	Casu al Work	Mech anic	Not categ ories	Trad e	Tot al	Govt. empl oyee	Casu al Work	Mech anic	Not categ ories	Trade	Total	Govt. employ ee	Casual Worker	Mech anic	Not categ ories	Trade	
1996	47	973	205	103	8	1175	7	165	61	52	63	348	9	428	58	124	100	719
1997	12	1143	93	508	241	1197	3	92	38	187	48	368	12	233	104	72	297	718
1998	17	970	126	270	170	1553	2	106	-	208	109	422	2	316	20	316	41	699
1999	-	-	-	-	-	-	17	354	78	97	76	622	-	497	289	174	112	811
2000	8	900	7	72	55	1042	44	144	2	388	69	647	8	519	29	205	120	881
2001	7	550	7	52	10	626	17	27	-	163	37	580	11	555	373	144	131	841
2002	-	655	31	-	110	796	18	297	27	185	45	574	16	517	45	165	54	797

From Table XIV we can see that the majority of prisoners are workers. Only very few prisoners are government employees. It can be assumed from this that persons who have got fixed employment and income commit crime less frequently. Among workers who have no fixed employment and definite source of income commit crime more frequently.

Table XVI

Per capita income of family per month

Income per month in rupees		Below 50	50 to 100	100 to 150	200 to 500	Above 500	Total
Among total prisoners	No:	12	17	51	42	28	150
	%	8	11.33	34	28	18.67	100
Among Recidivists	No.	12	17	37	26	13	105
	%	11.43	16.19	35.24	24.76	12.38	100

It can be seen from the table XVI, that the per capita income of majority of prisoner's family at the time of present offence was very low. 8% of them were maintaining themselves with a per capita income of below 50 Rupees, 11.33% between Rs.50 to Rs.100, 34% between Rs.100 to 150, 28% between Rs.200 to 500, and 18.67% above Rs.500 per month. Majority of the recidivists were having a per capita income of less than Rs.150 per month. From this it is clear that a majority of the households were maintaining themselves with great difficulty on their meagre incomes.

So some weight has to be given to the economic factor in producing criminals. The income is not only for the day-to-day existence of the persons, it also determines the social position and prestige. Now–a–days money is the

paramount consideration to assess the social status of a person in society. thus for some persons the economic need may provide the incentive that leads them into crime, for the others, social prestige and the social advantages, more money may tempt them beyond their power of resistance. The majority of delinquents are needy but the majority of the needy do not become delinquent. The differential treatment accorded to rich and poor by the police is detrimental to the poor. If two persons on different levels are equally guilty of the same offence, the one on the lower level is more likely to be arrested, convicted and committed to an institution. In that also if one person is a recidivist then it is doubly sure that he will be arrested and punished.

Poverty alone is not the main cause of a particular crime but it does produce the condition, most conducive to crime, both personally and socially. Economic insecurity, slums, inadequate food and clothing, lack of necessary medical care, lack of proper education facilities are bound to create attitudes dangerously close to recalcitrance and incorrigibility and thus certainly poverty leads to slums with their attendant miseries in which children as well as their parents are led into close association with delinquents. Thus poverty indirectly can easily develop envy, bitterness, and that may result in crime and repeated crime.

Psychological Factor

All human behaviour is the result of an interaction between a large number of factors some of which resides within the individual and some of which are to be found in the external environment. The personal characteristics and social situations which are the causative factors to crime in the first place are also the reason why that person persists in crime. Persons who live in good residential areas, are reared in wholesome homes, have good job and a comfortable life style are least likely to return to crime. They, like minor physical ailments cure themselves. But persons coming from deteriorated areas, broken family, with history of criminal members in the family, with out any jobs, and any means to live will have psychological problems also. And they are the persons who fail

mostly during the probation and parole and have a high chance of becoming recidivists.

The persistence of criminals in crime can be explained in terms of the social psychology of the recidivist. One of the main problems is the habit formation. The persistence in crime is only persistence in their habit, if the offenders live in an area where crime is prevalent and have sufficient opportunities for the offenders to carry on the criminal activities quite unnoticed for years. This criminal way of life become a habit for them and thus it finally turns them into a recidivist.

It is likely that imprisonment itself may well exacerbate certain underlying psychiatric conditions or the impact and effects of such imprisonment may be so severe as to precipitate mental disorder in certain individuals. It may also be the case that those who are in fact in some way mentally disordered may be less skilful in crime and thus get caught more easily[33]. There do appear to be some grounds for asserting that there exists a "stage army" of problematical personalities which is dealt with alternatively or even interchangeably by penal and psychiatric methods. Some forms of disorder may well manifest themselves in outwardly criminal behaviour. It is then the concern of the criminal justice system to identify such cases and decide upon an appropriate moral and practical response.

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[33] Herschel Prins, *Offender: Deviate or Patients* (1980), p. 42-50.

CHAPTER IV

CHAPTER IV

Analysis of Legislative Measures to Prevent Recidivism

Many nations around the world, realized the fact that the ultimate goal of punishment could not be achieved merely by giving punishment proportionate to their offences. Since some offenders seemed to be so dangerous, imposing punishment alone is inadequate to prevent them from committing harmful acts in the future. Hence incapacitating measures were introduced for dealing with such dangerous offenders. Two types of incapacitating measures are used to deal with dangerous offenders[1].The study would be meaningful only by analyzing the legislations that emerged in developed countries during the latter half of the 19th century targetting the harmful crimes and criminals

United Kingdom

The prevention of Crimes Act 1871 was enacted with an intention to impart additional punishment to habitual criminals so as to deter them from reoffending and to protect the public. The England and Wales Prevention of Crime Act was passed in 1908, which made possible the indeterminate incarceration and preventive detention of repeat offenders[2]. Section 21of the Act says that

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1 Preventive or indeterminate custodial sentences and Community notification. A preventive custodial sentence is similar to an indeterminate one in that both entail the imposition of custody for a period for longer than can be justified by the criminal act and the offender's record. Additional time is incorporated into these dispositions as the offender is seen to pose a significant threat to the community. A preventive sentence is different from an indeterminate sentence because it is fixed; a judge is required to indicate the length of time an offender will serve in custody. Community notification provision serve to incapacitate the offender within the community by making his presence known to people within a certain area who will, theoretically, protect themselves and their loved ones from victimization.

2 This may range from 5 to 10 years, according to the discretion of the court. Section 2(1) (b) of the English Criminal Justice Act of 1948 provides that "if the court is satisfied that it is

offenders convicted on indictment for an offence punishable by two or more year's imprisonment were liable to sentences of five to fourteen years detention if they had reached thirty years of age. Brostal training or corrective training[3]were given to an offender who were convicted on three previous occasions since the age of seventeen.

Section 28 of the Powers of Criminal Courts Act 1973 provides that on being satisfied[4], the court may impose an extended term of imprisonment to an offender who has been convicted for a term of two years or more. Even after his release he is under supervision[5].

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expedient for the protection of the public, [the offender] should be detained for a substantial period of time."

3 *Ex p.Hastings, Crim.L.r. 1960, p.61*

4 The satisfaction of the court rests on the previous conduct of the offender, the likelihood of committing further offences, and the discretion of the court, to enable the court to protect the public from him for a substantial time. J.P.S.Sirohi, *Criminology and Criminal Administration*, (v edn. 2003) .P 174, 175

S.28 of the powers of Criminal Courts Act, 1973 (substantially re- enacting Section 37 of the Criminal Justice Act, 1967) It provides: "Where an offender is convicted on indictment of an offence for a term of two years or more and the conditions specified in sub section (3) below are satisfied, then, if the court is satisfied, by reason of his previous conduct and of the likelihood of his committing further offences, but it is expedient to protect the public from him for a substantial time, the court may impose an extended term of imprisonment under this section.

(2) The extended term which may be imposed under this section for any offence may exceed the maximum term authorised for the offence apart from this section if the maximum so authorised is less than ten years or exceed five years of the maximum so authorised is less than five years.

The conditions specified in sub-section (3) concern the Criminal record which it is necessary that the offender should have, in order to be liable to an extended sentence. The offence must have been convicted within three years of a previous conviction involving at least two sentences of immediate imprisonment since the age of twenty-one.

Under section 28 (4) the court must, on passing an extended sentence, issue a certificate stating that the sentence is an extended sentence. The effect is that the prisoner may be released on license when he would have been entitled to be discharged under the remission rules, i.e.; after he had served two-thirds of the sentence if he behaved properly: the licence will remain in force under the date of expiration of the sentence. A person serving an extended prison sentence is entitled to be considered for parole like any other fixed term prisoner but, if he is granted parole, his licence will remain in force up to the date of expiration of his sentence where as the ordinary parole only remains under supervision up to the date when he would have been entitled to be discharged under the remission rules.

5 Garden (1970) 2 All.E.R.385.

The Criminal Justice Act, 1991 contains provision for the imposition of a custodial sentence for recidivists in order to protect the public from serious harm[6]. In such cases the custody may not be on the basis of the seriousness of the offence. The appropriateness of a custodial disposition is gauged by section 2(2) (b) of the Criminal Justice Act[7]. The Court in making its decision assesses the likelihood that harm will be inflicted on members of the community if the offender is released from custody. Unfortunately, the Act did not facilitate the Courts assessment of dangerousness because this Act itself repealed an earlier provision requiring a pre-sentence report[8]. The Criminal Justice Act, 1991 also requires that custodial and non-custodial sentences must be used proportionately. An extension of a sentence beyond its proportionate term is authorized only in special circumstances, i.e., when the conviction of offence meets the statutory criteria of being a "violent" and when the prospective harm meets the further statutory restriction that it be a 'serious harm'. Thus in this Act protective sentencing is made as an exception to the general rule of proportionate sanctions. In Crow and Pennington[9] the Court of appeal held that there should be reason to fear a substantial risk of further violence.

Section 79(2)(b)[10] and section 80(2)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 provides imposition of a custodial sentence or extend the normal sentence where the offence is a serious 'violent' offence and only a custodial sentence alone can protect the public from serious harm from the offender. Section 109 provides for automatic life sentences for offenders who

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6 See Section 1(2) (b) of the Criminal Justice Act, 1991.

7 *Ibid.*, Section 2(2)(b)

8 It gives information as to the offender's potential for rehabilitation and psychological characteristics.

9 Crow and Pennington (1995) 16 Cr.App. (S) 409.

10 Section 79(2) (b) of the Powers of Criminal Courts (Sentencing) Act 2000 is formerly Section 1(2) (b) of the Criminal Justice Act 1991.

commit a second "serious offence". Sections 85and 86 provided for imposing extended sentence and extended supervision[11].

Australia

Australian Criminal Law is made primarily by State Governments. A variety of provisions were introduced within the criminal legislation to deal with dangerous offenders. The first of these was introduced in New South Wales, Habitual Criminals Act, 1905 to protect the public and provide the habitual criminal with an opportunity to reform his behaviour. It provided for the preventive detainment of repeat offenders. This Act was subsequently repealed and replaced by the Habitual Criminals Act 1957, which provides for the pronouncement, detention and control of habitual criminals. Section 4 enables a judge to declare a person as habitual criminal if he or she is at least 25 years old and is convicted on indictment and has previously served at least two separate terms of imprisonment for indictable offences. The judge may accordingly pass a further sentence if he or she believes it to be expedient in relation to the person's reformation or for the prevention of crime.

In Tasmania, under the Criminal Code Act 1924, an offender who appears to be at least 17 years of age and who has committed at least two violent offences can be declared a dangerous offender and can be detained indeterminately. A judge must consider the potential of future harm that could be caused by the offender, the circumstances of his offences, medical and psychiatric opinion and any other matters of relevance. There is no review process after an offender is declared dangerous and incarcerated in Tasmania[12].

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[11] These sections are mainly to protect the public from serious harm from offenders and the desirability of preventing the commission by them of further offences and securing their rehabilitation. Ralph Henham, "Sentencing Dangerous Offenders Policy and Practice in the Crown Court", (2001) Crim.L.R. P.698. See also, in *Barros* it was held that it was not necessary for the expected future offences to involve serious harm to the public, or even for them to be violent or sexual offences. There is only a need of protecting the public and preventing these offenders from committing further offence. There is an obligation on the part of the sentencer to place reasons on record, where there is a chance of extremely lengthy period in incarceration. *Barros* (2000) Crim.L.R.601.

[12] Austrialasian Legal Information Institute, *Release from Custody*, (1999) *http://www.austii.edu.au/au/other/nsw/rc/dp35/chap12.html*. 21-8-2004.

In the northern Territory and South Australia, Western Australia, the Criminal Code Act, 1983 (NT) and the Criminal Law (Sentencing) Act 1988 (SA), the Criminal Code Act, 1913 (WA) and the Crimes (Serious and Repeat Offenders) Act, 1992 allow for the indeterminate incarceration of a person deemed a habitual criminal. Their release is by way of an order from the Supreme Court.

The Netherlands

In 1925 and 1928, Netherlands enacted legislation known commonly as the TBS Law (it means"detention at the government's pleasure") which was amended in 1988. The law affords the judges the discretion to order an assessment, at the time of sentencing, of an offender's degree of responsibility for the offence, in cases where the offence is violent in nature or preceded by a series of violent offences, carries a minimum four year term of imprisonment. The Court must also judge the offender to be a danger to the public. The offender is then remanded to a hospital where a psychologist and psychiatrist conduct an assessment. This includes an evaluation of mental state, offence history and circumstances and behaviour at the time of the present offence. The assessment is used to determine the offender's degree of responsibility, be it partial or completely absent[13].

The Dangerous Offender Legislation of Netherlands represents an improvement on other dangerous offences based on a clinical model in other nations. [14] Here mental health assessments provide a more rounded picture of the offender and the offence, potentially improving behaviour predictions.

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[13] Federal/Provincial/Territorial Task Force on High Risk Violent Offenders.

[14] John Howard Society of Alberta, Dangerous Offender Legislation (1999), *http://www.johnhoward.ab.ca/PUB/c20.htm#nethe*,20-5-2005.

United States of America

For more than a Century, laws in United States have made provision for increasing the security of penalties for offenders who have earlier criminal records. Massachusetts enacted Habitual Criminal Law in 1817. New York State has a persistent Felony Offender law that dates back to the late 19th century[15]. But such sentences were not compulsory in every single case, and judges had much more discretion as to what term of incarceration should be imposed.

In United States the movement to pass habitual criminal laws was given impetus by the widely publicised enactment of the Baumer Laws in New York in 1926[16]. In the late 1930s Sexual Psychopath laws were introduced in many American states. Those who commit serious violent or sexual offences are presumed to suffer from an individual pathology that renders them incapable of controlling their behaviour. Treatment is necessary to reduce the probability of recidivism and indeterminate confinement is given so that the offenders will be incapacitated until the time they were no longer dangerous.

Many State Governments in the United States have enacted Three strikes laws, which require the courts to hand down a mandatory and extended period of incarceration to persons who have been convicted of a serious criminal offence on three or more separate occasions. This is justified on the basis that recidivists are incorrigible and chronically criminal and must be imprisoned as a matter of public safety. This law was first enacted in Washington followed by California and many other states. By 2004[17], twenty six states and federal governments had laws that satisfy the general criteria that a third felony conviction brings a sentence of life in prison with no parole possible until twenty five years has been served. The exact application of the three strikes law varies considerably from

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15 Predicting and Controlling Dangerousness, *http://faculty.ncwc.edu/connor/294/294lect04.htm*.11-02-2005

16 1926N.Y.Session Laws, Ch.457.See"The Treatment of the Recidivists in the United States," (1945) 23Canadian Bar Review 640,642.See also Linda Sleffel, *The Law and the Dangerous Criminal* (1977), p.1.

17 Wikipedia, Three Strikes Law, *http://en.wikipedia.org/wiki/three_strikes-law*.8-02-2005

state to state. Some states require all three felony convictions for violent crimes in order for the mandatory sentence to be pronounced, while others mandate the enhanced sentence for any third felony conviction so long as the first two felonies were deemed to be either 'violent' or 'serious' or both.

The American Congress has tried to control the recidivism rate in United States by enacting the Violent Crime Control and Law Enforcement Act of 1994. This Act mandates life imprisonment for the commission of a serious violent felony, or a combination of two or more serious felonies or drug offences.

Washington's Habitual Criminal Statute imposes a minimum sentence of ten years imprisonment for persons convicted of a second felony, third misdemeanor or third petit larceny. Further more, in the event that a person is convicted of a third felony, fifth misdemeanor or fifth larceny, the statute imposes a life sentence[18].

The U.S. Supreme Court in *Ewing v California*[19] and *Lockyer v. Andrade*[20] held that sentences under three strikes law do not violate the Eighth Amendment of the U.S. Constitution which prohibits "cruel and unusual punishment" and upheld this law. The court concluded that "it is enough that the State of California has a reasonable basis for believing that dramatically enhanced sentences for habitual felons advance the goals of its criminal justice system in any substantial way". Long sentence reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated.

Washington's Community Protection Act of 1990, based on the community protection model of dealing with dangerous offenders. The legislation increased the severity of penalties for many existing offences and targets those offenders with a history of mental disorder or sex offences. These persons, whether they

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[18] Wash.Rev.Code § 9.92.090 (1996)

[19] 538 U.S.11 (2003) *http://caselaw.p.findlaw.com* 27-08-2004

[20] 538 U.S.63 (2003) *http://caselaw.p.findlaw.com*.27-08-2004

are about to be released or are already in the community, can be summoned to a hearing to determine whether they are sexually violent predators. If the hearing reveals reasonable ground to believe an offender is sexually violent, the offender will be sent to a clinical facility for assessment. If diagnosed positive he will be held indefinitely until Health Services Secretary recommends release. Those found to be no longer dangerous can be released but must register themselves with the local police. The police will then notify the community that a sexually violent predator has taken up residence in their area. An informed public is a safer public. Notification is not intended to increase fear. The legislature has determined that the purpose of the Community Protection Act of 1990 is "to assist law enforcement agency's efforts to protect their communities" by providing relevant and necessary information. "If the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release"[21].

On May 17, 1996, President Bill Clinton, signed a bill requiring all 50 U.S. States to enact Megan's Law Community notification provisions. Megan's Law requires the police to notify community members when a sex offender is released from prison and takes up residence in their area. A convicted sex offender must register his name, address and other pertinent information for a certain length of time, and this information is usually entered into a database.

Under the Florida Career Offender Registration Act (2003) [22] a select group of convicted felons the "worst-of-the-worst", are required to register their residences with law enforcement and a state registry, called the Career Offender Application for State-wise Tracking (COAST). These offenders by virtue of their histories of offences present a threat to the public and to communities. This registration law will assist law enforcement agencies in timely apprehending a

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[21] University of Washington Police Department, Sex Offenders, *http://www.washington.edu/admin/police/offenders/* 28-7 2005.

[22] Predicting and Controlling Dangerousness, *http://faculty.ncwc.edu/toconnor/294/294lect04.htm.28-7-2005*

career offender[23], if a career offender engages again in criminal conduct. Failure to register is a third degree felony. Law enforcement agencies may inform the community and the public of the presence of a career offender in the community.

Canada

In response to the recommendations made in 1938 by the Archambault Commission, the first Habitual Offenders Act was adopted in Canada in 1947[24] The habitual offender Act dealt solely with offenders with long criminal records and essentially served to remove them from society[25]. In 1948, the Criminal Sexual Psychopath Act[26] was enacted. The Act required mental health experts to identify any threat from dangerous sexual offenders. The sentence given was a combination of determinate sentence of minimum 2 years followed by in-terminate, incarceration, which would be reviewed by the justice minister every three years to determine the eligibility for parole and the conditions to be attached if parole was granted.

In 1977 an amendment to the Criminal Code of Canada, based on the1969 Committee's report, provided for indeterminate or determinate sentences for offenders found to be dangerous who would be eligible for parole after three years.

The Corrections and Conditional Release Act 1992[27], requires the correctional service to provide information regarding the identity and criminal

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[23] Career offenders are individuals who have been designated by a court as a habitual violent felony offender, a violent career criminal, a Three time violent felony offender under 775.084 or as a prison release re-offender under 775.082(9) and who are serving or have been released from sanction under that designation on or after January 1, 2003.

[24] Dominique Valiquet, *The Dangerous Offender and Long Term Offender Regime* (2006) Law and Government Division. *http://www.parl.gc.ca/information/library/PRB pubs/prbo613-e.htm* 18-5-2006.

[25] J.Jakimiec F.Porporino, S.Addario, and C.D.Webster "Dangerous Offenders in Canada, 1977-85", (1986) 9, *International Journal of Law and Psychiatry, 479-489.*

[26] M.W.Petrunik, *Models of dangerousness: A cross Jurisdictional review of dangerousness legislation and practice* (1994), p.16.

[27] *http://www.justice.gc.ca/en/news/nr/2005/doc_31458.html*.28-02-2005

record of offenders to the agencies authorized to supervise offenders. The Act also provides for the notification of police forces prior to the release of federal inmate, whether on temporary absence or statutory release. Presence of high-risk offenders should be notified to the public.

The legislative trends in many countries has been that the laws either envisage the aggravation of punishment or the adoption of special measures for treatment of the recidivists which may be other than the traditional punishment. Two kind of legislative measures have come into existence in dealing with the recidivists. One is 'single track system'[28] and the other is called the 'dual track system'[29].

There are mainly two types of recidivists. Repeatedly recidivistic, dangerous hardened criminals with substantial personality disturbances who are not subject to rehabilitative influence while in penitiary are of one type. The second is made up of those young recidivists who cannot be influenced by an up bringing in a reform school or by incarceration in a penitiary, and in whose cases a review of the totality of circumstances yields the conclusion that they will develop in to offenders with a proclivity to serious crimes. For them preventive detention is best as they will be prevented from committing further offence.

The Criminal Law seeks to deter offenders who might take to recurrence of crime or a regular career in criminality. It is maintainable that punishment and deterrence are effective methods to deal with deviance but the criminal justice

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[28] In the 'single track system' the offender is detained in the prison after the normal period of detention is over, in order to expiate the sin in the offender so as to restore him as a normal citizen to live his rest of the life in the society. This system was characterised by the extended punishment or extended detention as a penal sanction. This system was adopted in Norway, Switzerland, Hungary and in England. Norval Morris, *The Habitual Criminal* (1951) p.86

[29] In the dual track system' special measures are adopted to the treatment of habitual criminals after they have undergone a fixed term of imprisonment for the last offence committed. This system has been adopted by Belgium, Czechoslovakia, Finland, Germany, Holland, Italy, Latvia, Poland, Spain and Yugoslavia. The Laws in Denmark has given powers to the Judge to choose either of the systems for each successive offender. *ibid*

system has to evolve ultimate and enduring solutions which lie in rehabilitating the criminal and reforming them into law abiding citizens[30].

For professional criminals or political terrorists who indulge in ruthless violence and are a potential danger to the community, an extended period of preventive detention after serving the penal sentence may prove appropriate keeping in view of the public safety and security against these dangerous hardened criminals[31].

The criminal justice institutions being agencies of government have to play the role of custodian of public morality through the law enforcement. The government must provide an effective deterrence against probable offenders, the very basis of law and consequently the public order in a changing society[32].

There are numerous statutory provisions dealing with the problem of habitual criminality. Now the position has become very complex as the crime committed by mentally disturbed persons are on the increase. Legal sanctions for checking the criminal tendencies of persistent offenders and dangerous recidivists are, in India, scattered at several places. Some states have introduced habitual offenders Act, but all in all to punish these offenders is rather complicated.

Law Relating to Recidivists Under the Code of Criminal Procedure

The code of Criminal procedures, 1898 contained provisions relating to the control of antisocial elements in the society. Section 110 of the Code of Criminal Procedure, 1973 is definitely a preventive provision by insisting on executing a bond for good behaviour from the recidivists[33]. Section 110 reads as below:-

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[30] P.D Sharma, *Criminal Justice Administration, The Relay Race for Criminal Justice* (1998), p.38.

[31] *Ibid*. at p.181

[32] *Ibid*

[33] The preventive provisions put a brake upon repeaters from resorting to evil courses

110. Security for good behaviour from habitual offenders: - when[34] (an Executive Magistrate) receives information that there is within his local jurisdiction a person who –

(A) is by habit a robber, house breaker, thief or forger, or

(B) is by habit a receiver of stolen property knowing the same to have been stolen or

(C) habitually protects or harbours thieves, aids in the concealment of disposal of stolen property, or

(D) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under chapter xii of the Indian Penal Code (45 of 1860), or under section 489 A, Section 489 B, Section 489C or section 489 D of that code, or

(E) habitually commits, or attempts to commit, or abets the commission of, offences, involving breach of the peace, or

(F) habitually commits, or attempts to commit, or abets the commission of -

(1) any offence under one or more of the following Acts, namely:-

(a) The Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) [The Foreign Exchange Regulations Act, 1973 (46 of the 1973)[35];]

(c) The Employees Provident Funds [36][and family pension fund] Act, 1952 (19 of 1952)

(d) The prevention of Food Adulteration Act, 1954 (37 of 1954 ;)

(e) The Essential Commodities Act, 1955 (22 of 1955);

(f) The Untouchablity (Offences) Act, 1955 (10 of 1955);

(g) The Customs Act, 1962 (52 of 1962); or

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[34] Subs. by Act 63 of 1980, sec.2 for " Judicial Magistrate" (w.e.f.23-09-1980)

[35] Subs. by Act 56 of 1974, S.3 and Sch, for item (8). This Act was replaced by Foreign Exchange Management Act 1999.

[36] Ins. By Act 56 of 1974.

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration or food or drugs or of corruption, or

(G) is so desperate and dangerous as to render his being at large without security hazardous to the community; such magistrate may, in the manner herein after provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

On receipt of information that a person habitually commits any of the offences specified in the section, the action will be initiated by the executive magistrate. He must not be influenced by mere rumor or gossip. The court must have specific facts and satisfied that counter petitioners is sure to commit offences mentioned if he is not kept in custody[37]. The Executive Magistrate is to show cause to the person concerned as to why action should not be taken against him. The content of information recorded against the person, the amount of surety bond to be executed by him, the number of sureties are demanded, are all set forth in the order of the magistrate issued to call upon him to show cause[38]. The object of this provision is to inform the person concerned about the allegations which he has to answer.

If the person against whom such order is made is present in the court then it should be read out to him or explained to him[39]. If such person is not present in the court the Magistrate shall issue a summons requiring him to appear before the Magistrate. Based on the report of the police or the from any other

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37 *Gopalanachari. v. State of Kerala*, 1980 Supp SCC 649.

38 Section 111 of code of criminal procedures 1973.S. 111. order to be made - when a magistrate acting under section 107 section 108, Section 109 or section 110, deems it necessary to require any person to show cause. Under such section he shall make an order in writing, setting forth the substance of the information received the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

39 Section 112 of the Code of Criminal Procedure 1973-procedure in respect of person present in court-if the person in respect of whom such order is made is present in court, it shall be reads over to him, or, if he so decides the substance thereof shall be explained to him.

information which specifies that breach of peace cannot be prevented otherwise than by the immediate arrest of such persons, the Magistrate may, instead of issuing summons, issue a warrant for his arrest[40].

When such person is brought before the court, the Executive Magistrate shall enquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary[41]. Based on such

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[40] See S.113 of the Code of Criminal Procedures, 1973. S.113-Summons or warrant in case of a person not so present, -if such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

Provided that whenever it appears to such Magistrates, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate) that there is reason to fear the commission of a breach of the peace, and that such breach of peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

[41] See S.116. Inquiry as to truth of information. —

(1) When an order under section 111 has been read or explained under section 112 to a person in court, or when any person appears is brought before a magistrate in compliance with or in execution of, a summons or warrant, issued under section 113, the Executive Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.

(2) Such enquiry shall be made, as nearly as may be practicable, in the manner herein after prescribed for conducting trial and recording evidence in summons – cases.

(3) After the commencement, and before the completion, of the enquiry under sub – section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the enquiry, and may detain him in custody until such bond is executed or in default of execution, until the enquiry is concluded:

provided that —

(a) no person against whom proceedings are not being taken over under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;

(b) the conditions of such bond, whether as to amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.

(Fn. cont. in page-140)

enquiry if it is found that it is necessary for prevention of breach of peace that person in respect of whom the enquiry is made should execute a bond with or without sureties or may detain him in custody until such bond is executed[42]. If on the other hand it is found that it is not necessary to execute a bond from such person for keeping the peace, the magistrate shall discharge such person or release him if he is in custody[43]. The enquiry under this section should be completed within a period of six months if not the enquiry shall stand terminated unless specific reason to be recorded in writing.

In *Mohan Parmanand Khatri's Case*[44], the Bombay High Court has held that under section 110, Cr.P.C. the executive can obtain security for good behaviour only from habitual offenders. "Habit" connotes that person should be committing such acts recurrently so as to allow a reasonable person of reasonable prudence to come to a reasonable conclusion that he is in the habit of committing such acts. Stray incidents does not constitute as habit.

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(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries, as the magistrate shall think just.

(6) The enquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of six months of such detention.

(7) Where any direction is made under sub – section (6) permitting the continuance of proceedings, the sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

42 *Ibid.*

43 Section 118. Discharge of person informed against. — If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

44 *Mohan Parmanand Khatri v. M.G.Ingle and others,* 2004 Cri.L.J. 1017 (Bombay High Court).

The preventive power under section 110 of the Code of Criminal Procedure covers habitual persons as well as the desperate and dangerous persons[45]. The petitioner in *Mohd.Afzal v. union of India*[46], started his criminal activities in the year 1990 at the age about 19 years and was involved in 18 criminal cases, enlisted in the grounds such as voluntarily causing hurt, criminal intimidation, riots, house trespass, obstructing public servants from discharging their official duties, criminal conspiracy, criminal confinement, kidnapping, attempt to murder and murder. He was also involved in the offences punishable under the Arms Act and Prevention of Damage to Public Property Act. Out of the 18 criminal cases registered against him, the petitioner has been acquitted/discharged in most of the cases. It is alleged that the prosecution witness against him are extremely afraid to depose against him in the court. The complainants and near relatives did not support the prosecution case and turned hostile due to intimidation and terrorizing tactics by the petitioner. The detaining authority came to the conclusion that the criminal activities indulged by him clearly shows that he is a desperate and dangerous criminal whose activities are prejudicial to the maintenance of public order. His act of violence against the public and property shows his complete contempt for the law of the land. He is usually found in possession of fire arms and the witnesses are afraid to give evidence against him. The court held his detention as a valid one.

In *Madhu Lemaye v. Sub-Divisional Magistrate*[47], Hidyatullah C.J observed that under the provisions under chapter viii of the Cr PC are made for the function of the state which embraces not only the punishment of offenders but as far as possible, the prevention of offences. The basic policy underlined in section 110 of Cr.P.C is that when by reason of the conviction of a person, his past conduct leads to an apprehension for the future, and when the magistrate, on information,

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[45] A person who frequently resort to any form of crime even after any previous connections; had not deterred them from committing further offences are can be seen as "desperate and dangerous". If any situation occurs where they can commit a crime they will do it without any prick of conscience. So they can be prevented from committing such offence is by locking them into custody or making other persons to watch over them or to take responsibility of them from not committing the crime.

[46] 2004 Cri.L.J.3461.

[47] 1970 (3) SCC 746.

is of the opinion that unless prevented from so acting, a person is likely to act to the detriment of the public peace. The power conferred under this chapter should be invoked.

The clause (f) of section 110 can be used against persons who commit socio – economic offences[48]. Persons who habitually commit offences of anti – social nature such as those relating to adulteration of food or drugs or foreign exchange or customs hoarding and profiteering or corruption, deserve perhaps even greater control than persons who habitually commit offences like theft. Etc.

The category of persons coming under section 110 of the code of Criminal Procedure, 1973 consists of (1) habitual property offenders (2) Socio economic offenders, (3) offenders who commit offences against the person or abet the same, (4) persons who act as aids and auxiliaries of habitual offenders, from whom they get regular shelter and protection, (5) persons disturbing peace and 'tranquility 'in the community. This section helps to deal with all type of habitual offenders with the primary object of deterring them from committing further offences.

The gist of the chapter viii is the prevention of crimes and disturbance of public tranquility and breaches of peace. These provisions are thus essentially conceived in the interest of public order, in the interest of the general public. If prevention of crimes and breaches of peace and disturbance of public tranquility are directed to the maintenance of the even tempo of community life, there can be no doubt that they are in the interest of public order. 'Public order' is an elastic expression which takes within it various meanings according to the context of the law and the existence of special circumstances. This power was used in England for over 400 years and is not something which is needed only for administration of colonial empires. Its need in our society today is as great as it was before the British left[49].

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[48] See clause (f) of section 110 of Cr.P.C.

[49] *Union of India v. Chaya Ghoshal*, (2005) 10 SCC. 97.

In *Gopalanachari v. State of Kerala*[50] Krishna Iyer, J. while delivering the judgment said that

> "unless the preventive power under section 110 were prevented from pervasive misue by zealous judicial vigilance and interpretative strictness, many a poor man, may be cast into prison by sticking the label of 'habitual' or by using such frightening, expressions as 'desperate', 'dangerous' and ' hazardous' to the community'. Law is what the law does, even as freedom is what freedom does. Going by that test, section 110 cannot be permitted in our free Republic to pick up the homeless and the have-nots as it did when under British subjection because today to be poor is not a crime in this country". [51]

Procedural safeguards are the indispensable essence of liberty[52].The constitutional survival of section 110 certainly depends on its obedience to Article 21, as the Supreme Court has expounded. Words of wide import, vague amplitude and far too generilised to be safe in the hands of the police cannot be constitutionalised in the context of Article 21 unless read down to be as a fair and reasonable legislation with reverence for human rights[53].

A glance at section 110 shows that only a narrow signification can be attached to the words in clauses (a) to (g), by habit a robber--," "by habit a receiver of stolen property---", "habitually protects or harbours thieves---", habitually commits or attempts to commit or abets the commission of ----", "is so desperate and dangerous as to render his being at large without security hazardous to the community". These expressions, when they become part of the

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50 1980 Supp SCC. 649.

51 *Ibid.*,at p. 649.

52 It has been correctly pointed out by Krishna Iyer, J in *Maneka Gandhi* case that as Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should confirm to Article 22. For other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are available. *Maneka Gandhi v. Union of India,* (1978) 1 SCC 24 p.338.

53 *Gopalanachari v. State of Kerala*, 1980 Supp SCC. p.649 at 653.

preventive chapter with potential for deprivation of a man's personal freedom up to a period of three years, must be scrutinized by the court closely and anxiously. The poor are picked up or brought up, habitual witness swear away their freedom and courts ritualistically commit them to prison and Art 21 for them a freedom under total eclipse in practice. Courts are guardians of human rights. The common man looks upon the trial courts as the protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not 'non-persons'[54]. The Supreme Court[55] has directed the Trial Magistrates to discharge their duties when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner gives him the facility of being defended by counsel.

The Supreme Court has made clear its intention that prevention is better than cure, in criminal law as in medicine, especially when there is judicial supervision[56].

Section 356 of the Code Of Criminal Procedure, 1973

Section 110 of the Code of Criminal Procedure provides for preventive action without a formal trial. The section 356 of the code provides for preventive action after trial and conviction in the case of recidivism in respect of certain serious offences such as offences relating to currency notes, offences against the property, like theft, extortion, robbery and dacoity.

> Section 356 of the Code of Criminal Procedure, 1973 reads as follows:
> Order for notifying address of previously convicted offender: -
> (1) when any person, having been convicted by a court in India if an offence punishable under section 215, section 489 A section 489 B, section 489 C or section 489 D of the Indian Penal Code (45 of 1860) or of any offence punishable

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54 *Ibid*

55 *Ibid at* p. 654.

56 *Gopalanachari v. State of Kerala*, 1980 Supp SCC. p.649 at 655.

under Chapter xii or chapter xvii of that code, with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under any of those sections or chapters with imprisonment for a term of three years or upwards by any court other than that of a magistrate of the second class, such court may, if it thinks fit, at the time of passing a sentence of imprisonment on such person, also order that his residence and any change of or absence from, such residence after release be notified as herein after provided for a term not exceeding five years from the date of the expiry of such sentence.

(2) The provisions of sub – section (1) with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and attempts to commit them.

(3) if such conviction is set aside on appeal or otherwise such order shall become void

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) The State Government may, by notification, make rules to carry out the provisions of this section relating to the notification of residence or change of, or absence from, residence by released convicts.

(6) Such rules may provide for punishment for the breach thereof and any person charged with a breach of any such rule may be tried by a magistrate of competent jurisdiction in the district in which the place last notified by him as his place of residence is situated.

S. 356 (6) gives power to the State Government to prescribe punishment for breach of rules notified under S. 356 (5). But it does not lay down any guidance as to the quantum or nature of punishment to be specified in the rules. As far as it goes it can be seen that the delegative legislative powers given seems to go beyond the permissible limits. It is a well established principle of delegative legislation that the legislature must declare the policy in clear terms in

the law itself and that a power given to the executive must be accompanied by policy guidelines[57].

Laws Relating to the Recidivists Under the Indian Penal Code

To control the habitual offenders numerous measures have been tried through out the world[58]. Norval Morries, explained the two methods of combating the recidivists[59], - (1) Aggravation of punishment, i.e., the sentence for the last crime may be increased or continued indefinitely, though the conditions under which this increased term is served remain unchanged, both in theory and practice; (2) The sentence for the last crime may be followed or supplemented by a different type of punishment, applicable to habitual criminals as such.

Section 75 of the Indian Penal Code falls under the first category mentioned above i.e.; aggravated punishment for the last crime committed by a criminal who has got any previous conviction.

> The section 75 reads as follows:
> Section 75. Enhanced punishment for certain offences under chapter xii or chapter xvii after previous conviction – whoever, having been convicted,—
> (a) by a court in India, of an offence punishable under chapter xii or chapter xvii of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

The object of this section is to enable the courts to pass a longer sentence on a persistent recidivist. The object of the enhanced punishment is the

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57 M. P. Jain and S. N. Jain, *Principles of Administrative Law* (1979) p.32-35

58 The Hon. Mr. Justice Salmon, "Crime of Violence" (1960), *Cambridge Law Journal* p.45.

59 Norval Morris, *The Habitual Criminal* (1951), p.24.

protection of the public rather than the punishment of the offenders. The Law Commission of India[60] has recoganised the importance of this section 75 of the Indian Penal Code for protecting the public against recidivists. The commission in its report recommended that this section 75 should extend to all the offences under the Code punishable with imprisonment up to three years or more. According to the Committee the enhanced punishment under section 75 should be permissible only if the subsequent offence was committed within three years of the release of the offender from the prison for the last offence committed by him. It was also recommended that the section ought not to be applied where, on the last conviction, the offender had been sentenced not to imprisonment but to some lesser or milder punishment or measures, such as fine or probation.

In *Pratap v. State of U.P. and others*[61] the Supreme Court has held that section 75 IPC deal with persons with previous conviction, the previous sentence need not necessarily be in force when the subsequent offence is committed. This section will be applicable as often as the necessity arises and in respect of any offence subsequently.

According to the esteemed view of the full bench, what sec. 75, IPC, contemplates is that, where a person who has been previously convicted of an offence punishable under Chapter xii (which deals with offences relating to coin and government stamps) or chapter xvii (which relates to offences against property) with imprisonment of either description for a term of three years or upwards, is once again found guilty of a similar offence, he shall be liable to be enhanced punishment which may extend to imprisonment for life or to imprisonment of either description for a term which may extend to ten years. All the section is concerned, is that the previous conviction should have been in respect of an offence punishable with a term of imprisonment of three years or upwards, but it does not lay down that the offender should have been actually punished with such a term of imprisonment[62].

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60 Law Commission of India, 42nd Report p.78-80

61 (1973) 3 SCC 690

62 *Kamya v. State of A.P.*AIR 1960 AP. 490.

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Section 75, IPC comes into application only when a person is sought to be punished with imprisonment exceeding the maximum imprisonment provided for the offence. So long as the maximum punishment provided for the offence is not to be exceeded there is no need to resort to its provisions. For the purpose of the sentence the Magistrate could take the previous conviction into consideration even though it was not mentioned in the charge[63]. In *State of Kerala v.Krishnankutty*[64] Kerala High Court has approved the dictum in the above case.

It is thus not obligatory in all cases coming under the scope of section 75 IPC, to commit the accused to sessions. Considering the nature and gravity of the offence and circumstances in which it is committed the Magistrate has first to Judge whether a sentence or more severe than that prescribed for the offence as such under sec. 75 IPC, is necessary in the case. If only he is satisfied that a severe sentence than the maximum provided for the offence is called for, he need invoke sec 75, IPC and consider the need to commit the accused to the court of session under sec 324 Cr PC. In other cases, particularly where the offence charged is a trivial one, the magistrate has to deal with the case himself and mete out Justice[65].

Enhanced sentence has its own drawbacks. It is awarded to such offenders who are not likely to be reformed by such incarceration. It not only does have a demoralizing effect on the offenders, but also has adverse effect on other inmates whose prospects of reformation are adversely affected by coming into contact with the recidivists. Though section 75 of the Indian Penal Code enables the Courts to give enhanced punishment in certain cases, the provision is not of a mandatory nature and hence should be used discriminately. In *Kasim Ali v.Emperor*[66] it was held that S.75 should not be applied mechanically

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63 *Mohammad v. State*, 1967 Cr. L. J. 275.

64 1965 K. L. T. 1043

65 Dr. Sri Hari Singh Gour, *The Penal Law of India* (11th ed. Vol.1 1998), p.534.

66 1957 Cr.L.J 275.

The following conditions must be fulfilled before a person can be awarded enhanced punishment under this section:

(1) He must have been previously convicted in India for an offence which is punishable with imprisonment for at least three years[67].

(2). The offence which he had been convicted, and of which he is subsequently charged, must be one included in chapter xii or chapter xvii of the Code[68].

(3). It must have been committed in India.

(4). He must be subsequently charged with an offence punishable with imprisonment for at least three years[69].

(5) He must have committed it since his previous conviction[70].

(6). Previous conviction must not have been set aside- it should remain in operation on the date of conviction for the second offence[71].

Habit implies a tendency or capacity resulting from frequent repetition of the same or similar acts. It indicates depravity of or criminality in character, evidenced by frequent commissions of offences. Besides proof of number of conviction or course of conduct by evidence of general reputation or prior acts there must be some additional facts or resumed avocation indicating an intention to return to his former course of life and pursuing a career prejudicially affecting the community interests[72].

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67 *Jagdish v. State of Rajastan*, 1992 Cr. L. J. 2989 at p. 2990

68 *Fattu v.Crown* AIR 1923 Lab 286.

69 *Thakur Prasad Singh v. Emporor*, AIR 1924 Pat. 665

70 *Sayad Abdul Sayad Imam v. Emporor*, AIR 1926 Bom. 305.

71 *Dilip Kumar Sharma*, AIR 1976 SC 133.

72 Subbayan Achary v. State of Kerala 1981 Cri.L.J.1359 at1361(Kerala H.C). See also Prabha C.Sarkar, *Criminal Procedure* (7th ed.1998), p.207.

Laws Relating to Recidivists Under the Indian Evidence Act, 1872.

The Indian Evidence Act does not directly concern with the recidivists as such. But in certain instances the character[73] of the persons will become relevant. Normally the character of a person is irrelevant; but there are certain exceptions[74] when the character as affecting damages are admissible and also so far as such character appears from facts otherwise relevant[75].

The evidence under section 53 is of importance in weighing the probabilities in doubtful cases, but it can conveniently be dispensed with in cases where the prosecution case has not been proved[76].In criminal proceedings a man's character is important in explaining his conduct and in judging his

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[73] The word character is explained by the Explanation to section 55. In section 52, 53, 54 and 55, the word character includes both reputation and disposition; but except as provided in section 54, evidence may be given only of general reputation and general disposition, and of particular acts by which reputation or disposition were shown. It includes both reputation and disposition. Reputation means what is thought of a person by others and is constituted by public opinion. It is a general credit which a man has obtained in that opinion. When a man swears that another person has a good character, in this sense he means that he heard many people, though he does not particularly recollect what people, speak well of him though he does not recollect all that they said. Disposition means the witness's opinion of character of a person. . Rameshar Dayal, *The Indian Evidence Act* (1994),p.180

[74] Section 55. Character as affecting damages.- In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

[75] .Section 52. In civil cases characters to prove conduct imputed, irrelevant – In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant. Except in so far as such character appears from facts otherwise relevant.

[76] *Data Xiva Naique Desai v. State, A. I. R 1967 Goa 4. (F.B.)* In criminal cases, the evidence of good character of the accused person is always admissible. But evidence of bad character of the accused is inadmissible or irrelevant except in the following two cases. Firstly, when it is given by the prosecution to rebut the evidence of good character of the accused adduced by him in defence, secondly, when the bad character of the accused is itself a fact in issue.

Section 54 previous bad character not relevant, except in reply.— In Criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation1:- This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2:- A previous conviction is relevant as evidence of bad character

innocence or criminality. Even on the question of punishment the accused can prove general good character[77].

The offender's criminal character, as evidenced by a prior criminal record, may be an aggravating consideration. Previous good character of the offender is generally regarded as a mitigating factor. Lack of previous convictions may properly be reflected in the sentence on the ground that the gravity of the offence is tempered by its having been the offenders' first criminal act[78].

The antecedent criminal history is relevant to show whether the instant offence is an uncharacteristic aberration or whether the offender has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. On the one hand, a higher degree of guilt is assumed on the part of the recidivistic defendant who is supposed to have refused to accept the warning inherent in his prior convictions[79]. In truth however, the likelihood of repeated criminal activity grows greater and greater with every additional convictions, since the defendant's resistance to criminal activities decreases correspondingly. On the other hand, enhancement of punishment for recidivists has, quite correctly, a purely specific deterrent purpose in the individual case, and the provision for enhancing punishment ought therefore be identified in the statute in this sense and be applied correspondingly.

Character of witness affects his credit and is always material as it helps the court to reach the conclusion whether the evidence given by him should be treated as trust worthy[80].

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77 Habeeb Mohammad v. The State of Hyderabad, A. I. R. 1954 S.C.51

78 Mark Findlay, Stephen Odgers, Stanley Yeo, *Australian Criminal Justice* (2nd ed.1999),p250

79 Jurgen Meyer," Recidivism in German Criminal Law",in K,D.Gaur (ed). *Criminal Law, Criminology and Criminal Administration* (1992), p.527.

80 Section 146 of the Evidence Act gives under power to cross examine or to ask any question which tends to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him, except the questions covered by section 148 where the question relates to a matter not relevant to the suit or proceedings except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it. The rule applies both to civil and criminal cases. Rameshwar Dayal,*op.cit*,at p.183.

In *Ram Lakhan v. State of U.P.*, [81] it was held that the bad character of the accused is not relevant unless he gives evidence of good character in which case by rebuttal, evidence of bad character may be adduced. The credit of witness may be impeached by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit[82]. Whether the enquiry into the general character of a witness shall be restricted to his reputation for veracity or may be made in general terms involving his entire moral character and estimation in society. The party calling the witness may re- establish the credit of the witness whose veracity is sought to be attacked by cross- examining the witness who has spoken against him. When a man is prosecuted for rape or an attempt to ravish it may be shown that the prosecutrix was of generally immoral character[83].

Malimath committee[84] recommended Sec. 54 of Evidence Act be amended to include the provision that in Criminal proceedings the fact that the accused has a bad character is relevant. It further explains that previous conviction would be, relevant as evidence of bad character. The present law stipulates that previous bad character is not relevant except in responding to cases in which evidence has been led to show good character of the accused. The committee argued that since the accused has a right to give evidence of good character under Sec 53 of Act, it is only fair that the prosecution be able to give evidence of bad character even where evidence of good character has not been taken.

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81 AIR 1977 S.C. 1936.

82 Section 146 clause 3 and section 155 clause 1.

83 Section 155 clauses (4) of Indian Evidence Act.

84 Malimath Committee report, 2003

The Kerala Habitual Offenders Act (Act 28 of 1960)[85]

Section 2(d) of the Act has defined "Habitual Offender". It reads as follows:-"A person who, during any continuous period of five years, whether before or after the commencement of this Act or partly after such commencement, has been sentenced on conviction on not less than three occasions since he attained the age of eighteen years to a substantive term of imprisonment for any one or more of the scheduled offences committed on different occasions and not so connected together as to form parts of the same transaction, such sentences not having been reversed in appeal or on revision:

Provided that in computing the continuous period of five years referred to above any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account."

Registration of Habitual Offenders

On the basis of the direction from the government the District Magistrate makes a register of the habitual offenders within the district[86]. The District Magistrate or any officer appointed by him on this behalf shall issue notice to every habitual offender to appear before him and furnish such particulars as needed to enter the register. Habitual offender will be given a reasonable opportunity of showing cause as to why his name should not be entered in the register[87]. The name, address, finger and palm impressions, foot prints and

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[85] This Act has been enacted with a view to provide treatments and training of habitual offenders. It extends to the whole of Statement of Kerala. It came into force with the publication in Kerala Gazette. Published in the Kerala Gazette Extra-ordinary dated 11-11-1960.

[86] Section 3 of the Kerala Habitual Offenders Act 1960,Power of government to direct registration of habitual offenders – The government may direct the District Magistrate to make a register of habitual offenders within his district by entering therein the same and other prescribed particulars of such offenders.

[87] *Ibid.*,Section 4. Procedure for preparing register of habitual offenders – for the purpose of carrying out the direction given under section 3, the District Magistrate or any officer appointed by him in this behalf, shall by notice in the prescribed form to be served in the prescribed manner, call upon every habitual offender in the district,—

(fn. Cont. in page-154)

photographs of the recidivists will be entered in the register so as to easily identify the person.

The Superintendent of Police of the concerned district will be the custodian of the register. He can give report to the District Magistrate about the alterations to the register. Any entry or deletion from the register with is made only by order in writing of the District Magistrate[88]. No such register has been maintained and kept with the superintendent of Police. The details of the Habitual offenders are kept with the district office of the National Crime Records Bureau (D C R B).

According to the rule 4(ii) the registered offenders of a district shall be assigned serial numbers with the abbreviation of the name of the District concerned to denote the district of registration[89]. Every registered offender shall be supplied with an identification roll. A copy of the rules and orders he has to obey will be attached to it[90]. This identification roll has to be given to a police officer or magistrate or any other person authorized by the District Magistrate for examination or inspection[91]. Every registered offender who has been furnished with an identification roll shall carefully preserve it and produce the same for

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(a) to appear before him at a time and place specified in the notice;

(b) to furnish such information as may be necessary to enable him to enter the name & other prescribed particulars of the habitual offenders in the register; &

(c) to allow the finger and palm impression, foot prints and photographs of the habitual offender to be taken;

Provided that the name and other prescribed particulars of a habitual offender shall not be entered in the register unless he has been afforded reasonable opportunity of showing cause why such entry should not be made.

88 Section5.Charge of register and alterations therein :- (1)The register shall be placed in the custody of the superintendent of police of the District concerned who shall, from time to time, report to the district magistrate any alteration which ought in his opinion to be made therein.

(2) After the register has been placed in the custody of the superintendent of police no fresh entry shall be made in the register nor shall any entry be cancelled, except by, or under an order in writing of, the District Magistrate.

89 Rules 4(ii) of the Kerala Habitual Offenders Rules, 1963.

90 *Ibid.*, rule 5(v).

91 *Ibid.*, rule 5(vii).

recording his movements to the station house officer whenever required[92]. Each station House Officer shall maintain a list of registered offenders residing within his limits. It shall be the duty of the Station House Officer to see that the list is maintained correctly and up to date[93]. The study revealed that no such record under this Act is maintained by the station house officer. But the record of habitual offenders were maintained in the police station by Station House Officer in different lists like K.D[94]Register, Rowdy Register, D.C[95] List, Ex-convict Register etc..

Every registered offender shall notify to such authority about his change or intended change of his ordinary residence. If the change of residence is to another district within or outside the state he should inform the District Magistrate. The District Magistrate may direct by ordering in writing to the registered offender to report himself once a month or more frequently to the authority specified; or to notify any absence or intended absence from his ordinary residence. The District Magistrate may exempt any offender from notifying any absence or intended absence from his ordinary residence for such period and conditions may appear reasonable[96].

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92 *Ibid.*, rule 5(x). From enquiring about this to the Police officers and habitual offenders it was found that no such identification role has been issued to the habitual offenders. Moreover as there is no identification role, their movement from place to place is not recorded.

93 *Ibid.*, rule 6(ii).

94 *Known Depredator(K.D.)*

95 *Dossier Criminals (D.C.)*

96 Section 7 of the Kerala Habitual Offenders Act 1960.Registered offenders to notify change of residence and to report themselves: - (1) Every registered offender shall notify to such authority and in such manner as may be prescribed and any change or intended change of his ordinary residence:

Provided that where such offender changes or intends to change his ordinary residence to another district whether within the state or not he shall notify the change or intended change to the District Magistrate.

(2) The District Magistrate may, by order in writing, direct that any registered offender shall-

a) report himself once in each month or, where the District Magistrate for reasons specified in the order so directs, more frequently to such authority and in such manner as may be specified in the order; and (fn. cont. in page- 156)

When any registered offender changes the ordinary residence to furnish such information as may be necessary to enable him to enter the name and other prescribed particulars of the habitual offender in the register; of the other district, the District Magistrate where the offender has registered should inform the District Magistrate of the new residence, about his name and other particulars. Receiving this he shall enter in the register the name and other particulars and inform the District Magistrate of the first district. There upon the first District Magistrate shall delete the entry relating to that offender from the register[97].

(b) notify any absence or intended absence from his ordinary residence to the aforesaid authority:

Provided that the District Magistrate may exempt any such offender from notifying any absence or intended absence from his ordinary residence for such period and under such conditions as to him may appear reasonable.

97 *Ibid.*,Section 8. Procedure by District Magistrate on change of residence of habitual offender to another district:-

(1) where any registered offender changes his ordinary residence to another district within the state the District Magistrate of the district' in which the offender is registered shall inform the District Magistrate of the other district about such change and at the same time furnish him with the name and other particulars of the registered offender.

(2) On the receipt of such information, the District Magistrate of the other district shall enter in his register the name and other particulars of the registered offender furnished to him and inform the District Magistrate of the first district about such registration and there upon such District Magistrate shall cancel from his register the entry relating to that offender.

Provided that where a registered offender changes his ordinary residence to another district outside the state, the District Magistrate of the first district shall furnish the District Magistrate of other district with the name and other particulars of the registered offender, and make a request to that District Magistrate that he may be informed of the steps, if any, which may have been taken in relation to the offender under any law relating to the treatment and training of habitual offenders for the time being in force in that district; and upon the receipt of such information the District Magistrate of the first district shall cancel from his register the entry relating to that offender.

(3) upon the entry of the name and other particulars of registered offender in the register under sub-section (2), the provisions of this Act and rules made there under shall apply to him as if he has been registered, in pursuance of a direction given under section3, in the register of the district to which he has changed his ordinary residence.

Where the ordinary residence is changed to another district outside the state, the District Magistrate shall furnish the name and other particulars of the registered offender to the District Magistrate of that district and request to inform about the steps taken in relation to the offender under any law relating to the habitual offenders in that district. Upon receiving such information the entry from the register of the first district will be cancelled[98]. When the entry is made in the register, the provisions of the Act and the rules made there under shall apply to him as if he has been registered there[99].

The change of residence of the habitual offender will be recorded in the police station. If that change is to another police station boundary or to another district it will be reported there. This is not done according to Habitual Offenders Act, but according to the Police Standing orders.

The registered offender shall cease to be a registered offender on cancellation or at the expiry of five years from the date of such registration. A habitual offender can be re-registered in accordance with the provisions of the Act as soon as he has committed any of the scheduled offence irrespective of his earlier cancellation or expiry of the period of registration. Unless cancelled earlier it shall be in operation for five years from the date of re-registration. If an offender has been convicted during the period of registration or re-registration, the period will be extended to five years from the date of his release form such imprisonment[100].

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98 *Ibid*

99 *Ibid*

100 *Ibid.*,Section 9. Duration of registration and re-registration of habitual offenders:- (1)The registration of a habitual offender under this Act shall, unless earlier cancelled cease to be in force on the expiry of five years from the date of such cancellation or expiry the habitual offender shall cease to be a registered offender.

(2)Not with standing the cancellation or expiry of duration of registration a habitual offender may be re-registered in accordance with the provisions of this act relating to registration as often as he is convicted of one or more of the scheduled offenders at anytime after such cancellation or expiry; and the re-registration shall, unless earlier cancelled, cease to be in force on the expiry of 5 years from the date of such re- registration.

(3)Not withstanding anything contained in sub sections1 and 2 where a registered offender is, during the period of registration or re-registration, convicted of one or more of the scheduled

If the registered offender is aggrieved of his registration or re-registration or extension of registration, he can make a representation to the Government. The Government after considering this representation and hearing from the aggrieved party may either confirms or cancels the registration. In case of confirmation reasons should be recorded[101].

Restriction of Movements of Registered Offenders

According to section 11 of the Act the Government can make a direction to restrict the movements of a registered offender for a period not exceeding three years. For that, the government should take in to consideration the nature and circumstances in which he has committed the offence, whether he is doing any lawful occupation, suitability of the area for movements, the chance of earning livelihood in that restricted area. A copy of the order should be served to the registered offender[102]. By referring to the matters referred to in sub-section (2) of section 11 the government may by an order cancel or alter any order made under section 11[103].

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offences and sentenced to a substantive term of imprisonment the duration of registration or re-registration shall be extended for a period of five years from the date of his release from such imprisonment.

101 *Ibid.*,Section 10. right to make representation against registration etc: - (1) Any person defining himself aggrieved by the registration under section 4, or re-registration or extension of the duration of registration, or re-registration, as the case may be, under section 9 or by an order under sub-section [2] of section 7, may within the prescribed period make a representation to the Government against such registration, re-registration extension or order.

(2) The Government shall after considering the representation and giving the aggrieved person an opportunity of being heard, either confirm or cancel the registration, re-registration, extension or order, as the case may be, and shall in the case of confirmation, record' a brief statement of the reasons thereof.

102 *Ibid.*, section11. Power to restrict movements of registered offenders:- (1) If in the opinion of the government it is necessary or expedient in the interests of the general public to do, the government by order direct that any registered offender shall be restricted in his movements to such area and for such period not exceeding three years as may be specified in the order.

103 *Ibid.*, section12. Power to cancel or alter restrictions of movements:- The Government may by order cancel any order made under section11 or alter any area specified in an order under that section;

Provided that before making such order the government shall consider the matter referred to in sub-section (2) of section 11 in so far as they may be applicable.

Corrective Training of Habitual Offenders

According to section 13[104] the government may establish and maintain as many corrective settlements as they think fit to give corrective training to the recidivists. The government may also approve of or certify any institution run by private management or State Social Welfare Advisory Board as a corrective institution. This has to be notified in the Gazette.

By section 14[105] if the government thinks on the basis of the report from the District Magistrate or otherwise that it is necessary for the reformation of the

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104 *Ibid.*,section 13. Corrective settlements: (1) Government may, by notification in the Gazette, establish and maintain in the state as many corrective settlements as they think fit for the purpose of placing therein such habitual offender as are directed to receive corrective training under this Act.

(2) Government may also approve or certify any privately managed institution [whether known as settlement or otherwise] or any institution runs by the State Social Welfare Advisory Board as corrective settlement for the purpose of this Act.

105 *Ibid.*,Section 14. Power to direct habitual offenders to receive corrective training:-

(1).Where the government are satisfied from the report of the district magistrate or otherwise that it is expedient with a view to the reformation of a registered offender and the prevention of crime that the registered offender should receive training of a corrective character for a substantial period, the government may, by order in writing, direct that the registered offender shall receive training of a corrective character for such period, not exceeding the duration of his registration or re-registration, as may be specified in the order.

(2).Where a habitual offender, who is not more than forty years of age,—

(a) is convicted of any scheduled offence or

(b) is required in pursuance of section 110 of the Code to execute a bond for his good behaviour, and the court or the magistrate is satisfied from the evidence in the case and other materials on record that it is expedient with a view to his information and the prevention of crime that he should receive training of a corrective character for a substantial period, the court or the magistrate may, in lieu of sentencing him for such offence or, as the case may be, requiring him to execute such bond, direct that he shall receive corrective training for such term of not less than two and not more than five years as the court or the magistrate may determine.

(3) before giving any direction under sub section (2) the government or the court or the magistrate, as the case may be, shall—

(a) take into consideration the physical and mental condition of the offender and his suitability for receiving corrective training in a corrective settlement; and

(b) give a reasonable opportunity to the offender to show cause why such direction should not be given. (fn. cont. on page – 160)

registered offender and the prevention of the crime, the registered offender should be placed in the corrective institution to receive training for a period not exceeding the duration of the registration or re-registration as the case may be. In the case where the habitual offender is not more than 40 years of age and is convicted for any scheduled offence or is required to execute a bond under section 110 of the code of criminal procedure, if the court or the Magistrate is satisfied from the evidence given that it is essential for his reformation and prevention of crime, he should receive corrective training for a term not less than two and not more than five years as the case may be, he will be placed in the corrective institution. Before placing the recidivists in the corrective institution it is essential to take into consideration his mental and physical condition and suitability for receiving corrective treatment. He shall be given reasonable opportunity to state reasons why he should not be placed in such institutions. These habitual offenders who are in a corrective institution can be transferred to another institution[106].

Even though provisions are there for the establishment of correctional institutions under this Act, so far no such institution has been established. There are only prisons, otherwise known as correctional institution for providing corrective treatment.

Penalties and Procedure

Section 16[107] provide for the penalties to be imposed on a habitual offender. If it is not first conviction, he may be imprisoned for a term which may

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(4) A habitual offender in respect of whom a direction to receive corrective training has been made, shall be placed in a corrective settlement for the term of his training and while in such settlement shall be treated in such manner as may be prescribed.

[106] *Ibid.*, Section 15. Power to transfer from corrective settlement: - The government or any officer authorised by them in this behalf may at any time by order in writing direct any habitual offender who may be in a corrective settlement to be transferred to another corrective settlement.

[107] *ibid.*, at section 16. Penalty for failure to comply with certain provisions of the Act:- A habitual offender who, without lawful excuse the burden of proving which shall lie upon him-

(a)fails to appear in compliance with a notice issued under section 4, or (fn. cont.on p.161)

extend to six months or with fine which may extend to two hundred rupees or with both. If it is for a second or subsequent conviction, the imprisonment will be for a term which may extend to one year or with fine which may extend to five hundred rupees or with both. Instead of giving this punishment, the court taking into consideration, his age, mental and physical conditions, his suitability for receiving corrective treatment, thinks fit that it is necessary for his reformation and prevention of crime he may be put in a corrective institution to receive training of a corrective character for a term not exceeding three years as the case may be.

If any registered offender is found outside the restricted area in violation to the conditions under which he has been placed or escapes from any corrective settlement he may be arrested without a warrant and produced before the magistrate. The magistrate will consider all facts and either order to be removed to the restricted area or to the corrective settlement[108]. There he may be dealt

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(b) intentionally omits to furnish any information required under that section or furnishes as true any information which he knows, or has reason to believe, to be false or does not believe to be true; or

(c) refuses to allow his finger and palm impressions, foot prints and photograph to be taken by any person acting under an order passed under section 6; or

(d) fails to comply with the provisions of sub-section (1) of section 7 or with an order of the District Magistrate under sub section (2) of that section or with an order under section11

(i) on first conviction, with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both; and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both;

Provided that if the court, after taking into consideration the offender's age and physical and mental condition and his suitability for receiving training of a corrective character in a corrective settlement, is satisfied that it is expedient with a view to his reformation and the prevention of crime that he should receive training of a corrective character for a substantial period, the court may, in lieu of sentencing the offender to any punishment under clause (d) direct, after giving him an opportunity of showing cause, that he shall receive, corrective training in a corrective settlement for such term not exceeding three years as it may determine.

[108] *Ibid.*,section 17. Arrest of persons found outside restriction area or corrective settlement: - If any person,—

(a) is found outside the area to which his movements have been restricted, in contravention of the conditions under which he is permitted to leave such area, or (fn. cont. on p.162)

with in accordance with this act or rules made there under. According to rule 10 [109] any person who contravenes any of the rules shall be punishable with fine which may extend to one hundred rupees. Section 21 of the Act also provides for a fine which may extend to 100 rupees. According to the section 18[110], the validity of any order or direction issued under this act will not be questioned in any court and no legal proceedings will be instituted against any person who is acting in good faith. [111].

In order to carry out the purpose of this Act the government may make rules by notification to be published in the Gazette. [112] All rules made under this

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(b) escapes from any corrective settlement in which he is placed, he may be arrested without warrant by a police officer and taken before a magistrate who on proof of the facts, may order him to be removed to such area or such corrective settlement, there to be dealt with in accordance with this act and the rules made there under

[109] Rule 10, of the Kerala Habitual Offenders Rules, 1963.

[110] *Ibid* at section 18. Bar of jurisdiction of courts:- No court shall question the validity of any direction or order issued or made under this act.

[111] *Ibid.*, section 19. Bar of legal proceedings:- No suit, prosecution or other legal proceedings shall lie against any person for any thing which is in good faith done or intended to be done under this Act.

[112] *Ibid.*, section 21. Power to make rules:-

(1) Government may, by notification in the Gazette, make rules for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matter; namely,—

(a) the form of notice under section 4 and the manner in which such notice may be served;

(b) the form of the register of habitual offenders and the particulars to be entered therein;

(c) the authority to whom and the manner in which any change of ordinary residence shall be notified under sub section(1) of section 7;

(d) the nature of restrictions to be observed by registered offenders whose movements have been restricted;

(e) the grant of certificate of identity to registered offenders and inspection of such certificate;

(f) the conditions under which the offenders may be permitted to leave the area to which their movements have been restricted or the corrective settlements in which they have placed;

(g) the terms upon which offenders may be discharged from corrective settlements;

(fn. cont. on p.163)

Act shall as soon as they are made, be laid before the legislative Assembly for not less than fourteen days and shall be subject to such modifications whether by way of repeal or amendment, as the assembly may make during the session in which they are so laid or the session immediately following. In exercise of the powers conferred by section 21, the Government of Kerala has made the Kerala Habitual Offenders Rules 1963[113].

Kerala Police Act 1860

Prevention of crime is one of the prime purposes of the constitution of a police force. The maintenance of properly recorded information is a must for an action contemplated in the exercise of this power. There are certain directions laid down by the departmental regulations for the collection of information and also for the keeping of records. In order to take necessary preventive measures, they usually follow the practice of classifying the various types of offenders into separate categories.

It is an administrative necessity to maintain the confidential records of the habitual offenders and of the bad characters. The maintenance of records of the habitual offenders and of the bad characters by the police enumerating their activities and behaviour will be regarded as a confidential information needed by the police officer for an efficient discharge of his duty. If on the basis of such a record some restrictions are imposed on the liberty of the individual, and if he challenges the validity of the police action, the court may look into the records to satisfy itself that there was basis for the making of the record against the person[114].

(h) the working management, control and supervision of corrective settlements, including the discipline and conduct of person placed therein;

(i) the conditions for, and the manner of, approving or certifying privately managed settlements.

(j) The appointment of non-official visitors for corrective settlements.

[113] Published in Kerala Gazette No.9 dated 26-2-1963.

[114] *Malak Singh v. State of Punjab*, AIR 1981 SC 760.

In *Lakha Singh's* case[115], the Punjab and Haryana High Court while ordering the removal of the name of the person from history sheets opined that before entering the name of a person in the surveillance register, the Police have to act within the four corners of the rules. [116] Over enthusiasm on the part of the police officer for the prevention of crime may create problems. This power has to be used with extreme caution and in a manner which will uphold the dignity of the human individual as understood from the constitutional and judicial pronouncements. The name of the person concerned should be entered in the register only after a complete scrutiny and careful consideration of the matter.

It is the duty of a police officer to keep a watch over bad characters and potential criminals and in order that this duty be performed effectively, a confidential record of such persons is necessary. Surveillance register is no more than such a record.

In order to enter the name of a person in the register the police has to satisfy the condition that the person to be listed as a habitual offender is one who is reasonably believed to be a habitual offender in regard to the specified offences listed in the Habitual Offenders Act, and that it is further believed that his activities are of such kind as may lead to secure further conviction for one of those offences which has been specified in the Act for purpose of designating the offender as a habitual one. Then preventive action can be taken to restrain him from committing further crimes, to be engaged in the vocation of crimes.

It is essential to consider all the facts fully during the preparation of the list of habitual offenders. The decision to include or not to include, a name must be based on the application of the mind of the concerned authority on the basis of

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[115] *Lakha Singh, Sarpanch, Grama Panchayat, Rampur v. State of Punjab and other,* 2004 Crl.L.J. 2156 (Punjab and Haryana High Court).

[116] In this case the petitioners were never convicted in two or more cases. The opinion formed by the Police Inspector was without any bias. A habitual offender or a person habitually addicted to crime is one who is criminal by habit or by disposition formed by repetition of crimes. In this case there is no such material. The reasonable belief of the Police Officer that the suspect is a habitual offender or addicted to crime must be based on cogent material. Mere belief of an officer is not sufficient. It must be supported by material and reasons. *Ibid.*,

the authentic information collected carefully. While doing this, if the administrative procedure is properly adhered to, then it can be reasonably assumed that the chances of error in the preparation of records are minimum.

Section 29 (b) of the Kerala Police Act, 1860 specifies that police officers should take necessary steps consistent with law to collect and communicate information about the commission or designs to commit cognisable offence[117]. It mainly rests upon the incumbent police officer to investigate the matter fully before the name of a person is entered in the list of habitual offenders. A restraint is put upon by the law on the exercise of this power by providing that incorrect and negligently drawn information may entail a conviction under section 29 and 35 of the Police Act, 1860.

The initial task in the enforcement of law relating to the habitual offenders is the collecting of sufficient information by the local police about the well known anti social elements residing in or frequenting the concerned locality. Going through these information's the police can identify and select the persons who appear to have attained the status of habitual offenders. This is the primary utility in collecting the information. While doing this various other people who have shown potentialities of becoming regular law breakers would have come to the attention of the police, which will enable them to take preventive measures. This can be seen as the ultimate utility.

From this we can see that the identification and selection of the persons to be included in the list is the most important step. If the police fails in this initial step, the legislative purpose of providing to control, restrict, curtail, treatment and training of antisocial elements will get entirely frustrated. Even though it is the District Magistrate who is having the ultimate power in this respect, yet it is the police which have to concern itself with the identification of these antisocial

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[117] Section 29 (b) of the Kerala Police Act, 1860 – Collect and communicate, to the best of his ability, intelligence concerning the commission of cognisable offences or designs to commit such offences and lay such information and take such other steps consistent with law and with the orders of his superior officers as shall best be calculated to bring offenders to justice and prevent the commission of cognisable, and within his view, of non – cognisable offences.

elements. Thus the police have to play a significant role in the application of this Act.

Sources of Getting Information

The police get information about the habitual offenders from various sources. The primary source is the information possessed by the local police about such persons residing in their jurisdiction. Information will be gathered about the various anti social characters in the locality. Police attention will be drawn further by some of them by frequently resorting to the commission of the same or similar offences.

In every police station there will be a Station Crime History Part I to Part VI[118]. The Station Crime History1 contains mainly the details of property offences recorded in Kerala Police Files. Every year as soon as the file is opened all the full moon days should be written with red ink. As soon as a crime is committed the details of the complainant, petitioner, and crime details should be written. The date in which the crime has been committed to be looked into with respect to the full moon day as it has to be found out whether the crime has been committed when there is light or dark. Every year from this register an annual crime review should be prepared of the grave crimes. Non-convicts (i.e., those who have been left free by the court on the basis of inadequate evidence) will also be in this register.

Part II of the Station Crime History provides the full map of the police station area and the reported case details will be marked on this. Different crimes will be marked in different colours and underlined in different colours[119]. Date and month should be written there. Every year a new map should be made. It has to be kept there for 5 years. This map is made in order to find out the most prominent area of crime and what type of crime will be committed in a particular area at a glance.

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[118] Kerala Police Manual 1970. Vol.II Chapter III p.47. See also Police Standing orders.

[119] For example ordinary theft is written and underlined in blue black ink. Cattle theft in violet ink, stolen property written in black ink and underlined with green ink.

Part III of the Station Crime History is the general conviction register. Full details will be provided in this like age, finger print, details of prior conviction, jail number, details of relatives, etc. Ex-convict's details should be kept for 10 years after that it can be destroyed

Part IV of the Station Crime History contains details of important buildings like temples, markets, Government offices, etc. and also of the crime sensitive areas.

Station Crime History Part V mainly deals with habitual offenders. It contains DC's, KD's history sheet. Here offence and other details will be recorded. It is to be prepared in duplicate. One is sent to district Police Superintendent and other to be stored in the Police Station. Name, family, relatives and friends details age, identification marks, previous conviction modus operandi, places where he goes, mode of dispensing with the theft property, photo in different poses, etc. will be there. If K.D. is reformed, the Station head office will send a report about his reformation to Superintendent of Police. Even if D.C. is reformed his name will continue to be in the register. If he becomes inactive that will be reported.

Station crime history Part VI contains Rowdy History Sheet. Mainly those who behave indecently, threaten black marketing, etc. come under this. SHO[120] will prepare a rowdy history sheet and sent that to Dy.S.P., through C.I. He will be registered as rowdy and the file will be returned. Once every month new information will be reported on this. Every six months it will be renewed by Dy.S.P. It has to be kept for 10 years; C I can destroy it with permission from Dy.S.P.

The data collected in relation to each offender will then be tabulated in order to find out the number of convictions of each offender, the type of persons he usually associates with and his general reputation in the locality. Usually records are kept in the police stations about persons actively engaged in criminal activities. The habitual offenders will be classified and listed under categories.

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[120] Station Head Officer (SHO)

The notorious among them are known by their history sheets. The rowdy and the goondas, all have their own records. There is also the list of persons who are mere suspects in the eye of the police because of their dabbling in criminal activities or for their close association with the ill reputed persons, even though they may not have necessarily been convicts in a regular way. Each category is listed separately.

What ever be the category the offender is classified in, a personal file is prepared for each offender. As soon as the information is received by the police that a person is in association with the criminals or is addicted to a life of crime, the information will be recorded in a tabulated form. This information can be considered as the foundation of the personal file. Any other information received by the police later on will be added to the personal file, whether it be favourable or be against him. On the basis of this personal file, the decision is made for opening a history sheet. So for every person who has a history sheet, a personal file has to be maintained. But not every person having a personal file is a history sheeter. Personal files of persons having history sheets are kept separately from persons with no history sheets. A register containing a general index to history sheets and personal files will be maintained at every police station. A permanent serial number is given when a history sheet is opened and it will be entered in the general index register. This number given to the history sheet will not be changed, unless the history sheet is destroyed or transferred to another police station and is allotted afresh serial number at the receiving station.

The history sheets are intended to secure compliance by offenders with conditions imposed at the time of conviction or release, as well as for the purpose of regular surveillance. A person for whom a history sheet is maintained will be kept under close and discrete watch. Information about him will be collected from the village officer, the place of work, neighbors etc. generally, the departmental instructions lay down that history sheeters should not be subjected to any annoyance or to obstructive enquiries. The history sheets will be maintained by the officer in charge of the police station himself.

Generally a history sheet consists of three parts. (1) The first consists of a brief account of the personal details of the habitual offenders, his habits; his relation to the other members of the society, his means of livelihood etc. (2) In the second part a detailed account of each of the offences committed by him will be enumerated. This also contains information about the places where he has been suspected of having committed the offences. The method of committing crimes in each case will be described and also the names of his accomplices or suspected associates will be recorded. (3) Third part contains the current status of the habitual offender, which will be entered by the officer in charge of the police station in whose limit, he has his residence. All the information gathered about him while collecting intelligence about that area will be recorded. It will contain matters which are favourable and unfavourable.

The Supreme Court has looked into the necessity of the maintenance of the history sheet in *Malak Singh's case*[121]. The court said that discreet surveillance of suspects, habitual and potential offenders may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The nature and character of the function invoked in the making of an entry in the surveillance register is so utterly administrative and non – judicial, that it is difficult to conceive of the application of the rule of *Audi alteram partem*. Such enquiry as may be made has necessarily to be confidential; the observance of the principles of natural justice may defeat the very object of the rule providing for surveillance. There is every possibility of the ends of justice being defeated instead of being served.

The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. It would be contrary to the public interest to reveal the information in the history sheet, particularly the source of information. Revelation

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[121] *Malak Singh v. State of P & H* (1981) 1SCC 420 at p. 425.

of the source of information may put the informant in jeopardy. The observance of the principle of natural justice, apart from not serving the ends of justice may thus lead to undesirable results. So it was held that for this the rule of *Audi alteram partem* was not attracted. But all this does not mean that the police have a licence to enter the names of any person in the surveillance register. Permissible surveillance is only to the extent of a close watch over the movements of the person under surveillance. The limit prescribed by the rules, will entitle a citizen to the court's protection. Police officers should act with care and caution.

In *Kharak Singh v. State of U.P.* [122] the Supreme Court considered the ambit and scope of this right when the power of surveillance by the police under the Police Act was challenged. The Court held that the attempt to ascertain the movements of an individual is an infringement of the fundamental right.

In *R. Rajagopal v. State of T. N.* [123] the Supreme Court held that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21 of the Constitution. It is a right to be left alone". There is limitation to this right, for to give an unqualified absolute right to seek remedy in the court against any person having committed the breach irrespective of the nature of State functions being discharged by that official would render the very grant of this right a meaning which would be detrimental to public interest[124].

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[122] AIR 1963 SCC 1295.

[123] (1994) 6 SCC 632.

[124] Article 8 of the European Convention of Human Rights to the Right to respect for a person's private and family life. The interference in accordance with law and for the prevention of disorder and crime is an exception recoganised even by Eu convention of Human Rights to the right to respect for a person's private and family life. Article 8 of the Convention reads as follows: (1). every one's right to respect for his private and family life, his home and his correspondence shall be recoganised. (2). There shall be no interference by a public authority with the exercise of this right, except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder and crime or for the protection of health ropean or morals.

History Sheet of Known Depradator (K. D)

The history sheets are automatically opened by the officer in charge of the police station at the time of conviction for certain persons who have committed offences which come under particular category. The persons for whom history sheets are automatically opened are[125] :

(a) Persons who have committed offences relating to coin, government stamps or against property and have been sentenced to life imprisonment and are released;

(b) Robbers and dacoits who have once been convicted for any of the offences committed under sections 392-402 of the Indian Penal Code, and who have exhibited a degree of professionalism in the method and manner of committing the offence;

(c) Persons who have attained the ill reputation of being professional criminals and who were prosecuted or sentenced for homicidal offences by the use of poison or attempt thereof;

d) The habitual offenders who have been bound over even once for, security for good behaviour;

(e) Persons convicted of having committed theft three times and have been convicted twice of the offence of house breaking.

A person who falls in any of the categories specified above will be termed as a "known depredator "(K. D). The history sheets of a known depredator is opened automatically and kept alive for two years from the date of his release from the jail or on the date of the expiry of the bond executed by him, as the case may be. Even if he was acquitted on appeal usually the history sheet will be kept alive for the said period[126].

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[125] D. C. Pandey,*Habitual Offenders and the Law* (1983), p.61

[126] See also *supra* p.177and 178.

History Sheets of Other Habitual Offenders

The police authorities can include undesirable characters in the category of habitual offenders in order to keep surveillance on them. By keeping a watch over the anti social elements of the society the law enforcement authorities will be able to prevent the commission of crime. The antecedents, behaviour activities and movements of these persons will be recorded.

Under the order of the Superintendent of police or the Assistant Superintendent of police, the history sheets can be started against the following types of persons[127], viz.

(1) Persons who have once been convicted under any section of the Indian Penal Code and are, in the opinion of the police administration, likely to commit further crimes;

(2) Persons who have not been convicted but are believed to be addicted to a life of crime or suspected to be the receivers of stolen property;

(3) Persons convicted under the Arms Act, Opium Act and other local and excise laws:

(4) Persons who are suspected to be smugglers in arms, Opium, liquor or other dangerous drugs as defined in the Dangerous Drugs Act (Act 2 of 1930);

(5) Persons who may be liable to be subjected to an enhanced punishment if they are convicted of an offence proposed to be committed in the near future.

All the persons mentioned above will have their history sheets maintained for a period of one year from the date of its opening. As soon as this period expires, the officer in charge of the police station submits a report through the circle Inspector to the Assistant Superintendent of police, for orders as to whether the history sheets should be retained or closed down.

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[127] D.C.Pandey,*op.cit*, at p.62.

Rowdy Sheets

Those persons who have the potential for committing anti social acts and criminogenic tendencies, which are well known to the police but are not fully eligible, to be entered their names as habitual offenders or known depredators, a police Superintendent or Assistant police Superintendent may order the opening of a "rowdy sheet". The persons who find their place in the rowdy sheet are mainly those who habitually commit, attempt or abet to commit offences involving a breach of the peace. Persons coming under sections 106 and 107 of the Code of Criminal Procedure 1973 form the core of the "Rowdy" category.

Police will take note of those rowdy persons who disturb public tranquility, who have a record of having committed offences involving assault or use of criminal force or criminal intimidation or any event which will lead to the breach of peace. Persons who are convicted of creating a row in public places or who commit indecent exposure in the public place as mentioned under section 34(vi) of the Police Act, 1861 and those who frequently visit the public places in a state of intoxication, at least twice in two consecutive years are all entered in the rowdy list in order to keep surveillance on them.

Bad Characters Rolls

Those persons who are persistent offenders or have got records of criminality will find themselves in the bad character rolls[128]. It also contains history sheeters as well as rowdies and also any person who demand some kind of police attention or a watch on their conduct. The local police watch the movements of persons having bad reputation and also of such strangers who draw their attention by their acts and deeds. These persons will be classified into two categories, namely local bad characters and outsiders who have entered the

[128] This role has to be made in triplicate outsiders details will be collected. It will be sent to the concerned police stations and the counterfoils when returned will be pasted to the page. It has to be kept for three years.

jurisdiction of the police station from other place. These two records will be kept separately.

Ex – convicts and Jail Release List

The supplementary sources for enrolling the habitual offenders are the list of ex-convicts and of persons released from the jail. The list of these persons will be made available to the police by the respective authorities in the district.

Ex – convicts constitute the prime source for identifying and enrolling as recidivists. At the time of the conviction itself, in certain cases the court may pass orders under section 360 of the Criminal Procedure Code, 1973 to release on probation of good conduct or after admonition. On release he will be directed to submit himself before the police for surveillance.

The government can also pass orders to suspend or remit sentences under section 432 of the Criminal Procedure Code, 1973. For this also, conditions will be imposed which may require them to notify their place of residence and report their movements for the prescribed period of time. These conditions are imposed to ensure the good behaviour of the prisoner after his release and also to comply with the provisions of criminal law. The conditional release order must have an endorsement about the date of release, the description of the convict. If the court has made a particular type of surveillance for the prisoner, then that should be made clear in the release order and the superintendent of police must act accordingly.

Lots of prisoners will be released from jail from time to time. The jailor of the district jail will send a report to the superintendent of police about the list of persons who were to be released from jail in the next month before 15th of each calendar month. If necessary the jailor can send a supplementary list of persons who are admitted after 15th and to be released the next month. The release of the prisoner will be communicated to the police station, within the limit of which the residence of the prisoner is, so that they can check whether or not the prisoner has reached his home after the release. The administrative system has measures

to screen the potential offenders, by keeping surveillance on them and thus preventing the commissioning of crime.

Suspect History Sheet

Suspect history sheeters will have no case against them. But they will be the trouble makers in the locality. Their details will be recorded in this sheet. This also contains details of those persons who may have been left free due to lack of sufficient evidence by the court.

K.D. Check Register and Ex-convict Register

Apart form the above registers there is also KD check register and ex-convict register maintained in the police register What ever is checked every day will be recorded in the K.D. Check register. New moon day will be marked in black round shape and seven days before and after will be marked. If he is present P will be marked, if in Jail then J and if absent A. If absent, in order to publish as out of view it will be sent to DCRB. Bad character roll will be sent to all the concerned police stations where there is a chance that he may go. K.D. and D.C. full details will be enquired. Even the absence of their relatives will be looked into. There are two ex-convict registers, local and non-local. If it is about locals it will be kept there and for the non-locals it will be sent to their police stations. Good (G), bad (B) and Doubt (D) written in it according to their behaviour when they come out of the jail. They will be closely watched for one year, mainly the property offenders.

Change of every beat will be given to the Head Constables. Once every year the S.H.O. should check all the areas coming under him. The finished book should be kept for 20 years.

Loose Leaf Index *(Index to Station Crime History Part (I) and Part(III))*

It contains major classification from Class I to Class IX. Class I contains murder, murder for gain, poisoning or drugging, robbery. Class II – House-breaking and theft. Different modes of operation like opening door not locked, making holes in wall, door lifted of hinges. Class III – house theft. Types of theft like of bogus visitor, theft in bungalow, counter, servants, etc. Class IV – open place ordinary thefts. Agricultural implements cycle theft, fair, festival, etc. Class V – cattle theft, Class VI receipt or possession of stolen property. Class VII cheating bogus agent, gilt jewels, personation. Class VIII – Making or passing counter feit coins, notes, etc. Class IX counterfeiting or misappropriation. Cycle, jewels, servant or clerk (brech of trust misappropriation).

Enforcement of Surveillance

As soon as these recidivists' names are enrolled the police vigilance will keep a watch over their behaviour and actions. When the information is received by the officer in charge of the police station that a habitual offender, who has been under surveillance is not to be found in the area, he would fill up the character roll in relation to the type of the missing offender along with a brief note about the habits and manners of the person concerned. This information will then be directed to the officer in charge of the police station within whose jurisdiction the recidivists are believed to have gone. If the destination of this recidivist is not known then the information about him will be sent to the officer in charge of every police station, in whose jurisdiction there is likelihood that he must have gone. If this person is known to be a member of a gang of criminals, besides taking all the steps mentioned above the officer in charge takes the precaution of arranging for a special watch to be conducted on other members of the same gang, whether they reside within his jurisdiction or that of another police station, until the habitual offender returns or his whereabouts are fully ascertained.

Once the information about the missing of a recidivist is circulated, the police officers who receives that information would have to take immediate steps to keep a close watch to find out whether such a person is in his jurisdiction or

not. If that recidivist is found in his jurisdiction then he has to take down the date and time of his arrival, the place in which he is staying, the persons with whom he is associating himself with etc. The police officer has to arrange to keep watch over this person as if he has been registered as a recidivist within his jurisdiction.

On the other hand after keeping a close watch for finding this recidivist on the basis of the information circulated for a week from the date of the receipt of the roll after expiry of the week and the recidivist is not found, then the same is returned to the issuing police station with a statement endorsed on its back stating that the particular recidivist could not be traced.

When these recidivists go out of the jurisdiction, a constant vigil will be kept on him. Wherever he goes the officer in charge of the police station he is present at that moment has to assume the responsibility of keeping a watch over him. All the information collected by the police officer when the recidivist was present in his jurisdiction has to be noted in the back of the roll. He has to send that information to the issuing police stations and also to all the intermediate police station which fall on his route.

When information is received that a suspicious stranger has arrived within his jurisdiction he arranges to keep a watch over him and sends urgently to the officer in charge of the police station where the stranger is claiming his residence, to be entered in the 'Bad Character Roll'. If, before the receipt of the reply the stranger has moved to another jurisdiction, a copy of the roll is sent to that police station. On receiving the enquiry about such person, the officer in charge of the police station returns immediately with complete information regarding the individual in question. If he is not a resident then it is returned with a note to that effect. In such a situation the police officer who has issued the roll has to take every measure to find out the identity of the suspicious stranger.

Regulatory Measure

Regulatory measures envisaged for recidivists can be classified as (a) Coercive and (b) Corrective. The Coercive category consists of

(1) Reporting by recidivists

(2) Reporting about residence

(3) Restrictions on the movement.

(4) Domiciliary visits by the police.

Reporting by Recidivists

A person who has been registered as a habitual offender may by an order in writing by the District Magistrate be required to report himself once in a month or more frequently and in such manner as specified in the order to such authority[129]. He also has to notify any absence or intended absence from his ordinary residence[130]. The District Magistrate may by a general order authorise the Superintendent of police to exempt any registered offender from reporting any temporary or intended absence for a period not exceeding four months at a time[131]. As and when the offender required to report, presents himself at the police station, an entry of the fact of his attendance is made in the identity card.

If any registered offender who intends to leave, permanently or temporarily, the village in which he is residing shall before his departure intimate the village officer having jurisdiction over the area about the date, the place to which he is going, the purpose of the journey, the route which he intends to take, the time needed for it, the duration of the stay etc and should obtain a certificate to that effect from the village officer[132]. A registered offender who has obtained the certificate should not without sufficient cause, deviate from the route or exceed the time for journey or absent for longer than stated[133]. If he is prevented from giving notice and obtaining certificate due to illness or other sufficient cause, in person he shall inform the village officer having jurisdiction over the area of the

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129 Section 7 (2) (a) of The Kerala Habitual Offenders Act, 1960.

130 *Ibid.*,Section 7(2)(b).

131 Rule 6[x ix],The Kerala Habitual Offenders Rules, 1963

132 *Ibid.*,Rule 6(iii),

133 *Ibid.*.Rule 6(iv),

fact by written or verbal message containing the particulars he is required by the rules to furnish[134].

Any registered offender, who intends to leave the house in which he is residing during the night between 10.PM and 5.AM on any day to go to any other place shall before his departure intimate the village officer about the date and time at which he intends to leave the house and return thereto. He shall also state the place and premises to which he intends to go[135].

Reporting About Residence

Section 7(1) of the Habitual Offenders Act, 1960 requires that every registered offender shall notify any change or intended change in his ordinary residence. The place of residence furnished by a registered offender at the time of preparing the personal sheet shall be taken as the place of his residence[136]. If the offender seeks to change his residence permanently to a place which is located out side his present police jurisdiction, the officer in charge of the police station where he intends to reside in future is informed and the offender is required to observe the restriction imposed upon him in that jurisdiction and to bring the same to the notice of the police officer of that jurisdiction. If the change of residence is to another district then the District Magistrate of that district has to be informed about that fact and also the name and other details of that offender. On receipt of this the District Magistrate shall enter the name and other details furnished to him in the register. Then he shall inform the District Magistrate of the first district about the registration and there upon such District Magistrate shall cancel from his register the entry relating to the offender[137].

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134 *Ibid.*, Rule 6(x)

135 *Ibid.*, Rule 6(viii).

136 *Ibid.*, Rule 6(1)

137 Section 8, The Habitual Offenders Act, 1960.

Restriction on Movements and the Identification Roll.

The recidivists who are registered are required to report at fixed intervals to the police and also if they have to move from one place to another they have to get prior sanction directing the duration of such movement, the time, the place, the route which he has to take etc.

Other than these restrictions the Government may direct that any registered offender shall be restricted in his movements to such area and for such period not exceeding three years as may be specified in the order if it is necessary for the interest of the general public[138]. Every registered offender whose movements have been restricted shall not leave or ordinarily be permitted to leave such area[139]. An entry shall be made in the personal sheet and identification roll of a registered offender whose movements have been restricted, specifying the area in which his movements have been restricted. [140]and the Superintendent of Police shall maintain a separate register in this regard[141]. Every registered offender shall be supplied with an identification roll. A copy of the rules and orders he has to obey will be attached to it[142]. He has to give his identification roll for examination or inspection when required by any police officer or Magistrate or any other person authorised by District Magistrate on his behalf[143]. He has to carefully preserve it and produce the same for recording his movements to the Station House Officer whenever required[144].

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138 *Ibid.*,Section 11

139 Rule 7(1)(a), Habitual Offenders Rules, 1963.

140 *Ibid.*,Rule 7(2)

141 *Ibid.*,Rule 7(3)

142 *Ibid.*,Rule 5(v)

143 *Ibid.*,Rule 5(vii)

144 *Ibid.*,Rule 5(x),

Domiciliary Visits

Any Magistrate or any Police Officer not below the rank of Sub- Inspector may at any time inspect the residence of a registered offender[145]. Any Police Officer shall be competent to check the presence of a habitual offender at his residence with a view to verify the presence of such registered offender and it shall be the duty of such registered offender to appear before such officer[146].

The forgoing measures are essential to keep a watchful eye on the potential law breakers and the police will be in a position to prevent the intended commission of the crime by them. All these measures are meant to keep check upon the offender so that he may not be able to slip away in the company of other criminals. The Police authorities can impose rigid restrictions in the ordinary life of the recidivist like restricting movement, personal liberty, place of residence, locality, staying within the house during night, making him give reasons for going to any place for that he must get prior sanction. Police also have to make inquires to find out whether they are carrying out these restrictions. For effectually carrying out the legislative purpose of controlling the conduct of recidivists and preventing them from engaging further in a career of crime, the restrictions have been regarded as constitutionally permissible.

Corrective Regulation

The corrective measure contemplates reforming the offender through institutional treatment. The Kerala Habitual Offenders Act provide for setting up of corrective settlement in the state for the purpose of placing habitual offenders who are deemed worthy of being reformed[147].

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[145] *Ibid.*,Rule 6(x v)

[146] *Ibid.*,Rule 6(x vi)

[147] Section 13(1), As per section 13(2) of the Act a privately managed institution or any institution run by state Social Welfare Advisory Board can also be approved or certified as corrective settlement for the purpose of the Kerala Habitual Offenders Act.

The management, control and supervision of every corrective settlement established under section 13, shall be visited by the settlement manager who shall be appointed by the Government. The settlement manager shall be responsible for the management of the settlement and for the well being of the inmates[148]. He shall maintain a register containing names of the offenders who have been placed in the corrective settlement. Conduct of the offenders during the quarter of half year, work allotted, capacity and inclination for work and any punishment given, special remarks etc should be entered in the personal sheets of the registered offenders.

The registered offenders will not be allowed to go outside the corrective settlement without a pass. The settlement manager should inform the police officer who has got jurisdiction over the place where corrective settlement lies at least three days before it is availed of. Any absence should also be notified to the police. The route to be taken by the person granted leave should be notified in the pass and also if there is any overnight stop then he has to report himself at the police station and get the pass affixed with the signature of the police officer noting the approximate hours of arrival and departure.

In the corrective settlement the registered offenders have to carry out such work as may be allotted by the settlement manager. The terms of remuneration, the hours of work etc shall be decided by the settlement manager, subject to the orders of the Government.

Any settler who disobeys the rules or orders of the settlement manager shall be subjected to penalties like, warning, more arduous work, reduced wages, loss of wages for work done, withholding or cancellation of leave, confinement in a lock – up within the settlement for not more than 30 days, fine not exceeding Rs. 100/- etc. All punishments under this rule will be passed by the settlement manager and shall be liable to revision by the District Magistrate[149].

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[148] *Ibid.*, Rule 8(1)

[149] *Ibid.*, Rule 8(x iv) and (xv)

The settlement manager may at his discretion reward the registered offenders for good conduct such as exemption from roll call, a liberal grant of passes, increased payment of work, promotion to position of responsibility and allotment of lands for separate cultivation[150]. If any person shows unmistakable evidence of good conduct and sustained industry for a sufficient period, he may be permitted to reside outside the settlement but within the district for the purpose of earning his livelihood. This is entirely at the discretion of the Superintendent of police of the District. All orders passed by the Superintendent of police will be subject to revision by the concerned District Magistrate[151].

If the conduct of a settler has been uniformly good and he has had no disciplinary punishment for breach of the rules of the corrective settlement during the immediately preceding three years, if he is able to maintain himself and his dependents by honest means outside the corrective settlement, the settlement manager shall submit his report with the report of the Superintendent of police through the District Magistrate concerned to the Government for discharge on probation after he has resided in the corrective settlement for a period of three years[152].

A registered offender discharged from a corrective settlement shall ordinarily be on probation for such period as may be determined by the District Magistrate. Ordinarily this period shall not exceed two years but recording sufficient reasons the District Magistrate can extent this period. During the period the probationer shall reside in such place as the District Magistrate may direct. He shall continue to maintain good conduct and shall comply with such conditions as may be prescribed in the 'discharge license' issued to him. When a settler satisfactorily completes the period of probation, he shall be discharged finally

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150 *Ibid.*.Rule 8(x vii)

151 *Ibid.*,Rule 8(x viii)

152 *Ibid.*,Rule 8(x ix)

from the settlement. In case of failure he shall be liable to re – commitment to a settlement[153].

The family members of the habitual offenders will be permitted to live with him in a corrective settlement provided the earnings of the habitual offender in the settlement is sufficient to support them independently[154].

Guidelines for Screening of Habitual Offenders

The main aim of Habitual Offenders Act is to train and treatment of habitual offenders after considering (a) Previous Convictions[155]. (b) Keeping the company of bad characters[156] (c) Suspicious conduct[157] (d) suspicion of involvement in crime[158] (e) miscellaneous evidence[159]

The empirical study revealed that in the majority of the cases the provisions and procedures relating to the Habitual Offenders Act and Rules are not specifically adhered. Majority of provisions in the habitual offenders Act and Rules comes under other laws. Even the Police, Probationary officers and Judges do not know about its specific provisions and did not use them.

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153 *Ibid.*, Rule 8(x xi)

154 *Ibid.*, Rule 8(x xv)

155 This constitutes an important piece of evidence which can lay basis for justifying a preventive action against the proposed offender.

156 Information as to the association of the accused with other bad characters is generally available in the records of all suspicious characters maintained by the police. The proof the person associating with bad characters can also be had from the records and proceedings involving other bad characters, who might have been convicted, discharged or acquitted in groups or batches.

157 A sudden and suspicious absence or a suspicious movement of the accused is a material fact for keeping a watchful eye on the habitual offender. This information's can obtain from the records kept for that purpose in the police station.

158 A suspicion that this person was involved in a crime is important. This can be made from the statements of the witnesses who can give exact reasons for their belief that a particular bad character was involved in the Commission of that specific crime.

159 This relates to the general reputation and disposition of a criminal.

As Justice S. B. Sinha[160] pointed out crime control implies orderly and efficient method for arresting, prosecuting, convicting and punishing the guilty and for deterring crime by others. The protection of individual rights is necessary to guard the accused against the arbitrary exercise of power by the State. The rising crime rate and the high rate of recidivism clearly indicate that the system is not an effective deterrent.

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[160] Justice S. B. Sinha, *Judicial reform in Justice Delivery System* (2004) 4 SCC (J) P 41-42.

CHAPTER V

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Sentencing and Recidivism

The passing of a sentence on an offender is probably the most public face of the criminal justice process. In the publics' eyes, the sentence is the test as to whether justice has been done, both to the victim and the defendant. The primary objective of criminal sentencing has been defined as (1) punishment (based on gravity of the past offence); (2) rehabilitation (based on the current needs of the offender); and (3) deterrence and incapacitation (based on the need to protect the public in the future) [1]. Sentencing objectives do not have to be the same for all cases. These objectives may vary from case to case. In some cases, punishment of the offender and protection of the community may be the dominant objectives. In others, rehabilitation of the defendant and victim restitution may be of greater importance. Still others may have deterrence or a restorative justice approach as the primary objective. Crime reduction is, in effect, protect the public.The objective of preventing an offender from recidivating, if successful, will reduce crime and ultimately protect the public.

Generally it is assumed that those individuals who violate the law must be punished for their misdemeanors. Lack of punishment makes a society without law, one that is incapable of maintaining civil order and citizen's safety. Countries have chosen to enact and enforce as effectively as possible all laws punishing such misdemeanors.

When we look through the history of mankind we see that in every society at every stage of civilization, there has been some means of check over the conduct of the individuals. Down from the primitive to the modern times every society has its own code of conduct and enforces it with certain sanction, designed to bring peace and harmony. In earlier times the imposition of sentence

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[1] See *State v. Gallion* ,678 N.W.2d 197 (2004)

was almost standardized. Law has laid down specific punishments for offences and once a person was found guilty, the judge merely ordered the appropriate sentence to be carried out. The focus of attention was the offence not the offender. The sentencing judges were not bound to choose penalties designed for reformation and rehabilitation of the offenders or to adapt the punishment to their needs and potentialities or to look upon the place where they are to be sent.

The situation has now changed in recent years as a consequence of changes in societies out look towards crime and criminals. There has been a rethinking about crime and punishment .Winds of compassion for the criminals are blowing the world over. Now it is believed that the sentence must be in accordance to the offender, rather than the offence, so that he can return to the fold of society as a law abiding citizen. Thus sentencing requires considerations beyond the nature of the crime and circumstances surrounding it[2].

Repeated offending presents a particular set of theoretical and practical difficulties to sentencers and sentencing policy makers alike. Some of these difficulties arise from the various types of recidivism. Some recidivists, such as those who repeatedly commit burglaries can almost be viewed as career criminals. Some will repeatedly offend as a by-product of social deprivation or deeply grounded personal difficulties. Some will be mentally disturbed, while others will keep returning to court because of associations they have formed.

Objectives of Punishment

Punishment is the infliction of pain physically or mentally and in most cases both. In ancient India punishment was inflicted on people in accordance with law (1) to free the criminal from his sins[3], (2) to cure unrighteousness and to preserve righteousness unhampered[4], (3) to show honour to the righteous and to

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2 *Mohd. Giasuddin v. State of Andhra Pradesh*, AIR 1977 SC. 1926.

3 Mahabharatha, Rajdharmanusasana Parva (Santi). Quoted in James Vadakkumchery, *Criminology and Penology*, 1983) p.186.

4 Manu Smrti, *Ibid.*

inflict pain on the unrighteous[5], (4) to check evil[6], (5) to make the kingdom safe and anger-proof[7], (6) to protect the people[8], (7) to restrain delinquency[9]. A person is said to be punished when some pain is inflicted on him. That pain may be of imprisonment or fine, or forfeiture of property, or some other restriction or deterrent imposed by the society as a mark of its disapproval of the act of the individual punished.

H.L.A. Hart[10] has defined punishment in terms of five elements: (1) It must involve pain or other consequences normally considered unpleasant (2) It must be for an offence against legal rules (3) It must be of an actual or supposed offender for his offence (4) It must be intentionally administrated by human beings other than the offender (5) It must be imposed and administrated by an authority constituted by a legal system against which the offence is committed.

The punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or reforming them into law abiding citizens. It is this principle which underlines the doctrines concerning the desirability and objectives of punishment. Theories of punishment, therefore, contain generally policies regarding handling of crimes and criminals[11].

The penal theories[12] enunciate the aims of sentencing. These theories have immeasurable influence over the kind of sentences, which are awarded. In order to unravel punishment as a social institution, to understand the rationale for sentencing and to appreciate the inherent tensions and difficulties encountered in determining an effective sentencing policy, it is essential to identify and understand the main thrusts of these penal theories.

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5 Vishnu Smrti, *Ibid.*

6 Artha Sastra of Kautilya, *Ibid.*

7 Mahabharatha, (Santi) *Ibid.*

8 Manu Smrti, Yajnavalkya Smrti, *Ibid.*

9 Brahaspati Smrti, See Sukla Das, *Crime and Punishment in Ancient India* (1977), P.26.

10 H.L.A. Hart, *Punishment and Responsibility. Essays in the philosophy of Law* (1968). p. 4-5.

11 Prof. N. V. Paranjape, *Criminology and Penology* (9th edn, 1997) p.143.

12 Retributive theory, Desert theory, Deterrent theory, Preventive theory, Reformative theory.

Theories of Punishment

There are mainly two groups which uphold different theories of punishment. One group is described as utilitarianists or consequentialist group and the other is retributionalists. The retributive theory is propounded by the moralists where as the utilitarian theory is propounded by the reductivist by eliminating conditions which are responsible for crime causation. While retributionists assert that the infliction of punishment is justified in itself as the offenders should be given what is due to them as a result of their action, the utilitarians regard punishment as evil which should be used only if it serves some real purpose like deterrence from commission of crime.

Retributive Theory

This theory is based on the idea of vengeance and embodies the principle, "an eye for an eye and tooth for a tooth". Retribution is probably the oldest and most ancient justification for punishment. "You hurt me and I hurt you" is its literal meaning. In the olden times, when a man injured another, it was considered to be the right of the injured to take revenge on the person causing injury. In primitive society punishment was primarily retributive. The basic principle of this theory is that the offender must receive as much pain and suffering as inflicted by him on his victim and thereby restore the social balance disturbed by the acts of the criminal[13]. In other words it connotes that punishment is an expression of society's displeasure against the offender's criminal act[14]. The criminal deserves to suffer – *"lex talionis"*.

Retaliation fulfills a religious mission of punishing the offender, it re-establishes the social harmony affected by the offence and offender's guilt is washed away through suffering. It suggests that evil should be returned for evil without any regard for consequences[15]. According to Salmond[16], the retribution

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13 M. Ponnaian, *Criminology and Penology* (3rd. ed. 1992), p.208.

14 Prof. N.V. Paranjape, *Criminology and Administration of Criminal Justice* (9th edn.1997), p. 98.

15 P. K. Sen, *Penology old and new* (1943), p. 27.

16 J. Salmond, *Jurisprudence* (1947), p.118.

theory gratifies the instinct of revenge or retaliation which exists not merely in the individual wronged, but also in the society at large.

Retributive theory intends that a man deserves punishment because he has acted wrongly. What retributionists have insisted upon is that no man can be punished unless he is guilty that is, unless he has broken the law[17]. More precisely, he performed an action of a certain culpability; that the penalty will give satisfaction equivalent to the grievance caused by his action; that similar ones have been and will be imposed on similar offenders; that he was responsible for his action and performed it with a knowledge of possible consequences according to a penalty system and that unlike non-offenders he has gained satisfaction attendant on the commission of an offence. As it stands, it is worth consideration as sufficient argument for punishing a man.

Proponents of this theory, urge that a criminal deserves to suffer punishment. It is said that unless the criminal gets the punishment he deserves, the victim will seek individual revenge, which may result in social mayhem, or the victimized will refuse to make a complaint or offer testimony, and the state will be handicapped in dealing with criminals[18]. It is further claimed in favour of this theory that it assuages the angry sentiments of not just the victim but the community as well[19].

In *Union of India v. Kuldeep Singh*[20], *the Supreme* Court held that "criminal law adheres to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences[21]. In *State of U.P. v. Shrikrishnan*[22], the Supreme Court stated that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the

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17 John Rawls, *Two concepts of Rules: Philosophical Review* (1955), p.7.

18 K. D. Gaur, *Criminal Law – Cases and Materials* (3rd edn), p.297.

19 Ahmad Siddique, *Criminology Problems and Perspectives* (IV. ed., 1997), p.111.

20 (2004) 2 SCC 590.

21 *State of M.P. v. Babbu Barkare*, (2005) 5 SCC 413.

22 (2005) 10 SCC 420.

public confidence in the efficiency of law and society could not long endure such serious threats. In *Abu Ram v. Mukha*[23], the learned Judges opined that it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc".

In *D.Lananjoy Chatterjee v. State of W.B.*[24] the Supreme Court has observed that, a shockingly large number of criminals go unpunished, there by increasingly encouraging the criminals and ultimately making justice suffer by weakening the system's credibility. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal[25]. The fact remains that whenever there is a serious crime, the society feels a sense of disappropriation[26].

The evidence of the retributive theory in our criminal justice system is well exemplified by the fact that punishment follows crime. By retribution the citizen's righteous indignation is satisfied. Punishment reflects denunciation of the criminal and his act by the society. The infliction of the punishment gives definite expression and a solemn ratification and justification to the hatred which is excited by the commission of the offence.

Retributive theory suffers from certain limitations. Retribution approach is largely repressive and does not coincide with the modern humanitarian correctional approach in dealing with the criminals. Modern penal system has changed in such a way that it cannot tolerate sanguinary methods of punishment. The abolition of the concept of physical torture and public punishment in the modern society is an indication that goes against the retributive theory.

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23 (2005) 10 SCC 597.

24 (1994) 2 SCC 220.

25 Similar view has also been expressed in *Ravji v. State of Rajastan*, (1996) 2 SCC 175, it has been held that" it is the nature and gravity of crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and should "respond to the society's cry for justice and the criminal."

26 Justice J. Eswara Prasad, *Death sentence As Effective Deterrent*, Cri.L.J.2003. p.204.

This theory does not hold good for those who turn to be offenders not on their own volition, but due to the socio – economic or political reasons. In modern society, even the fact that punishment gives satisfaction to victims of offenders and others cannot be fully pressed, as many crimes are not reported to the state, if so reported are not registered by the state or if registered and prosecution is launched a large number of them go unpunished. Further some crimes are covered under the insurance scheme such as insurance of movable and immovable property against theft and fire and as such the shock of crime is absorbed through these modern methods.

The main criticisms of the retribution are, it is not possible to award punishment equal to the guilt. Retribution is contrary to modern penological thought which lay emphasis on the classification of offenders and individualization of punishment. The punishment based on retribution, results in the chain of causation of crime, and from it emerges the gang of criminals. Infliction of evil upon any one can never in itself be good. Retribution in the sense of vengeance will do more harm than good to the society and social welfare, so it should be discounted, while retribution in the sense of reprobation must always be an essential element in any form of punishment.

Desert Theory

Desert theory came to prominence from the mid 1970's, when liberal academics offered the principle of proportionality as a means for restricting the states authority to punish. The core of desert theory is the principle of proportionality, which holds that a sanction should be proportionate in its severity to the gravity of the offence[27]. The desert theory requires that punishment do not demean, degrade or humiliate the offender[28].

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[27] Andrew Ashworth, "sentencing" in Mike Maguire *et, al,* (eds) *Oxford Hand Book of Criminology* (2001), p.1077. See also A.Von Hirsch, *Censure and Sanctions* (1993), p.183. According to Von Hirsch a principled project of sentencing reform recognizes the importance of parsimony, a principle of self restraint in which milder penal impositions is preferred. The notion of parsimony is based on normative grounds, and affirms that convicted defendants retain both their status as humans and their continuing membership in the legal and moral community. Hence if desert treats the offender as moral agent in imposing upon him / her, a deserved punishment, it also emphasis that the offender retains human dignity. If a desert includes the communicative work of censure, it also excludes rhetoric and penalties that

Desert is not revenge, the vindication of personal injury. Further more, desert is not a *lex taliones* it does not require the visitation upon the offender of a punishment identical in form or even equal in severity to the victim's injury. The guiding premise of desert theory is that sentencing systems should be as just as possible.

In *Surjit Singh v. Nahara Ram*[29], the Supreme Court observed that Criminal Law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more suitable considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proponents of this theory feel that this theory places limits on state power, in that excessive exemplary or incapacitative sentence become unacceptable and that it helps reduce unjustifiable sentencing disparity. However detractors of this theory focus on the issue that how is proportionality to be determined? What actual punishment would forfeit a set of rights equivalent to one violated by a rapist or for instance a reckless driver? [30] It is also felt that this theory lacks a concrete consequential approach.

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deny the humanity of the offender. Parsimony does not only apply to the overall severity of the sentencing scale.

28 Claire Valier, "Minimum Terms of Imprisonment in Murder, just Desert and the Sentencing guidelines" (2003) Cri.L.R.326.

29 (2004) 6 SCC 513.

30 C. M. V. Clarkson and H. M. Keating, *Criminal Law: Text and Material* (1998), p.33.

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Utilitarian Theory

Utilitarian theory tries to maintain that there should be some purpose in punishing the individuals. The purpose may be deterrence, prevention or reformation. Punishment must serve as an instrument for reducing crimes either by deterring the offender and others from doing similar acts in future or it should prevent the commission of offences by incapacitating the offenders or make good citizen by reformation. Utilitarians accept punishment only for achieving good consequences. The deterrent theory, preventive theory, reformative theory all comes under Utilitarian Theory.

The Deterrent Theory

Crime shall not pay and the punishment meted out to the offender shall be such as to demonstrate as an example and a warning to the offender and to all other like – minded people to deter them from committing the same or similar offences. The principle of deterrence is of ancient origin and has been prominent throughout history in crime systems of punishment.

The term deterrence can be said as a two edged sword. First, in the usual sense that the punishment of the offender will deter others from committing that crime for which he was convicted. Under this philosophy, if the intending criminals are to be deterred by the threat of punishment, it is essential that they should be made to realize that it will be carried out, if the offence is committed. According to Sir.John Salmond "punishment is before all things deterrent, and the chief end of the law of crime is to make the evil-doers as example and a warning to all who are likeminded with him[31]. Secondly, it deters the person found guilty of an offence from committing further crimes by physically preventing him from doing so.

The deterrent effect of a particular type of punishment depends upon several factors. These are the social structures and value system under consideration; the particular population in question, the type of law being upheld,

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[31] John Salmond, *op. cit,at* p.111.

the form and magnitude of the prescribed penalty, the certainty of apprehension and punishment and the individual's knowledge of the law as well as the prescribed punishment and his definition of the situation relative to these factors[32].

The deterrent theory underlines the principle that inducement to promote one's selfish interests is at the bottom of every criminal act and by providing adequate penalty and exemplary punishment, it seeks to create a sort of fear in the minds of others and thus serves to deter them from committing criminal acts. The rigour of penal discipline is made a terror and warning to the offender himself and to others as well.

Generally this theory is based on the hedonistic assumption that people regulate their behaviour by calculation of pleasure and pains and that the aim of punishment is to increase the pain over the pleasure of the contemplated criminal act. Punishment should up the scale towards desired conduct.

Efficacy of the deterrent aspect of punishment can be pointed out with reference to the Islamic law of crimes as applied in Saudi Arabia, the only country where the system with all its severity is being applied even now. Muslim Law of Crimes, like other laws of medieval ages, is very severe in its application to offenders. For instance, mutilation of a limp is possible as punishment in a case of theft. It is reported that crimes are almost unknown in Saudi Arabia and it is a common sight in towns that people leave their shops open and unattended while they are away for some time[33].

In *Maru Ram v. Union of India*[34] the Supreme Court has held that deterrence is a valid punitive component of sentencing. Section 433– A is

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[32] John C. Ball, "The Deterrence, Concept in Criminology and Law" (1955) *Journal of Criminal Law, Criminology and Police Science*, p.347-352.

[33] Ahmad Siddique, *Criminology Problems and Perspectives* (4th edn 1997), p.116.

[34] (1981) 1 SCC 107.See *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75. See also *State of M.P. v. Balu* (2005) 1 SCC 108 in this case supreme court held that the courts are expected to properly operate the sentencing system, to impose such sentence, for a proved offence, as may serve as a deterrent for commission of like offences by others.

actually a social piece of legislation which by one stroke seeks to prevent dangerous criminals from repeating offences and by the other protects the society from harm and distress caused to innocent persons. The dominent purpose and avowed object of the legislature in introducing section 433 – A is to secure a deterrent punishment for heinous offences committed in a dastardly brutal or cruel fashion or offences committed against the defence or security of the country.

The Hindu Law gave ample power to the Judge for imposing punishment in his discretion. The punishments recommended by the law – givers are either maximum or minimum or a mere standard which should be followed as a guide. The Gautama recommended four factors to take into consideration for inflicting the punishment against a crime i.e. the status of the offender, his bodily strength (that is power of endurance), and the nature of the offence and whether it has been repeated[35].

The draft plan of the Indian Penal Code gave due importance to the deterrent theory of punishment and even after all these years the concept of deterrence receives a prime consideration in the sentencing process. In *Dulla v. The State*[36], the court emphasized that the twin objects of punishment are to prevent a person from repeating the crime and prevent others from committing it. In *Khana Saday Singh v. State*[37] it was laid down that among the important objectives of punishment, the deterrent object is an important one. in *Yadu Ram Alis Anand Sagar v. State of Jammu and Kashmir*[38] the High Court enhanced the sentence of seven years to that of ten years and observed, in fact such persons did not deserve any sympathy or consideration from the court, on any ground what so ever, and the sentence imposed on such persons should be so deterrent as to serve a living example for others to prevent them from being grave menace to the society.

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35 *Gautama*, XII, 51, *Ibid* at p.18. N. K. Dutta, *Origin and Development of Criminal Justice in India* (1990) p.17.

36 AIR 1958 A II 198:

37 AIR 1960 A II. 190.

38 1972. Q.L.J. 1464.

The deterrent theory may be effective only if it scores highly on the following long recognized features: certainty of punishment, immediacy of punishment (to impress the connection upon the individual) severity, comprehensibility (reason and justification of punishment should be understood by the individual on whom it is inflicted) and if there is availability to the individual of alternative means for the achievement of the goals otherwise sought through offending behaviour. It is immediately obvious how enormously far all these requirements are from the daily reality of the criminal justice process[39].

The nature of the process of becoming a criminal is worth noticing. In social terms it is essentially a process of cutting off significant relations with people in law – abiding society. Once a man is convicted of an offence, and particularly once he goes to prison he will begin to loose the approval and support of his law-abiding family and friends. His ties to them will be cut or weakened. He cannot however exist without a degree of social approval and that which is withdrawn must be replaced by approval from another and less scrupulous source. The chances then are that he will drift into the half world of pubs, clubs, cafes, betting shops and so on, which will offer undemanding relationships. Having 'done time' will no longer be a disadvantage and sooner or later the chance of taking part in a further 'job' may present itself[40]. The commission of an offence leads to deteriorating family situation; this will worsen with each conviction and throws him fully into a criminal way of life.

Recidivism and Deterrence

In certain situations deterrent aspect of a sentence was almost irrelevant to the facts of a man's life. "He that is down needs fear no fall". If a man's ordinary life contains little that he values if he feels that, crime apart, he is a nobody and life is merely dull and grey, then a deterrent sentence is not going to mean much. It is the people who have a stake in life who can be deterred, not

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[39] Joie Chowdhury, "sentencing – An Analysis" (2004) Cr. L. J. 258.

[40] Christopher Harding, Laurence Koffman, *Sentencing and the Penal System. Text and Materials* (1988), p.7.

men living the disorganized life of some of our criminals. Men who cannot bear to think what the future holds in store are poor risks for deterrence.

The determined and permanent classes of criminals do not regard the present criminal justice system as a credible deterrent. They do not believe the cost of crime exceeds or even equals the benefits of crime and they are prepared to act accordingly. These professional criminals are becoming aware of the limitations of the police and the system of criminal justice and discovering that the crime can be highly profitable and rewarding[41].

The general objections to deterrent philosophy are, deterrence has no utility in crimes of emotion and passion, and it has no effect on hardened criminals i.e., the recidivists. It is unjust to punish one individual to teach a lesson to others: crimes are not committed by cool calculations. Deterrence converts a curable criminal into a hardened criminal.

The efficiency of criminal punishments as a deterrent has often been doubted by those who assert that many people do become criminal and will continue to do so in spite of the threats of condemnation and fear of punishment. So it has not achieved its end. Deterrence though important cannot be thought of as the sole or over riding purpose of criminal law. There is a sense of resentment about the deterrent dose of punishment, which the recipient considers to be unjust. Severe punishment for trivial offences makes the people unwilling to cooperate in carrying out the punishment. The deterrent punishment also leaves no hope for the correction and resocialisation of the offenders. Another point is that the punishment to be effective and deterrence must be certain. The criminal justice system, which follows the principle that the prosecution should establish the guilt beyond reasonable doubt and benefit of the doubt goes to the accused, has never been able to use the punishment in a deterrent manner.

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[41] Sanker Sen, "Crimes in Modern India", in K.D.Gaur (ed.) *Criminal Law & Criminology* (2002), p.55.

Preventive Theory or Incapacitation

This concept implies that the offender's capacity to commit new crimes is to be concretely obstructed or reduced through a prison sentence. The basic idea is that the offender is to be incapacitated by being taken out of social circulation. The period of removal may be very long in case of prisoners with greater potential for mischief. This is precisely why prison or extended prison is used in order to be incapacitated.

The incapacitative approach is to identify offenders or groups of offenders who are likely to do such harm that special protective measurers (usually in the form of length of incarceration) should be taken against them. It is undisputed that in case of certain type of offenders the incapacitative principle is necessary to be applied in the interest of the society. Supporters of this theory say that it is the best mode of punishment because it serves as an effective deterrent as also a useful preventive measure. It presupposes some kind of physical restraint on the offenders[42].

The proponents of this theory takes a very dim view of the personality of the offender and his disablement to commit any offence for a duration of time is taken as an end in itself. The notion of incapacitation of dangerous offenders is good but to find a formula to reliably predict their dangerousness is difficult. And also this theory involves sentencing on the likelihood of the offender committing further offences. Saying it in the proper sense it is not just to impose sentence for crimes that has not been yet committed. So in order to protect some unidentified future victims in the society these persons are put behind the bars. The Supreme Court of the United States[43] opined that as from the past behaviour of these offenders it can be seen that there is a possibility of threat to the society if he is left free to roam about in the society it is better to put him behind the bars first to protect the society and second to prevent him from committing another offence.

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[42] According to the supporters of this theory, murders are hanged not merely to deter other persons from committing the same offence but to eliminate such heinous and dreadful offenders from the society.See also Stephen A.Saltzburg, Daniel J.Capra, *American Criminal Procedure, Cases and Commentary* (5th ed.1996), p.752

[43] *United States v. Salerno*, 1987 481 U.S.739.

In this theory the main problem is to find out who will recidivate. If it can be predicted this method will be accurate to check crime.

Reformative Theory

The primary aim of criminal law and penal practice is to prevent the individual offender from committing further offences. The major emphasis of the reformist movement is rehabilitation of offenders in peno–correctional institutions, so that they are transformed into law-abiding citizens.

The move towards reformative theory began originally as a protest. It was a protest both against the physical conditions in prison and against the moral, spiritual degeneration, which took place in those conditions. And for a long time the twin object of the reformers remained as the erection of clean prisons, decently and fairly administered together with efforts directed at the prisoner to get him abandon his evil ways with the aid of religious and moral exhortation.

The theory is based on the faith which recognizes the worth and dignity of every individual in society and a willingness on the part of society to reclaim the delinquent for his own sake, and not merely to keep him from again harming the society. This contemplates a constructive programme under adequate facilities and personnel for re-educating and re-organizing the criminal's attitude by providing motivation, stimulation, ideas and patterns of convict.

Rehabilitation is necessarily an individualistic approach; delinquents are treated as if their conduct can be manipulated and controlled. By studying each criminal his history, associates, environment and mental capacity an attempt would be made by suitable treatment to guide the criminal back to a useful life.

The detractors of this theory focus on the fact that hardened criminals do not respond favourably to the reformist ideology. We can see this from the F.B.I. Law Enforcement Bulletin[44] that "while studying the factors responsible for this

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[44] James Q.Wilson, "A long Book at Crime", (Feb.1975) *F.B.I. Law enforcement Bulletin.*

surge in crimes, criminologists and law enforcement officers have found that there are some hard core career criminals, who commit majority of crimes. An analytical study of an urban industrial town has revealed that most of the crimes are committed by a group of 15 to 20 hardened criminals whose life is crime. Though many criminologists and social workers have faith in the reformation of the hardened criminals and look on them as the victims of social and psychological forces outside their control it has, some how, been found that the rehabilitation programmes in general have not been very useful in the reformation of the criminals. Various studies in America on the subject of criminal rehabilitation programmes do not have any considerable or measurable gains in reducing recidivism.

In the Indian scenario also looking at the crime statistics we can see that the percentage of recidivists among offenders has increased to 10.4 percent during 2004[45]. A large number of the prisoners are recidivists. This means that the application of reformative theory has failed in their previous conviction. Why do such things happen? It shows to be a total failure of our criminal justice system.

Sentencing of Recidivists

In most jurisdictions recidivists are sentenced more severely than first offenders. Such sentencing can be linked to one of the following rationales: (1) just deserts (offending behaviour is more reprehensible, and deserving of greater ensure, if it happens persistently); (2) individual deterrence (the persistent offender needs a stronger deterrent); (3) incapacitation (society must be protected from the recidivists). Mitigation for the first offender can be linked to a rehabilitative rationale (providing the opportunity for self rehabilitation).

Ashworth[46] has delineated three approaches to sentencing recidivists. The first is simply to ignore an offender's previous record and sentence him or her solely on the current offence. The rationale behind this approach is that

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45 Crime in India 2004.

46 See A.Ashworth, *Sentencing and criminal Justice* (1992), p.143-50.

repeat offenders have already incurred punishment for their earlier offences, and to take into account at a later date is to punish them twice for those offences. Put another way, the offender's culpability for the current offence is made no more or less by previous behaviour.

A second approach is founded on the premises that a first offender should receive a discounted sentence. Second and subsequent convictions should result in a progressive loss of this mitigation; and the seriousness of the current offence sets the ceiling beyond which the sentence cannot go, no matter how extensive the previous record. The first premise indicates tolerance for human frailty, treating the offence as 'out of character'. It relates to the just deserts view of sentencing as censure; treating people as capable of responding positively to that censure. Repeat offending gradually erodes this tolerance. Questions arise as to whether the first offender mitigation can apply to more serious offences, and how quickly the mitigation may be lost. In response to the former, it could be argued that tolerance of human weakness is more justifiable for minor offending and offences which do not demonstrate a high degree of deliberation. For the latter, one method would be to apply considerations of seriousness, frequency and similarity of previous offending, with mitigation lost more quickly when previous offending shows a 'settled determination to break the law'.

The third approach is the cumulative principle, whereby sentences become progressively more severe with each new offence. This is normally justified on the grounds that society needs to be protected from persistent offenders (incapacitation), and that ever increasing penalties will deter an offender (individual deterrence). These grounds take precedence over the principle that offenders should be sentenced in proportion to the gravity of the current offence. This approach is normally associated with extensive use of imprisonment, as repeat offending causes it to escalate up the penalty scale.

Smart sentencing[47] demands that the primary mission of sentencing discretion be the responsible pursuit of crime reduction. Within the limits

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[47] Honorable Michael H.Marcus, *Smart Sentencing: Public safety, Public Trust and Confidence through evidence – Based Dispositions* (2006). *http://www.smartsentencing.com.* 26-8-2006

imposed by law, proportionality, and resources prioritized by risk levels, depositions should be based on what is most likely to reduce criminal behaviour for a given offender. Programs and alternative sanctions should be used on those offenders whose criminal behaviour is most likely to be reduced by those dispositions. Jail and prison beds should be reserved primarily for those offenders for whom incapacitation is the deposition most productive for the public safety.

In jurisdictions where aggravating and mitigating factors are specified in legislations or guidelines, there is also guidance as to the application of previous convictions. Sweden[48] has a general principle of using imprisonment sparingly but, in considering whether imprisonment is appropriate, the court may take into account of previous criminality. In so doing, the court is directed to consider the extent of the previous offending; the time elapsed between offending, the similarity between past and previous offending, and the seriousness of past and present offending. In Finland, previous offending counts as aggravating if it is similar to the current offence, or if it shows a particular disregard for the law[49].

In South Africa the courts are obliged to take an offender's previous convictions into account when imposing a sentence[50]. Generally, an offender's previous convictions will result in a tougher sentence. The high court has held that courts should regard the nature, number and extent of similar previous convictions, the passage of time between them, and the offence for which sentence is being handed down. The closer the previous convictions are in time and in nature to the present offence, the greater the bearing the previous criminal conduct of an accused should have on the sentence handed down.[51]

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48 Hanns Von Hofer," Crime and Punishment in Sweden: Historical Criminal Justice Statistics 1750-2000", (2003) vol.4 No.2, *Journal of Scandinavian studies in criminology and Crime Prevention*, p.162.

49 Tapio Lappi – Seppala, *Sanctions in Finland* (2004), *http://ww.optula.om.fi/uploads/ exiz 1k.pdf*.25-6-2005

50 Martin Schönteich, *SENTENCING IN SOUTH AFRICA Public perception and judicial process, Institute for Security Studies* Occasional Paper No 43 - November 1999. *http://www.issafrica.org/Pubs/PAPERS/43/paper.html* 14-3-2005.

51 *Muggel 1998 (2) SACR 414 (C).*

The American guideline systems incorporate a "criminal history score" with higher scores leading to longer sentences. Mainly the score is arrived at through the number of previous convictions and the seriousness of the applicable offences[52]. In 1993 and 1994 Washington and California enacted laws which required a person who committed serious offences on three occasions to be sentenced severely for the third offence. The Washington Persistent Offender Accountability Act, 1994 requires that a third serious offence receives a sentence of life imprisonment without parole, or a death sentence if the crime is one of aggravated murder in the first degree. The purpose of this sentencing is expressed as improving public safety, reducing the number of serious repeat offenders at large, setting proper and simple sentencing practices that both victims and persistent offenders can understand, and restoring public confidence in the criminal justice system. Washington State Legislature[53] in its findings and extent declared that punishments for criminal offences should be proportionate to both the seriousness of the crime and the prior criminal history.

The purpose of sentencing in the federal courts of America are set out in the United States Code[54] as being "(A) to reflect the seriousness of he offence, to promote respect for the law and to provide just punishment for the offence; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner."

A comprehensive sentencing model is offered for consideration by Wisconsin Sentencing Commission[55] by which judges should consider three critical sentencing elements in order to substantially reduce recidivism. Those elements include (1) objectives of sentencing (2) facts of the case and offender

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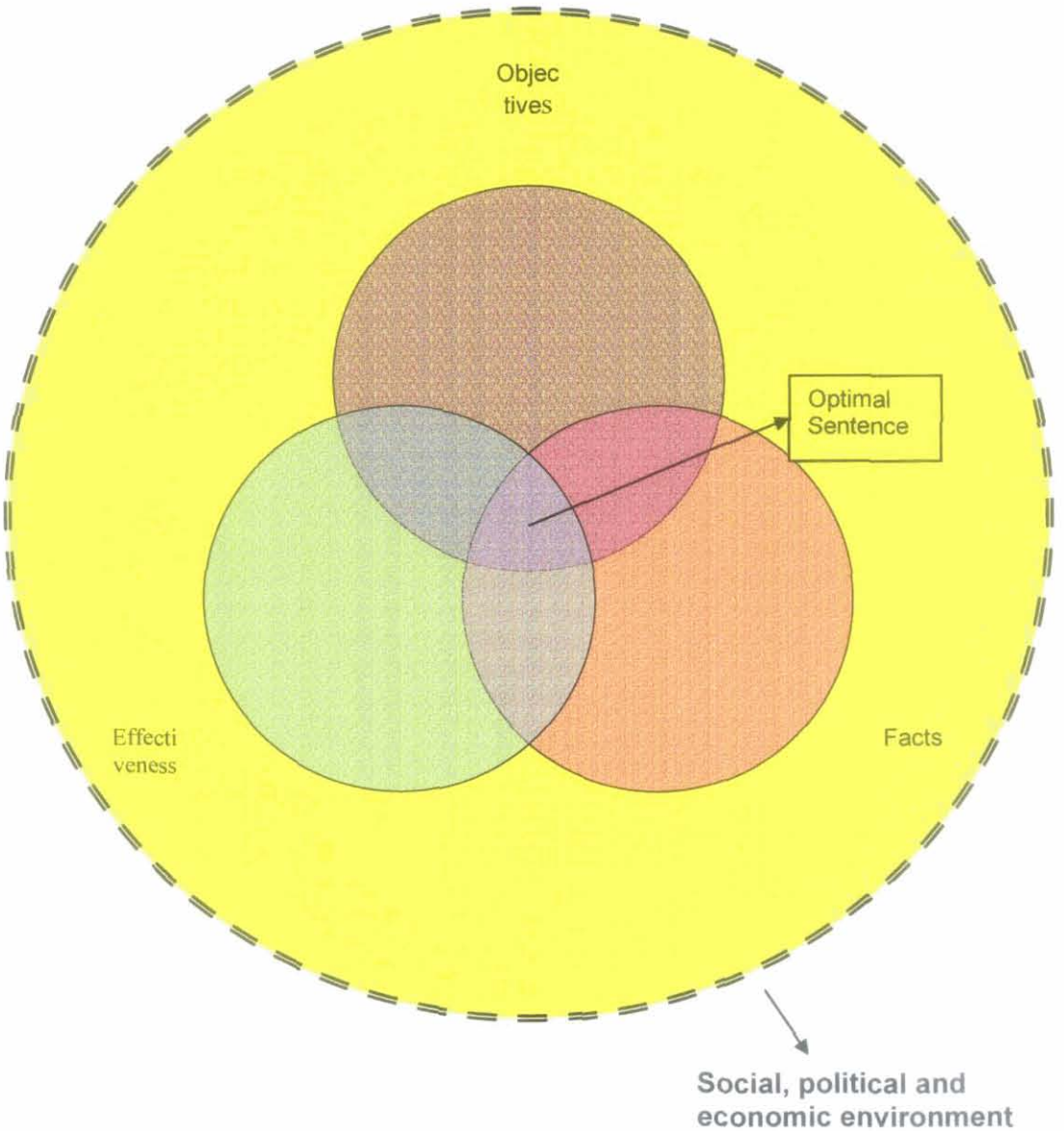
52 M.Tonry, "The failure of U.S.Sentencing guidelines", 1993 (a) vol.39, No.2, *Crime and Delinquency*, p.131-49.

53 Washington State Legislature, RCW 9.94A555 findings and intents – 1994 C1, *http://apps.leg.wa.gov/rcw/default.aspx<cite=9.94A555*.6-2-2005

54 28 U.S.C. § 991(b) (1).

55 Steven J.Semmann, *Three Critical Sentencing Elements Reduce Recidivism: A Comparison between Robbers and other Offenders*, Wisconsin Sentencing Commission (April 2006), *http://wsc.wi.gov/doc.* , 23-5-2006.

(3) effectiveness of sentencing options. The area at which the three elements intersect contains the optimal sentence to reduce an offender's likelihood to re-offend.



In United Kingdom Section 29 of the Criminal Justice Act, 1993, provide that in considering the seriousness of the offence, the court may take into account any previous convictions of the offender. A judge may be justified in awarding a severe and exceptionally lengthy sentence on grounds of dangerousness of the crime or a lighter one for rehabilitation or reformation of the criminal. A kind of balance between crime and punishment therefore, seems

inevitable for judicial sentencing. Judicial authorities all over the world have been struggling hard to establish a coherent set of principles for judicial sentencing but the fundamental question is as to which of the four, namely, retribution, deterrent, prevention or reformation should take precedence in the process of sentencing. The crucial problem is whether it is the 'protection of society', or the prevention of crimes, which should gain primacy in awarding the sentence.

About a proper sentence the law commission of India in its 47th report has stated that " a proper sentence is a composite of many factors, including the nature of the offence, the circumstances extenuating or aggravating the offence, the prior criminal record if any, of the offender, the age of the offender, the professional and social record of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for rehabilitation of the offender, the possibility of a return of the offender to the normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender, or by others and the present community need if any, for the particular type of offence involved".

In a very recent decision the supreme court of India[56] has held that "the law regulates social interests, arbitrates conflicting claims and demands. Ensuring security of persons and property of the people is an essential function of the state. It could be achieved through instrumentality of criminal law". Undoubtedly, there is a cross – cultural conflict where living law must find answer to the new challenges and the sentencing system to meet the challenges. The contagion of lawlessness would undetermined social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentences. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise.

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[56] *Adu Ram v. Muruka,* (2005) 10 SCC 597.See also *State of M.P. v. Saleem,* (2005) 5 SCC 554, *State of U.P. v. Satish,*(2005) 3 SCC 114.

In the *State of M.P. v. Bala*[57], it was held that the punishment prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the offence concerned, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it.

The imposition of sentence is the most critical point in the administration of criminal justice. It is critical because, no where in the entire legal field the interest of the society and those of the individual offender are at stake than in the system of sentencing. The system lacks efficiency if it fails in its essential function of protecting society by deterring offenders. It lacks credibility, if it does reflect 'the mood and temper of society' towards misconduct of offender, and thereby ratify and reinforce the values of the society. The system deserves indictment, if it fails to provide an equitable justice to the offender, for no other factor impinges most than a sense of in–justice in the mind of a convicted offender[58].

A progressive trend in the area of sentencing is discernible in the Indian criminal justice system. Thanks to the substantial amendments that are being brought about in the code of criminal procedure 1973, which incorporated clause (2) in section 235[59], makes it mandatory on the part of the sentencing judge to hear the accused on the question of sentence when the accused is found guilty. Similarly section 248(2)[60] enjoins a duty on the part of the magistrate to hear the accused with regard to the question of sentence.

The Law Commission[61], in its 48th report, recommended the insertion of S.235 (2), which would enable the accused to make a representation against the

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57 (2005) 8 SCC 1.

58 M.Z.Siddique,"The Problem of Disparity in Sentencing." (July 1981) Vol.9 No.2 *Indian Journal of Criminology*, p.72.

59 Section 235(2) of the Criminal Procedure Code 1973, if the accused is convicted, the judge shall unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

60 Section 248(2) of CPC 1973, where in any case under this chapter, the magistrate finds the accused guilty, but does not proceed in accordance with the provisions (fn. Cont. in page-208) of section 235 or section 360, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law.

61 48th report of Law Commission of India.

sentence to be imposed, after the judgment of conviction has been passed. The under lying concept is that the accused may have some grounds to urge for giving him consideration in regard to the sentence, which the court may not be aware of during trial. This is also to ensure that the accused should get a fair trial in accordance with the accepted principles of natural justice.

In *Santa Singh v. State of Punjab*[62] the supreme court observed that the provisions of section 235 (2) was very salutary and contained one of the cardinal features of natural justice, normally, that the accused be given an opportunity to make a representation, against the sentence proposed to be imposed on him. In *Tarlok Singh v.State of Punjab*[63], the Supreme Court observed the object of section 235(2) to give a fresh opportunity to the convicted person, to bring to the notice of the court, such circumstances, as may help the court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case.

The traditional attitude of the sentencing judges was that their responsibility ended with the imposition of the sentence. Many criminal court judges, sentenced offenders to confinement, without fully recognizing what would happen after sentence was imposed. Now, in the recent years, primarily because of the emergence, and development of the idea of re–socialization of the offenders and growing number of law suits by prisoners, the courts have become increasingly aware of the condition of "prison confinement", and are thus called upon to participate in the activity which in the main had been a matter for the administrator[64].

The Supreme Court of India has more than once emphasized that sentencing is a complex process which calls for proper adjustment of the competing theories of punishment. The Supreme Court in *Modi Ram and others v. State of Madhya Pradesh*[65] observed that keeping in view the broad object of

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62 1976 Crim. L.J.1875.

63 A.I.R. 1977 S.C 1747.

64 H.L.A.Hart, Punishment *and Responsibility, Essays in the Philosophy of law* (1968), p.165.

65 A.I.R.1972 S.C. 2438.

punishment of criminals by courts, in all progressive civilized societies, true dictates of justice demand that the attending relevant circumstances should be taken into account for determining the proper, and just sentence. The sentence should bring home to the guilty party, the consciousness that the offence committed by him, was against his own interest, as also against the interests of the society of which he happens to be a member. The court in *Parveen Kumar Gupta v. State of Madhya Pradesh*[66], stressed that the purpose of punishment is protection of the society, by deterring potential offenders from committing further offence, and by reforming and turning them into law abiding citizens.

In *Ram Narain v. State of U.P.*[67], the Supreme Court of India has observed on sentencing that "sentencing is always a matter of some difficulty. It generally poses a complex problem which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishments. Though a large number of factors fall for consideration in determining the appropriate sentences, the broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that the commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence to be appropriate should therefore, be neither too harsh nor too lenient."

Modern trends in criminology is against the imposition of severe or savage sentences against criminals, because the deterrent, retributive or the punitive aspect of punishment is no longer treated as valid consideration in the administration of criminal law. It must also be remembered that the normal criminal law of the country mostly deals with the ordinary offences committed by persons either under the pressure of, provoked or unbalanced emotions or as a result of adverse environment and circumstances. So while dealing with these criminals, who in many cases deserve a sympathetic treatment and in few cases, are more sinned against than sinners, the criminal law should treat punishment

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66 1974 Cr. L. J. 57.

67 1973 1 SC WR 675.

more as reformative or corrective than as a deterrent, retributive or punitive measure.

Stressing on this point the Supreme Court has held in *Ram Naresh Pandy's* case[68] that modern criminal jurisprudence recognizes, that no one is a born criminal and that a good many crimes are the product of socio – economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about the reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals.

A criminal is a man who violates laws decreed by the state to regulate the relations among its citizens. A boy who is arrested and convicted is thereby publicly defined as a criminal. Thereafter his associations with lawful people are restricted and he is thrown into association with other delinquents. On the other hand a person who is consistently criminal is not defined as law abiding by a single lawful act. Every person is expected to be law abiding, and lawful behaviour is taken for granted because the lawful culture is dominant, more extensive and more pervasive than the criminal culture[69].

The role of judges and magistrates in sentencing is crucial because sentencing decisions involve such a large element of discretion. It is rare that the sentence for an offence is fixed by law. Naturally the sentencer must be aware of the sentencing options that are available and any legal restrictions on his powers. In other words there is a legal framework within which the sentencer must work. But within this framework there is a considerable degree of choice for sentencing individual cases. This is accentuated by the fact that the maximum penalties for most offences are far more severe than would normally be required. The law, therefore, provides no more than an upper limit of sentences and it offers little practical guidance for sentencers in deciding on an appropriate sentence[70].

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68 *Ram Naresh Pandy v. State of M.P.*, AIR 1974S.C.35.

69 Wayne Morrison, *Theoritical Criminology, From Modernity to Post – modernism* (1995), p.150.

70 Christopher Harding, Laurence Koffman, *op.cit, at* p. 92-93,

Although there is no "correct" sentence for a particular type of offence or offender, there is a notional scale of penalties, which has been developed by the courts. This is not laid down by law but has to be deduced, where this is possible, from the sentencing practice of the courts. This is far from precise and at most, it establishes only general ranges of sentences. Within these ranges there is still much room for sentencers to manoeuvre. Quite apart from the vagueness of this, there is the additional problem that sentencers may have very different aims in mind when passing sentence on a particular type of offender. Faced with that conflict the sentencer must decide which objective should prevail in the particular case[71].

In theory, the sentence should be calculated only on the basis of the offence, with the record being relevant to mitigation. But, in practice, petty persistent offenders tend to attract sentences which are arguably disproportionate to the crimes they have committed. In such cases, it is persistence rather than the actual offence that determines the sentence.

Ashworth[72] in his book has stated that the sentencers should first identify the normal range of sentences for the offence; second, the sentencer must place the offence within the normal range according to its relative gravity. That is by looking into that whether there is violence or not?, was the offence pre-mediated or not?, was it provoked or not?, was there a breach of trust or not ?, and so on. If the sentence reaches the third stage, he must then make allowance for any mitigating factors. Here appellate courts judgments afford some general guidance on the mitigating effect of such factors as pleading guilty, family responsibilities, old age, etc and one particularly important factor will be the offender's previous record. It often appears that the more sentences an offender has received, the more likely he is to be treated more severely.

In imposing the sentence the court should set forth the end to be achieved and make clear what is intended in the imposition of the sentences. There must

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71 D.A.Thomas, *Principles of sentencing* (2nd ed. 1979), p.8-9.

72 A. Ashworth, *Sentencing and penal policy* (1983), p.43-46.

be a clear-cut idea about the final out come of the sentence[73]. It should be the duty of the sentencing court to ensure that the prison system is responding to the purpose of the sentence. They must be aware of the possible results of the sentences passed by them for this purpose visiting penal institutions should be made obligatory on them.

In *Rajendra Prasad v. State of U.P.*[74], Justice Krishna Iyer has observed that "when the legislative text is too bald to self acting or suffers zigzag distortion in action, the primary obligation is on the part of the Parliament to enact necessary clauses by appropriate amendments to the provisions in question. But, if legislative undertaking is not in sight, judges who have to implement the code, cannot fold up their professional hands but must make the provision viable by evolution of supplementary principles, even if it may appear to possess the flavour of law-making".

While adjudging the law, it must be in the mind of every judge, that he has his own share of law making and has an important role to play in the process of interpretation of the provisions of the Constitution or a statutory enactment, the application of a precedent and laying down of a rule, where the matter is not governed by the statutory provision or case law[75]. For the correction of the offenders the sentencing judge has a very important role to play. By awarding a proper sentence within the limits of the penal statutes, he can make maximum contribution for the re-socialization of the offenders.

In the complex milieu of Indian society no safe and sure rule can be laid down in sentencing each case. The Supreme Court has time and again directed the lower courts to exercise their discretion along with the judicial line according to the principles and not according to humour of the judge, arbitrarily and fancifully[76].

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73 *Santa Singh v. State of Punjab*, A.I.R. 1976 S.C 2386

74 A.I.R. 1979 S.C 916.

75 S.M.N. Raina,*Law, Judges and Justice* (1979), p.13.

76 *Bed Raj v. State of U.P.*, A.I.R. 1955 S.C 778,See also *Dulla and others v. The State*, A.I.R. 1958 S.C 198.

In *Sivaprasad v. State of Kerala*[77] this aspect has been enunciated. It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient emphasis and materials are not presented before the court to help it for a correct judgment in the proper personalized, punitive treatment suited to the offender and the crime.

The Supreme Court in *Bhagwanta v. State of Maharashtra*[78] observed"It is not possible for courts to attempt on the slender evidence to explore the murky depths of a wrapped and twisted mind so as to discover whether an offender is capable of reformation or redemption, and if so, in what way. That is a subject on which only experts in that line, after a careful study of an individual's case history could hazard an opinion with any degree of confidence. Judicial psychotherapy has its obvious and inherent limitations".

In *Ved Prakash's* case[79], the Supreme Court while taking into consideration, the antecedents of the offender, released him on probation and observed, "the trial court should collect materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the criminal are very relevant. Even if section 360 of Criminal Procedure Code is not attracted, it is the duties of the sentencing court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitative slant".

It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim. A court cannot afford to forget these aspects while imposing punishment on the

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77 1969 KLT 862.

78 A.I.R. 1974 S.C 2281.

79 *Ved Prakash v. State of Hariyana*, A.I.R. 1981 S.C 643.See also *Allaudin Mian and others v. State of Bihar*, (1989) 3 SCC 5., *Sushil Murmu v. State of Jharkand*, (2004) 2SCC 338.

aggressor. The court has to do justice to society and to the victim on the one hand and to the offender of the other. The proper balance must be taken to have been struck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the court and the permitted departure there from made only for compelling and convincing reasons.

Disparity in Sentencing

One complex problem relating to the sentencing process is the lack of uniformity in the quantum of punishment given by different courts for the same or similar offences. The Supreme Court took note of the problem of disparity in sentences and observed[80] that the problem of disparity had not been solved satisfactorily so far. The court found it strange that though the two cases were identical in terms of the offence and circumstances, a four year imprisonment was awarded in one while only three month's imprisonment was given in the other.

The disparity in sentences imposed by the different judges on offenders committing like crimes in the identical circumstances, erodes the principle of justice. Justice demands like cases are treated alike. Centuries ago Aristotle declared that injustice arises, when equals are treated unequally and also when unequal are treated equally[81]. If an offender is punished less severely for an act under provocation, then it is unjust to subject another to full penalty, who has also committed similar act under similar provocation.

The principle of justice gets eroded where the offender receives a particular sentence, not on consideration of the offender's background and personality, but on consideration of the personality of the particular judge, who happens to dispose of the case. Another significant cause of disparity in sentences is lack of unanimity among judges as to the purpose of sentence[82].

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80 *Rameshwar Dayal v. State of U.P.*, (1971) SCC 924.

81 H.L.A.Hart, *Punishment and responsibility* (1973), p.12.

82 *Rameshwar Dayal v. State of U.P.*, (1971) SCC 924.

The problem of sentencing disparity between courts is not so much one of different sentences, but inconsistency in basic principles and sentencing assumptions. If, for instance, one court generally views an offence, whatever the circumstances of commission and of the offender quite differently from another court so that there is an evident disparity of sentencing policy in relation to that offence, this is likely to be a matter of both public and official concern[83].

This disparity not only offends the principle of justice, but it also affects the rehabilitative process of the offender, and may create problems like indiscipline and riots inside the prison[84]. Disparity in sentences created hatred in the mind of the offender. The man who is serving a life imprisonment for the same act for which a fellow prisoner is serving five years sentence is not likely to be receptive to correctional programmes. His attitude will be that he has been unfairly treated in sentencing and may well reject all attempts to rehabilitate him. In fact he must have lost his faith in all the institutions dealing with administration of criminal justice.

In Asgar Hussain's case the Supreme Court has pointed out these points "the differentiation in the matter of sentence cannot be justified on the ground of the status of accused. The disparity in the sentence creates hostile attitude in the mind of the offender and reduces the chances of his re – socialization as the offender feels that he has been discriminated"[85].

The choice of sentence can never be reduced to the mechanical application of a set of legal rules to the facts of individual cases, for sentencing is a much more complex process than this. But there is a need for consistency, in the interest of justice, and the development of coherent principles of sentencing.

In determining the sentence it is not a question of looking for disparity in sentence, but that of philosophy underlying the determination of nature and length of the sentence. But disparity does not offend the principle of justice, if it

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83 Christopher Harding, Lawrence Koffman, *op.cit*,at p.114-115.

84 R.O.Dawson, *The sentencing:The Decision as the type, Length and conditions of Sentence* (1969), p.216.

85 *Asgar Hussain v. The State of U.P.*, A.I.R. 1974 S.C 338.

discloses a rational basis for differentiation, namely, the attitude of the offender and his potentiality for reformation or recidivism. So instead of uniform sentences what we need is a uniform philosophy, which may produce a sentence in tune with the legal and social policy. It is not the equality in sentences, but the equality of consideration we need. Whenever a decision regarding a sentence is being taken, the similar considerations must be taken into account. This will prevent the chances of disparity in sentences and the offender will not feel that he has been discriminated.

It can be seen that influence of human equation in sentencing is as great as in any other human field of judgment. Closely held values cannot be totally expelled from the mind of the sentencing judge. As Blackstone[86] observed "judgment, though pronounced or awarded by the judge, is not their determination or sentences, but the determination of sentence of law, is one of the most fallacious of legal fiction".

Effect of Length of Sentence on Recidivism

The effect of length of incarceration on offender recidivism is an important issue for those concerned with public safety and the cost-effectiveness of incarceration. It is not always an easy task to adjust the duration of the sentence to the gravity of a particular offence. To award an appropriate sentence, skillful balances between all the theories of punishments have to be taken in order to meet the ends of justice. Longer period of imprisonment reduces the chance of re-socialization of the offenders. Longer imprisonment, not only breeds hostility and resentment, but also makes it more difficult for the offender to avoid further law violations. The experience of being incarcerated is in itself criminogenic and with the passage of time in the penal institutions it becomes intensified.

The purpose and justification of a sentence of imprisonment or a similar measure, deprivative of liberty, is ultimately to protect the society against crime. This end can only be achieved if the period of imprisonment is used to ensure, that the offender is not only willing but is also able to lead a law abiding and self

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[86] E.S.Robinson, *Law and Lawyer* (1973), p.10.

supporting life[87]. The Supreme Court[88] further observed that "we think that harsh and prolonged incarceration may some times be self defeating. He gets sufficiently hardened and callous with the result that by the time he is processed through the years inside the prison, he becomes more dehumanized. The whole goal of punishment being curative is thereby defeated".

As the sentence is longer, the chances of re-socialization decreases, the personality becomes less stable, non-prison contacts diminish, person become involved with groups who tend to accept the norms of criminal sub culture and participates in their abnormal behaviour. In short, a longer sentence not only frustrate the rehabilitation programmes, but also increases the rate of recidivism and have deteriorating effect upon the inmates' abilities to function as a normal person.

Points of view are divided between those advocating longer sentences in the interest of public safety, and those advocating shorter sentences with the assumption that longer incarceration will not reduce, but may increase recidivism rates.

Those advocating longer sentences generally argue that longer periods of incarceration will reduce crime rates for mainly three reasons[89] (1) The offender cannot re-offend against the public while incarcerated (incapacitation) (2) long periods of incarceration discourage released offenders from committing additional crimes (specific deterrence) and (3) the awareness of penalties discourage potential offenders from committing crimes (general deterrence).

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87 *Nadella Venkatakrishna Rao v. State of Andra Pradesh*, A.I.R. 1978 S.C 480

88 *Ibid.*

89 See A.B.Bulmstein, J.Cohen, and D.Nagin (eds.), "Deterrence and incarceration: estimating the effects of criminal sanctions on crime rates", (1978) National Academic of Sciences. Washington DC.*http://www.nap.edu/openbook/php?*. See also U.S.Department of Justice Office of Policy and Communications, The *case for more incarceration* (1992) *http://www.usdoj.gov/ojp.incar.jsp.*15-2-2004.

Those advocating shorter sentences[90] argue that (1) certainty of punishment is more important than duration of punishment in deterring offenders from re-offending; (2) Many offenders commit crime due to physical addictions, or limited choices and are in need of treatment programmes, literacy efforts, and job training as opposed to long periods of incarceration; (3) prison is a school for criminals, and those who are incarcerated become more sophisticated and more entrenched criminals.

Goltfredson[91] studied 104,182 male prisoners in 14 offence categories in the United States who were paroled for the first time between 1965 and 1970. Results indicated that while on parole, offenders with the longest time served generally had higher recidivism rates than offenders with the shortest time served. The significance of the association between the time served and recidivism rates varied across different offence categories. For property offenders, who served the longest time had higher recidivism than those sub groups who served the shortest time. For armed robbery and drug offences, however, offenders with longer sentences had slightly lower recidivism rates than offenders with shorter sentences.

Orsagh and Chen[92] tested the theory that there is an optimum sentence length which minimizes recidivism rates. The researchers studied 1425 offenders released from a North Carolina Prison in 1980. They concluded that time served affects recidivism rates. The direction of the effect varies across offence classes. For some offence classes, recidivism rates will be reduced by shortening the period of confinement. They further indicated that the effect of longer prison sentences on recidivism is complex and is likely to be

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90 See, L.S.Branham, "The use of incarceration in the United States: A look at the project and the future". (1992) American Bar Association, Criminal Justice Section, *http://www.abanet.org/crimjust/home.html*.22-4-2005 See also D.M.Gottfredson, M.R.Gottfredson and J.Garofalo "Time served in prison and parole outcomes among parole risk categories", (1977) vol.5 *Journal of Criminal Justice,* p.1-12.,3-2-2004

91 D.M.Goltfredson, M.G..Neithercut, J.Nuffield and V.O'Leary, "Four Thousand Life Times: A study of time served and parole outcomes" (1973). National Council on crime and delinquency. *http://www.nccd-crc-org/nccd/index_main.html*.3-2-2004

92 T.Orsangh and J.R.Chen, "The Effect of time served on Recidivism: An Interdisciplinary Theory", (1988) 4. (2), *Journal of Quantitative Criminology*, p.155-171.

offender specific. A sentence can be either too long or too short for a specific individual.

Those who serve short terms of imprisonment are likely to receive less assistance both during their time in prison and subsequent to their release, which may exacerbate the impact of a term of imprisonment. In the United Kingdom[93], those over the age of 21 and sentenced to less than 12 months do not have to be supervised by the probation service. Little is done in preparation for release and nothing on release. This is despite short term prisoners (those serving sentences of less than 12 months) having the highest re-offending rates in the U.K. 61% of short term male prisoners are reconvicted within two years compared to 56% of those serving between one and four years. 56% of short term female prisoners are reconvicted within two years compared to 35% of those serving between one and four years.

In the New Zealand Ministry of Justice Reports[94] it was stated that, inmates released after serving shorter prison sentences were more likely to be reconvicted than inmates released after serving longer prison sentences. Nine out of every 10 inmates (92%) released from corrective training and three quarters (75%) of the people released from imposed sentences of one year or less were reconvicted within two years, compared to less than half (46%) of the inmates with determinate sentences of more than five years being reconvicted.

In the case of short term imprisonment there are lots of disabilities. As they were inside the prison for only a short period of time, the prison authorities were not in a position to administer the correctional techniques on them. The prison will be serving as a warehouse for them, for storage purpose. Other than that they will be allowed to mingle with the hardened criminals and also professionals well versed in their trade. These short term

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93 M.Borzycki and E.Baldry, "Promoting Integration: The provision of prisoner post release services," (Sep.2003) No.262, *Trends and issues in crime and criminal justice*, p.36.

94 New Zealand Ministry of Justice Reports 2002. *http://www.justice.govt.nz/pubs/reports/2002/reconvition-imprison-rates/table-3 csv.*17-5-2005

prisoners will get tips to improve their criminal ways. In effect when they come out of the prison after their brief stay they will be better thieves, robbers, etc.

We can see that among the prisoners admitted to the central prison during the years 1996 to2002[95], more than half of the prisoners were sentenced to imprisonment below one year. Within that, majority were given imprisonment below six months.

When we take into account all the prisoners admitted during 1996 to 2002[96] in the various Jails in Kerala we can see from the above Tables that the majority of prisoners were sentenced to imprisonment for a period less than one year. In the year 1996, 83.7% were given imprisonment for a period less than one year, 6.7% between one year and two years, only 9.6% above two years. In 1997, 83.7% were given imprisonment below one year, 6.4% between one and two years, 9.9% above two years. In 1998, 79.9% were given imprisonment below one year, 7.7% between one and two years, and 12.4% above two years. In 1999, 80.2% were given imprisonment below one year, 7.1% between one and two years, and 12.7% above two years. In 2000, 82.2% were given imprisonment below one year, 4.2% between one and two years, and 13.6% above two years. In 2001, 81.7% were given imprisonment below one year, 6.9% between one and two years, and 11.4% above two years. In 2002, 78.8% were given imprisonment below one year, 9% between one and two years, and 12.2% above two years.

From this we can see that only persons below 13% were given punishment above two years. About 80% were given imprisonment below one year. When these short term prisoners were admitted to the prisons, as their stay was for short period, they were not able to undergo any correctional process. The only effect by this imprisonment is by allowing these short timers to mingle with other prisoners thereby acquiring a prison culture, acquiring skills to commit further offence from hardened criminals, enable them to make friendship with other criminals and there by opening a way to join the criminal gangs and also making them an ex-convict

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[95] See Appendix 2.

[96] *Ibid.*

thereby going back into the society becomes difficult for them. With the added disablement of not having got any reformative or correctional treatment and rehabilitation, they will surely be in the path of becoming recidivists.

If the prisoners sentenced to less than one year, who form more than 80%of the total prison population, are taken out from the prisons and given some alternative to imprisonment then the over-crowding of prisons can effectively be controlled as well as more concentration and aid be given to the remaining prisoners in their reformation and rehabilitation. The cost for maintaining these prisoners can be reduced. Above all the chance of these persons becoming recidivists can be avoided.

Among the prisoners interviewed by the researcher the majority were given punishment for less than one year. Among them most of them are there for a period of less than three months. Actually they consider their brief stay inside the prison as a period of rest as well as to revisit their old friends inside the jail. As soon as they were outside the prison walls they start to do their old job. Majority said that they will be getting caught only after many crimes and that too only for a few months. They do not mind that. If we continue with this type of sentencing we will surely be producing a lot of recidivists.

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CHAPTER VI

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Alternatives to Imprisonment

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

The UN Standard Minimum Rules for Non-custodial Measures provide a set of basic principles[1] to promote the use of non-custodial measures as well as minimum safeguards for persons subject to alternatives to imprisonment. Directions for sentencing depositions[2] and post sentencing deposition[3] were also made in this report.

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

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

3 *Ibid.*,Rule 9:- Post sentencing depositions: The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society. Post-sentencing dispositions may include: - (a) furlough and half-way houses; (b) work or education release,(c) various forms of parole; (d) remission; (e) pardon. The decision on post-sentencing dispositions, except in the case of pardon shall be subject to review by a judicial or other competent authority, upon application of the offender. Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

The wider use of alternatives reflect a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long-term a better protection for society.

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

1. Probation

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

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

5 Section 89 of the Code of Criminal Procedure 1973- Arrest on Breach of bond for appearance.

6 *Ibid.*,Chapter VIII Security for keeping the peace and for good behaviour.

7 *Ibid.*,Chapter IX order for maintence of wives, children and parents.

8 *Ibid.*,Chapter X Maintence of public order and tranquility.

9 *Ibid.*,Chapter XI Preventive action of the police.

10 Probation is a judicial system by which an offender, instead of being punished by a sentence, is given an opportunity to reform himself under supervision, and subject to conditions imposed by the court, with the end in view that if he shows evidence of being reformed, no penalty for his offence will be imposed.

purpose of deterrence as well as reformation. It helps in the reformation of the offender by extending every possible assistance and guidance to him, while at the same time the threat of being subjected to unexecuted sentence keeps him deterred from indulging in delinquent acts. The system is useful to the society in general and the offender in particular. At the same time, it enables the probation officers to get a deep insight into the problems of criminals.

The object of probation is the protection of society by preventing the crime through rehabilitation of the offender without curbing his freedom[11]. It shifts the focus of criminal justice from crime to the criminal by replacing punitive approach with reformatory one. It is the result of the recognition of the principle that the purpose of criminal law is more to reform the criminal than to punish him[12].

The provisions relating to probation are contained in sub section (1) of section 360[13] of the Code of Criminal Procedure, 1973 and Section 4[14]of Probation of Offenders Act, 1958.

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11 Gurupal Singh, "Probation of offenders Act in retrospect and prospect with special reference to Punjab", in K. D. Guar (ed.) *Criminal Law and Criminology* (2002), p.899

12 *Rattanlal v. State of Punjab*, A.I.R 1965 SC 444

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

14 Section 4(1) of the Probation of Offenders Act, 1958: " When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct then not with standing anything contained in any other law for time being in force, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years as the court may direct and in the mean time to keep the peace and be of good behaviour.

Probation is applicable to all first offenders and to any person who has committed an offence not punishable with death or imprisonment for life. The power to release the offender on probation of good conduct is one of discretionary in nature, after taking into consideration, the character of the offender and the nature of the offence. The accused should execute a bond to keep peace and good behaviour for a period not exceeding three years with or without sureties. The benefit of probation cannot be claimed as a matter of right. But there is also a limitation to the discretionary power to the court[15]. This section clearly shows that when a person is not released on admonition or probation, the court has to state reasons for imposing a sentence. A person below twenty-one years of age should not be sentenced to imprisonment unless the court states its reason for doing so[16].

The object of section 6 of the Act is to ensure that the young offenders are not send to jail for the commission of less serious offences because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. It is for this reason that the mandatory injection against imposition of sentence of imprisonment has been embodied in section 6 of the Act[17]. Disqualification attaching to a conviction of an offence is taken away with by section 12 of the Probation of Offenders Act, 1958.

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15 Section 361 of the code of Criminal Procedure, 1973.

16 Section 6 of the Probation of Offenders Act, 1958.

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

Advantages of Probation

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

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

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

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

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i.e., nature of the offences, character of the offender and the attendant and surrounding circumstances. In this case, the honorable Supreme Court granted benefits of probation to the accused.

is well known that the interests of society are best served when all its members play a positive role by seeking their self-rehabilitation. It is a good method of preserving social solidarity by keeping the lawbreakers under control.

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

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

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

Custodial treatment removes the offender from his family and community and suspends his social and economic obligations to them. He becomes indeed a burden upon society. The probation exacts from the offender a contribution within the limits of his capacity to the well being of others whether it is through his useful employment in the community or through his participation in the life of the family or other social group[18].

Even though probation has all these advantages, it is sad to find from the studies the researcher conducted among the recidivists only 0.96% were given probation[19].

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[18] Report of the Departmental Committee on the Probation service (Morrison Committee) 1650 (1962) p.13-16.

[19] See table No.1.

TABLE 1

Granting of Probation among Recidivists

Recidivists	Probation		Total
	Given	Not Given	
Number	1	103	104
Percentage	0.96	99.04	100

From the table above we can see that only 1 (number) recidivist was given probation. The rest of the recidivists were not provided with this facility. From this we can see that the sentencing authority is not looking upon the alternative of making an offender into a good citizen without imposing incarceration or branding him a convict, and thus saving the exchequer a lot of money as well as making use of him in the society in a useful and beneficial way by not breaking the family units. The courts should make use of this alternative in all possible instances.

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

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

2. Admonition

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

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

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

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

[21] Section 3 of the Probation Of Offenders Act, 1958: " when any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860), or any offence punishable with imprisonment for not more than two years or with fine or with both, under the Indian Penal Code or any other law, no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the offender, it is expedient so to do, then, not withstanding any thing contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Under section 12 of the probation of offenders Act 1958, a person found guilty of an offence and released on due admonition shall not suffer disqualification attached to a conviction of an offence. By this section, the stigma attached to the offence is taken away and the rehabilitation and resocialisation of the offender is given importance.

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

3. Fine

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

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

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

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[22] Section 63 of the Indian Penal Code.

been a common method of punishment since a long time in western as well as eastern civilization[23].

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

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

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

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

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[23] R.G.Cadwell, *Criminology* (1956), p.426.

[24] M.K.S.Singh," Fine and Correctional Administration",in K.D.Guar (ed.), *op.cit*, at p.757.

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

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

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

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

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[25] A.I.R. 1952 SC. 14.

[26] *In Re Shankarappa*, A.I.R. 1958 AP. 380.

[27] Section 421 and 422 of the Criminal Procedure, 1973.

TABLE 2

Type of Offence Committed Initially

Recidivists	Murder	Offence against Properties	Offence against Persons	Offence against local and special laws	Total
No:	1	73	12	18	104
percentage	.96	70.19	11.54	17.3	100

TABLE 3

Period of Imprisonment

Recidivists	Life Imprison ment	Above 10 years	7 years & above	3 years & above	One year & above	Below one year	Total
No	2	3	2	12	34	51	104
percentage	1.92	2.88	1.92	11.54	32.69	49.04	100

As far as the majority of the recidivists were concerned they had committed petty offences for the first time. See table 2.

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

To the few to whom fine was imposed the amount was huge which they were not in a position to pay. That should not be the way to impose fine. If any result is to be made by imposing fine it should be one which the offender is in a position to pay but with some difficulty. Also it should not be a lump sum amount.

It should only be in installment. For others fine had been imposed along with imprisonment. That also had not made much effect as the ill effect of imprisonment was also there.

4. Parole

The origin of a parole system is traced back to the British system of transporting offenders to penal colonies – particularly to America. Once the offenders are sold to the highest bidder in America, the British Government pardoned them for the offence they committed. The offenders then acquire a new status- 'indentured servants', and not criminals. This system is almost identical with the modern system of parole. The transported convicts would agree to certain conditions in order to receive the change of their 'statuses[28].

The unsatisfactory results of the British System of Penal transportation led to the abolition of transportation of prisoners as a penal sentence, and there was an overcrowding of prisoners in British prisons. Consequently, a new method known as 'Ticket of Leave' was adopted in the later decades of the18th century as a measure to reduce the prison population. But unfortunately the measure proved to be still worse because the prisoners were discharged from the prisons merely on surety to behave properly, without being prepared for a disciplined life in the society at large. The obvious result was that they frequently resorted to recidivistic tendencies thus rendering public life more insecure and unsafe. Therefore, as the time advanced necessary changes were made in the method of release under 'Ticket of Leave' system and finally modern system of conditional release on parole was substituted by 1820's.

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

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[28] George G.Killinger and Paul F Cromwell Jr., *Corrections in the community: Alternatives to imprisonment selected readings* (1974).

the institution and shows potentiality for correction in his attitudes is allowed considerable latitude and finally released to join free society conditionally. Thus, parole is essentially an individualized method of treatment and envisages a final stage of adjustment of the incarcerated prisoner to the community.

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

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

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

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

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29 Sutherland and Cressey, *Principles of Criminology* (6th ed.), p.575.

30 *Poonam Lata v. M.L. Wadhawan*, (1987) 3SCC 347.

31 (2000) 3 SCC 394.

Parole ameliorates punishment by permitting the convict to serve sentence outside the prison walls but parole does not interrupt sentence[32]. Parole does not vacate sentence imposed, but is merely a conditional supervision of sentence[33].

Parole is not a suspension of the sentence. The convict continues to be serving the sentence despite granting of parole under the statute, rules, jail manual or the government orders. A parole does not suspend or curtail the sentence originally imposed by the court as contrasted with a 'commutation of sentence' which actually modifies it[34]. Parole relates to executive action taken after the door has been closed on a convict.

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

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

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

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32 *People ex rel Rainon v. Murphy*, 135 NE 2d 567.

33 *Woodden v. Goheen*, KY, 225 SW 2d 1000.

34 *Dadu v. State of Maharashtra*, (2000) 8 SCC 437. See also *State of Haryana v. Nauratta Singh*, (2000) 3 SCC 524.

cannot substitute the period of detention either by abridging or enlarging it[35]. The grant of parole is a quasi-judicial function performed by the Parole Boards. Before allowing an inmate to be released on parole the parole officer has to ensure that the parolee has a suitable home to live in and a satisfactory job to do. These parole officers also have to undertake a pre-parole orientation programme for the inmate and make sure that the inmate is well prepared to adjust himself to normal life and at the same time the condition outside the institution are conducive to the development of his personality.

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

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

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

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35 *Dadu v. State of Maharashtra,* (2000) 8 SCC 437.

36 James Vadakkumchery, *Criminology and Penology* (1983), p.241.

were allowed to go on parole majority said that they were given only one weak at the maximum. Most of the prisoners said that this parole facility was being misused by persons who had money and influence. The political prisoners were granted parole indiscriminately[37].

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

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

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

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

maximum. The High Court in its interim order has stated that if parole has been granted in the first stage, then when the period of parole is extended the true fact must be found out[39].

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

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

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

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39 See report in Malayala Manorama 27th July 2006, p.1

40 A.S.Ramachandra Rao and R.V.Ravo, *Process of rehabilitation in prisons – A perspective*, (181) CULR, p.153.

TABLE 4

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

No:	Respondents	Yes		No		Average		Total	
		No	%	No	%	No	%	No	%
1	Lawyers	32	64	6	12	12	24	50	100
2	Judges	14	70	3	15	3	15	20	100
3	Police Officers	3	15	13	65	4	20	20	100
4	Prison Officers	8	40	4	20	8	40	20	100
5	Academicians	11	44	2	8	12	48	25	100
6	Prisoners	87	58	24	16	39	26	150	100
	Total	155	291	52	136	78	173	285	600
	Mean value		48.51	-	22.66		28.83	-	-

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

5. Suspended Sentences

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

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

alternative to non-custodial measures, such as fine or probation. It is a sentence of imprisonment suspended in its effect. Although the suspended sentence is supposed to be a sentence of imprisonment, it operates in effect as non-custodial penalty. It is only potentially custodial in nature[41].

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

In O'Keefe[43], it was observed that "before arriving at a suspended sentence, the court must go through the process of eliminating other possible courses such as absolute discharge, conditional discharge, probation order, fines and then say to itself: this is a case of imprisonment, and final question, it being a case for imprisonment, is immediate imprisonment required, or can I give a suspended sentence."

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

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41 Christopher Harding, Lawerence Koffman, *op.cit*, at p.201.

42 Martin Wasik, Discharge Provisions and the Restricted meaning of "conviction", (1997) 113, *LQR* Oct. p.637.

43 O' Keefe [1969] 1 All E.R. 426.

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

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

6. Forfeiture of Property

The object is to make the offender forfeit all the properties he has made through crimes. No one should be beneficiary of his own criminal act. There are three cases[44] in which specific property of the offender is liable to forfeiture. This type of punishment is imposed in cases of smuggling, drug peddling, holding black money, tools used for offences, and also on the offenders under Prevention of Corruption Act, Narcotic Drugs and Psychotropic Substances Act, 1985.

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

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[44] (1) Where depredation is committed on territories of any power at peace with the Government of India, such property as is used or intended to be used in committing such depredation is liable to forfeiture in addition to sentence of imprisonment and fine (section 126 I P C). (2) where the property is received knowing the same to have been taken in the commission of depredation on the territories of any power at peace with Government of India or in waging war against any Asiatic power at peace with the Government of India, the property so received is liable to forfeiture (section 125 I P C). (3) a public servant unlawfully buying or bidding for property forfeits the property so purchased (section 169 I P C).

preventing agency had been efficient and they had confiscated the ill gotten gain this would not have happened. Some of the recidivists said that they made money though crime. It had been safely deposited. With that money their family could lead luxurious life and they could also take benefit of that by getting extra benefits in the prison. They could even get the facility of good lawyers and thereby reduce their period of imprisonment.

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

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

7. Compensation to Victim

In the primitive societies the responsibility of protecting oneself against crime and of punishing the offenders rested with the individuals[45]. As the societies got organised in the form of states, the responsibility of protecting the members against criminals and punishing the violators of crime shifted to the political authority. The remedies continued to be compensation by the wrong-doer to the victim or his family members. It is based on the restitutive justice which can be seen in the old Germenic Law, code of Hamurabi, Law of Moses and ancient Hindu Law

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

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[45] It reflected the idea of Retributive Justice.

section 357 of the Criminal Procedure Code[46]. It empowers the court to direct the convicted person to pay compensation and costs and thereby combines the function of the civil court to pay compensation for wrong with that of the criminal court. This section empowers the court to order the payment of the whole or any part of the fine recovered from the accused, first in defraying expenses properly incurred in the prosecution and secondly as compensation for any loss or injury caused by the offence[47].

The concept of restitution is emphasized by the fact that crime constitutes a relation not only between the criminal and society, but also between the criminal and his victim. The principles of restitution have been accepted in recent times under the probation of offenders Act, 1958[48].

In *Sarawan Singh v. State of Punjab*[49] it was said by the Supreme Court that in awarding compensation, the court should not just consider what compensation ought to be awarded to the heirs of the deceased and then impose a fine which is higher than the compensation. The court laid down that the amount of fine should be determined on the basis of various factors including nature of crime, number of injuries and the paying capacity of the offender.

In *Guru Swami v. State of Tamil Nadu*[50], it was held that in case of murder it is only fair that proper compensation should be provided for the dependents of the deceased.

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46 The court has a very limited discretion under section 357(i) as it can give compensation only out of the fine if imposed on the offender. So sub section(3) of section 357 was added as recommended by the Law Commission in its 31st report in the code of criminal procedure, 1973 and it provides : "When court impose a sentence of which fine does not form a part, the court may, when passing judgment , order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reasons of the act for which the accused person has been sentenced".

47 Sir Henry Maine, *Ancient Law* (1901), p.370

48 Section 5 of the Probation of Offenders Act,1958.

49 (1978) 4 SCC 111.

50 (1979) 3 SCC 799. It was a case where the appellant had murdered his father and brother as a result of some family feud and was sentenced to death. On appeal, the Supreme Court reduced the punishment to life imprisonment and imposed a fine of Rs.10, 000/- on the offender to be paid to the heirs of the deceased.

In case of death caused by rash or negligent act, punishable under section 304-A of the Penal Code, the courts have reduced the period of imprisonment to the one already undergone, but imposed a severe fine in order to provide substantial relief to the dependents of the deceased[51].

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

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

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

TABLE 5

KNOWLEDGE ABOUT VICTIMS & PAYING COMPENSATION

Recidivists	Known about victims	Don't know about victims	Don't care	Paying compensation	Total
Number	45	73	32	0	150
percentage	30	48.67	21.32	0	100

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51 *Sukhden Singh v. State of Punjab*,1982 SCC (Cri) 467. See also *Prabhu Prasad Shah v. State of Bihar*, AIR 1977 SC 704.

52 A.S.Ramachandra Rao, *op.cit*, at p.157.

53 *In Re Prisoner*, 1993 (2) KLT 10.

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

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

8. Externment from a Locality

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

Police or other Acts of different Sates[55] with a view to maintain public peace or to prevent anti-social activities by a person provide for his externment.

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[54] Forty Second Report of Law Commission 1971.

[55] Some of the Acts having Externment powers are, (1) Bombay Police Act, 1951, Karnataka Police Act, 1964, Gujarat Police Act, 1976, Delhi Police Act, 1978, (fn. cont. in page-249)

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

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

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

In *N. B. Khare v. The State of Delhi* the Supreme Court widened the scope of these safeguards[56]. The Supreme Court[57] going through the Bombay Police Act, 1902, held the procedure to be reasonable even though the person suspected had no right to cross-examine the witness deposing against him. The provision was made to protect the public against dangerous and bad characters.

Madhya Pradesh Security Act, 1959, the Punjab Security of State Act, 1953, Assam Maintence of Public Order Act, 1947. etc.

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

[57] *Gurbachan singh v. State of Bombay*, AIR. 1952, SC 221.

In *Prem Chand v. Union of India*[58] the Supreme Court emphasized that an order of externment should not be passed without observing natural justice and opined that vague allegations and secret hearings were violative of articles 14, 19 and 21 of the Constitution. There must be a clear and present danger based upon credible material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence is hazardous to the community and its safety.

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

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

9. Assignment to a Detention Centre

This form of punishment, though not available in the Indian Penal Code, it is found in the Russian Penal Code, under the basic measures[59]. There they call it as, 'assignment to a disciplinary battalion'. Rigorous training, work programme and other disciplinary behaviour like that found in an army battalion are the basic

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[58] AIR 1981 SC. 613.

[59] Sections 21 and 22 of the Russian Penal Code, 1997 and Section III, Chapter 9 of the Criminal Code of the Russian Federation, 1976.

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

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

Under section 14 of the Kerala Habitual Offenders Act, 1960, for the reformation of the registered offender and the prevention of crime, he can be placed in a corrective institution to receive training during the period of registration, or for a term not less than two and not more than five years[60].

It is better to send the offender to detention centers which can provide them with work and supervision than sending them to prisons there by making them mingle with hard core criminals and cultivate a criminal culture and study different ways to commit crimes, there by becoming recidivists themselves.

Bhattacharyya J. has advocated that default offenders should be put on compulsory work outside the prison, e.g. on public projects like dam, roads or rural construction etc... He further suggested that this forced labour should be during the leisure hours of the convict which will not impair his regular employment. Another benefit of such forced employment, which may be of small duration at a time but spread over larger period, will be that the offender will be kept busy and conscious and will not easily lean towards crime[61].

10. Pardon

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

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60 See *Supra*, Chapter IV, n.106 and 107.

61 B.K.Bhattacharyya, *Prisons* (1958), p.42-45.

executive function to be exercised by the head of the state after taking into consideration various matters which may not be taken into consideration before a court of law enquiring into the offence.

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

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

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

A pardon is an act of grace and therefore it cannot be demanded as a matter of right[62]. The effect of pardon is that it not only removes the punishment in the eye of the law, but also places the offender in the same position as if he never committed the offence. The executive can exercise the pardoning power at any time after commission of an offence, either before legal proceedings are taken or during their pendency or either before or after conviction[63].

Prof. Gillin observed, "If the pardons are administered with care and solely to correct injustice, they certainly do not diminish respect for law. They, on the other hand, will infuse confidence in the machinery of justice"[64].

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62 *Kehar Singh v. Union of India*, A.I.R 1989 SC 653.

63 *In Re. Channugadu*, A.I.R 1954 Madras 911 at p.917.

64 J.L.Gillin, *Criminology and Penology* (3rd ed., 1977), p.308.

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

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

11. Commutation of sentence

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

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

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[65] *Ram Deo Chauhan v. State of Assam*, AIR. 2001, SC. 2231.

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

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

12. Open prison

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

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66 A.I.R. 2000 SC. 986.

67 An 'Open Prison', according to the First United Nations Congress on 'prevention of crime and the treatment of offenders' is characterized by the absence of material and physical precautions against escapes (such as walls, locks, bars, armed or other special security guards) and by a system based on self-discipline and inmates sense of responsibility towards the group in which he lives. United Nations, Resolution and Recommendation adopted by the 1st United Nations Congress on the Prevention of Crimes and Treatment of Offenders, (August 29,1955) , p.76

The study group on 'open Prison in India' set up by the then Bureau of correctional services generally agreed with the above definition except the work 'absence' qualifying the material and physical precautions against escapes. The characteristic features of a good open prison, according to the study group, should resemble the patterns of life and living in small Indian rural communities[68].

For the rehabilitation and prerelease preparation the All India Jail Manual Committee has suggested the system of open campus. According to its considered view, "training of inmates in freedom, while in prison is a peculiar problem in correctional work". In closed institutions the long-term prisoners stand the risk of getting prisonised. If properly organised, semi open and open training institutions and open colonies should furnish some solution in this respect. In the treatment of offenders, emphasis has to be put not on their exclusion from society but on their continuing to be a part of it[69].

In "Declaration of principles of crime and punishment" of the Cincinnati OHIO (USA) meeting of the First Prison Congress in 1870, it was observed "the Supreme aim of prison discipline is the reformation of criminals not the infliction of vindictive suffering". The XII[th] Penal and Penitentiary congress on the Prevention of Crime and the Treatment of Offenders, Geneva (1955) gave a scientific thinking to it and attempted to find a definition of open peno correctional institutions[70].

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

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68 Central Bureau of Correctional Services, *Open Prison in India* (1973), p.4

69 Ishwar Chandra Vasta, "Open Peno Correctional Institutions in the states of Uttar Pradesh and Uttaranjal", in *KD Gaur(ed.) Criminal Law and Criminology* (2002), p 829.

70 An open prison is characterised by the absence of material or physical precautions against escape (walls, locks, and bars, armed or spread security guards) and by a system based on self-discipline and the inmate's sense of responsibility towards the group in which he lives. The U. P. Jail enquiry Committee (1955-56) observed, "The ultimate objective of punishment is to make the anti-social person a good citizen. A sense of co-operative social living can be better installed into inmates under semi open or open training institutions than in closed prisons.

of self-discipline and self-improvement among the inmates. Open prison act as a transit point between the prison and the community. It is a half-way-house for the prisoners to smoothly get into and to reintegrate them into the social main stream.

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

The Supreme aim of correction is the reformation of criminals, not the infliction of vindictive suffering. The prisoner's destiny should be placed measurably in his own hands. He must be put into circumstances where he will be able through his own exertion, to continually better his own condition. A regulated self-interest must be brought into play, and made constantly operative. The prisoner's self-respect should be cultivated to the utmost, and every effort made to give back to him his manhood[71].

The open peno correctional institutions are more favourable to the social readjustments of the prisoners and at the same time more conducive to their physical and mental health. The adjustment levels of the prisoners are supposed to be better because of the facilities provided to develop a healthy interpersonal relationship and the free environment. There may be also some therapeutic approach in the open camps to rectify the maladjusted behaviour of the inmates. The work programmes in a rather free atmosphere according to their tastes, educational and recreational facilities and the attempt of reorientation help the prisoners to develop a higher adjustment level[72].

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[71] Ishwar Chandra Vasta, 'Open Peno Correctional Institutions', in N.K.Chakrabarti (ed.), *Administration of Criminal Justice The Correctional Services, institutional corrections* (vol.2, 1997), p.44.

[72] Maya Sanyal, "Open Prison and the Inmates" in N.K.Chakrabarti (ed.), *Ibid.*, p.88.

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

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

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

In *Dharambir v. State of Uttar Pradesh*[74] the Supreme Court supported the institution of open prisons since such prisons, the court felt, had certain advantages in the context of young offenders who could be protected from some of the well known vices to which young inmates were subjected to in the ordinary jails.

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[73] M.J.Sethna, *Society and the Criminal* (1971), p.32.

[74] (1979) 3 SCC 645.

The best thing about the open prisons is that the system counters what is known as 'prisonisation' of the convict, institutionalization and criminalisation denoting the two components of 'prisonalisation'[75]. Here he was allowed to stand on his own feet. Because of more extensive terrain and freer movements, the inmates may be more relaxed and tension free, a condition conducive to the administration and reception of rehabilitative sense of discretion and responsibility. As there is no heavy guarding the chances to escape is very great. The fact that he rejects this possibility indicates he has taken a great moral step, a great social step. By accepting this responsibility, he has admitted to himself that he wishes to be a social rather than an asocial animal. Thus the state's burden of dealing with recidivism decreases.

13. Public Censure

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

Where fine as a mode of punishment has an eroding effect on the effectiveness of the criminal justice system, 'public censure' plays an important role in deterring the offender from committing the crime. Public censure was recognised as a mode of punishment in ancient times. It includes shaving the criminal's head, banishing him from the town, branding him on the forehead with a mark and parading him on an ass, or making him wear chappal garland[76] etc. Some foreign penal codes employ public censure as a substitute for

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[75] Howard Jones and Paul Corner, *Open Prison* (1977), p. 9.

[76] In Bulgarian Criminal Code 2004 But today these practices will violate article 7 of the International Covenant on civil and political rights. But in the above-mentioned practices, the common element is to bring to the society's knowledge and to impress upon the convict in a forceful manner, the guilt which led to his conviction.

imprisonment. In India, public censure is provided for a second or subsequent offence by resorting to publication at the expense of the convict[77].

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

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

CHAPTER VII

CHAPTER VII

Correctional Institutions

Correctional institutions are one of the three main constituents of the criminal justice system. Correction in its broader sense, means reshaping, re-educating and reforming the individual behaviour, attitudes and feelings of anti-social nature which have culminated into his incarceration for custody. In penological parlance it is a process of treatment, reformation and rehabilitation of the offender with a view to converting him into self-respecting law abiding and socially responsible citizen of a particular society[1]. According to Mishra Correctional work means two things namely, (1) prevention of crime and (2) treatment of the offenders[2].

The idea of correctional imprisonment had been foreshadowed in Europe as in England and on the continent imprisonment as a means of reforming character had some times been imposed by religious and secular authorities. The Roman Catholic Church had sometimes released the prisoner upon showing repentance. In England the houses of correction was invented to take care of the wide spread vagrancy and idleness that arose when great numbers of the rural population were forced to vacate their cottages. The idea of prisons as a correctional and a rehabilitational method was advanced in England in 1778 when parliament authorised the construction of a "penitentiary" whose purpose as stated in law was " by sobriety, cleanliness and medical assistance, by a regular series of labour by solitary confinement during the intervals of work, and by due religious instructions, to preserve and amend the health of the unhappy offenders

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1 S.P.Srivastav, "The Nature of Crisis of Correction", (Jan 1981) Vol.9 No.1, *Indian Journal of Criminology*, p.23.

2 B.K.Mishra, "Prevention of Crime", (1959) 6TH issue *Journal of Correctional Work*, p.69. In a developing state, correctional administration have important roles to play. It should consist of three broad phases preventive, curative and rehabilitative. See also Harihar Swain, "Role of Prison welfare in Social Defence", (1978) Vol.XXXV No.2, *Orissa Review*, p.13.

to inculcate in them habits of industry, to guard them from pernicious company and to accustom them to serious reflection and to teach them both the principles and practice of every Christian and moral duty[3].

The system of imprisonment as exists now originated in the first quarter of the 19th century. In the initial stages the prisons were used as a place for detention of the under trials and has undergone a radical change and the penology of the present day has become centered on imprisonment as a measure of rehabilitation of the criminals.

The American Prison System

Jails and houses of correction were established in the American colonies soon after settlement that had been brought over as a heritage from the mother country. The medieval period in the history of American colonies witnessed an era of brutal treatment with the offender. The life in prison was hard, unbearable and painful. This led to severe criticism and a public opinion was mobilised against the torturous treatment of prisoners in prison. This eventually led to the passing of the Penn's Charter of 1682[4]. The object of this charter was to extend a merciful treatment to the offenders by incorporating humanitarian principles under the prison administration. But this does not bring quick improvement to the condition of the prisoners.

The Quaker's[5] movement in 1775 led to the remodelling of the Philadelphian Prison on new pattern. In the walnut street jail in Philadelphia[6], the

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3 N.K.Chakrabarti (ed.), *Administration of Criminal Justice – The Correctional Services* (1997) Vol.2, p.2.

4 Penn's charter of 1682 contained provisions to put an end to brutal methods of punishment on humanitarian grounds and bring out reforms in prison administration. The charter interalia contained that (1) the practice of releasing prisoners on bail should be introduced (2) Compensation should be allowed to persons who were wrongfully imprisoned and this amount should be double the amount actually suffered by the victim of the offenders act. (3) Prisoners should be allowed the choice of their food and lodging to a certain extent. (4) 'Pillory' i.e., punishing the offender in public places should be abolished. – G.B.Vold, *Theoretical Criminology* (1958), p.89.

5 Quaker's were religious sect who condemned inhuman treatment to offenders on theological grounds.

prisoners were classified into two main classes, viz., (1) the incorrigible or the hardened criminals and (2) the corrigible or the ordinary criminals who were capable of reformation. The former were subjected to solitary confinement in cells without any labour while the later were lodged together in rooms and worked in shops during the day. The blocks of cells were erected in the yard of the prison for the complete segregation of the more hardened offenders. The block became known as the "penitentiary house" and was the first of its kind in America. It was the beginning of the prison system in America.

However, after a few years the walnut street prison steadily deteriorated and become a colossal failure mainly due to the overcrowding of prisons, laxity in discipline and abuse of power by governors[7]. This ultimately led to the development of new model prisons which were set up at Pennsylvania and Auburn

The Pennsylvania Prison System

The Pennsylvania prison provided for 250 prisoners, each of whom was entirely isolated from every other one. The prisoners were kept in separate cell which was large enough to provide room for work and had little open space attached to it for the purpose of exercise. The prisoners were kept completely secluded from one another and kept under strict supervision from the beginning of the sentence to the end. The only persons allowed access to him were the warden, the guard, the chaplain and representatives of social welfare organizations interested in the welfare and care of the prisoners and also with the reformation of the criminal[8].

Thus the system provided for solitary confinement with work within the cell itself. In each cell there was a Bible, the only reading matter permitted to the prisoner. No letters could be written to the man's family or to anyone outside. He

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6 The Walnut street jail was the first prison to be designated for post conviction purpose. The significance of this prison lies in the fact that it became the model of prisoners in the United States for the next 40 years. James T. Carcy, *An Introduction to Criminology* (1978), p.89.

7 N.V. Paranjape, *Criminology and Penology* (9th ed., 1997), p.246.

8 Sutherland and Cressey, *Principles of Criminology* (6th ed.,), p.449.

was absolutely shut away from the world and because of the disastrous results on mind and body by solitary confinement without work in the western penitentiary; labour in the cell was introduced. Thus arose the famous solitary or separate system which was believed to solve the problem of contamination of one prisoner by another. The major set back of this system was productive labour, over crowding and cruelty[9]. Consequently, this prison fell into disuse in the latter half of 19th century and finally gave way to the Auburn system.

The Auburn System

A new system of prison construction and management developed in the state prison of New York at Auburn in 1818-19 with a view to rectifying the mistakes of earlier system. By Act 1821, the prisons in Auburn were divided into three classes. The first class was composed of the most hardened criminals and most heinous offenders. They were to be confined to solitary cells night and day without work and thus allowed to think on their misdeeds. The second class composed of the less incorrigible, they were to spend part of their time in solitary confinement and another part in labour as a recreation. They were kept in cells three days a week. The third class composed of the most hopeful men in the prison, was to work together in the day time but was housed in separate cells at night[10].

A legislative commission which investigated the policy in 1824 recommended that solitary confinement to be abandoned at once and this recommendation was accepted. After this the Auburn authorities provided for work by the prisoners in association, but in silence during the day and solitary confinement during the night, but congregate work in shops during the day[11].

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9 *Ibid.*

10 J.P. Sirohi, *Criminology and Criminal Administration* (5th ed., 2003), p.124-125.

11 *Ibid.*

The essential elements of Auburn system[12] was (1) absolute non communication between prisoners (2) work in association in order to take advantage of industrial machinery and organization as in a factory in free society, (3) Hard work for punishment for health and for reformation, (4) isolation in individual cells when not at work, (5) enforcement of silence in association and diligence in work enforced by punishment.

The Auburn system was productive to a certain extent. To a fair degree the system also prevented contamination by the enforcement of the rule of silence in the workshops and by separate confinement in cells at night. But resting upon brute force it had very little reformatory effect on the inmates[13].

The Elmira Reformatory

The controversy between the Pennsylvania and Auburn methods was ended by the importation of a new system from Europe and Australia. This system was started in an organised manner in the Australian convict camps by Capt. Maconochee[14]. The system consisted of the indeterminate sentence, as a method of measuring good behaviour in prison and parole. The first institution based on these methods was Elmira Reformatory in New York created by law in 1869. It was opened only in 1876. The disciplinary system at Elmira was so severe. But it helped in the rehabilitation of prisoners and work in prison kept the inmates engaged during their stay in prisons. As a result, they were mentally and physically fit and alert to be able to be absorbed in the society as reformed and normal men after their release.

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12 F.Lewis Orlando, *The Development of American Prisons and Prison customs*, 1776-1845 (1967), p.36.

13 Prof. Gillin described the Auburn system as, "A system of discipline by repression and labour underfear"..See J.L.Gillian, *op.cit*, at p.349 See also David J. Rothman, *The Invention of the Penitentiary*, in Thimothy J. Flanagan, James W. Marquart, Kenneth G. Adams (ed), *Incarcerating Criminals. Prisons and Jails in social and organizational context* (1998), p. 15-23.

14 Capt. Maconochee's methods were imported in to Ireland and England and under the name of the Irish system it became known to and was discussed by American leaders shortly before the civil war. See John .v. Barry, "Pioneers in Criminology: XII, Alexander Maconochee (1787-1860)", (July-August 1956) 47, *Journal* of criminal Law and Criminology, p.145-161.

The beginning of the treatment programme in American persons was established at Illinois in the year 1933. The prison cells were very well ventilated and with adequate light. The condition of sanitation and health were also improved. Adequate facilities such as schooling, reading, taking exercise and recreation were also provided. The inmates could dine together in mess and could meet their relatives and friends on fixed days. The gap between the free life and the prison life was narrowed down to the maximum possible extent[15].

The English Prison System

In England, conditions of prisons were very pathetic. They were treated brutally and were also subjected to barbarous punishments. Lord John Howard[16] observed that prisons were damp and vermin infested, places full of filth, corruption, sex indulgences and all sorts of evil and also painful and torturous punishments.

The first penitentiary was established in England in 1776 with solitary cells so that the prisoners were kept in isolation and had ample opportunity to repent for their wrongful deeds. The prisoners were put to work during day hours so that the rigours of isolation was minimized and they remained fit in health.

The parliamentary Act of 1778 paved the way for prison reform in England. The policy was to extract work from the prisoners during day, keep them in solitary cells during night and to bring about a change in their attitudes thorough religious preachings so that they could be returned to normal life after their release from the prison.

Despite the penitentiary arrangement, the political upheavals in Europe during 17th and 18th century added to the problem of prison administration as a large number of war captives and political prisoners were to be accommodated in the prisons. Consequently, penal colonies were established where a large number of criminals could be migrated, by way of punishment. This followed the

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15 G.B. Vold, *op.cit*,at p.122.

16 John Howard, *State of Prisons in England and Wales* (1777)(4th ed.1973), See also K.S.Pillai, *Principles of criminology* (1924), p.610.

transportation of British prisoners to American Colonies and also later to Australian countries. When the penal transportation became more and more objectionable the penitentiary system became the main reliance of England for the treatment of her convicts.

In 1877, the local prisons of England and Wales were put under the control of Home Office and ultimately under the same board as that which had control of the convict prisons. The total prisons then became the resort to which Government turned for the punishment of those who were not sentenced to penal servitude.

The history of the English system shows that prisons have been put under three stages in its development. During the first period when the prisons of Great Britain were under the administration of Sir Edmund Du Cane (1878 – 1894) deterrence and retribution were held to be the proper objects of the system. Although the needs for combining penal and reformative elements were admitted in practice the place reserved for the re – education of prisoners was very small. Sentences had to be executed in such a way as to deter both actual and potential offenders from committing crimes. Individual treatment of offenders or of a group of offenders was ruled out as being against the principles of law and Justice Sir Edmund Du Cane, in his book, 'The punishment and prevention of crime', has described the working of the system under his administration that "the object of the penal element is more to deter others than for the effect on the individual subjected to punishment[17].

The first official attack on this principle was made by the Gladstone, committee which played a vital part in the development of the English prison system[18]. This report led to a far-reaching reorganisation of the prison system. At the regime of Evelyn Ruggles Brise (1895 –1922), it was recoganised that

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17 Edmund F Du Cane, *The Punishment and Prevention of crime* (1885), p.1-2.

18 Gladstone in his famous blue-book wrote that "prison treatment should have as its primary and concurrent objects, deterrence and reformation and should be effectively designed to maintain stimulate or awaken the higher susceptibilities of prisoners and whenever possible to turn them out of prison better men and women, both physically and morally, than when they came in". Report from the Departmental committee on prisons 1895, p.18.

prisons should exercise as a reformatory as well as a deterrent and retributory influence. This reformatory function was accepted as an important, but definitely a secondary feature of the prison system, as was made clear by the report of the commissioners of prisons for England and Wales[19].

The purpose of prison system was predominantly reformatory during the II stage. The chief aim of punishment was to educate delinquents and prepare them for re-entry into social life. Deterrence and retribution for actual and intimidation for potential offenders was held to be assured by a quick apprehension of the delinquent, infliction of an adequate punishment, and by curtailment of his liberty. It was further thought that a reformative prison system not only does not weaken the discipline in the penitentiary or makes conditions easier, but presents to the inmates the task which requires an intensive effort on his part and whose fulfillment he frequently finds painful and difficult.

The contemporary English prison is based on a clear ideological conception, a conception which differs fundamentally from that of Du Cane and of Ruggler Brise. The latter embodied an attempt to reconcile the conflicting functions of punishment. It embodied a new criminal policy and signifies in practice a definite break with the past. In the light of these new principles, the prison system is seen to be more than mere instrument for ensuring that sentences are carried out according to a body of administrative provisions.

The earlier method of classification of prisoners solely depended upon the legal and administrative criteria. A proper system of classification came into existence based on his degree of social danger and his susceptibility to reformative treatment. Certain groups of delinquents were placed in certain types of establishments and were subjected to an appropriate system of training. New

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[19] The Commission expressed that the official opinion of those responsible for prison administration that if the aim of the prison system is to be retributory, deterrent and reformatory, the object of punishment shall be altogether reformatory as little as possible deterrent and not at all retributory. Report of the Commissioners of prisons for England and Wales (1931), part I,p.22.

prison buildings, better adapted to modern sanitary and reformative requirements were installed.

Sir Lionel Fox[20] the great prison reformer of the present century, stressed on two main aspects of prison administration. Firstly, he suggested that the public should be kept fully informed about the work in prison service through annual Reports and granting prison visits to pressmen and other reputable persons interested in public work. Actuated by this objective he initiated a prison service Journal in 1960. Secondly, he emphasized that the administration should attempt to reconcile many different and often conflicting objectives.

The English system since 1895 had been based on the principles set out in the famous Gladstone Committee Report which lay down that deterrence and reformation were the primary and concurrent objectives of treatment in prisons. Thus, in prison it was the fact of imprisonment and not the severity of the regime that the deterrent is to be found[21]. These objectives were effectively incorporated in the prison rules made under the criminal justice Act 1948. The English Criminal Justice Act of 1982 envisaged a scheme of liberallised parole system to ease the pressure of prison population.

As and by way of educational work in the English prisons, there were evening classes, where voluntary teachers taught a number of useful, instructive and moralizing subjects. For good conduct and hard work, prisoners got remission of a portion of their original sentence; male convicts could get a quarter, and women convicts one-third. In convict prisons wage system was introduced.

In an English prison the staff consisted of "subordinate" officer. The 'governor' is the responsible head of the establishment. In the larger establishments he was assisted by one or more deputy governors. The duties of the chaplain in the majority of the prisons were performed by local clergymen.

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[20] Sir Lionel Fox held distinguished position and was associated with the prison administration in different capacities. He was the secretary of the prison commission from 1925 to 1934, and later on its chairman from 1934 to 1960.

[21] Lionel Fox, *Studies in Penology* (1964), p.187.

And there were medical officers. The matron was the lady officer, under the governor, being in charge of the women's wing of a mixed prison. In some prisons the matrons were known as lady superintendents. Persons who were formerly known as wardens were (after 1919) known as prison officers. And it had been accepted by the prison commissioner that though the ideals of prison administration and prison rules might be admirable, yet it was on the proper application of these rules by the prison officials who came into contact with the prisoners that the success of the prison system must depend. Hence the importance of care in the selection and training of prison officers should be given[22].

The Indian Prison System

In India the idea of imprisonment as a form of punishment had been in existence from very olden times[23]. People were sentenced to imprisonment and sent to crude forms of jails. They were kept in old forts with handcuffs, fetters and chains. Prisons of the Pre-Buddist times[24] were mostly dungeons and the prisoners were kept under chains and heavy loads. During Hindu as well as in Moghul period in India the punishments awarded to the criminals were deterrent in nature and included death penalty by hanging, mutilation, whipping, flogging, branding or starving to death. Particularly, during the reign of Moghul rulers in India the condition inside the prisons was awful and draconic. The Hindu prisoners were subjected to the most inhuman and cruel treatment. The inmates were kept under strict discipline in the prisons[25].

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22 The salient features of the present English Prison system may be stated as follows:- (1) The prisoners should be classified into different categories through group therapy method; (2) The inmates should be provided vocational training inside the prison for their physical, moral and mental upliftment; (3) Reformation of the prisoner should be sought within the community itself; (4) After the prisoner's release from the prison, his rehabilitation and socialization should be entrusted to aftercare institutions or voluntary social service organizations; and (5) Prisons should be minimum security institutions wherein basic rights of prisoners, should be duly recognized.

23 According to Brahaspati in 'Avarodhana' or restraint of liberty by means of imprisonment is a form of punishment. he laid greater stress on imprisoning the convicts into prisons. Prasanto Kumar Sen, *Penology old and New* (1943), p.127

24 J.M.J. Sethna, *Society and the Criminal* (5 ed., 1989), p.252.

25 See N.V. Paranjape, *op.cit,* at p.254.

The prisons in India were in a terrible condition when the East India Company took over some of the provinces of India. The East India Company however was also not so keen to invest money on prison imprisonment being a non-profit welfare programme[26].

Even in the 19th century, in India the prisons were places of torture and ill-health. In the jails which were in strong buildings, the discipline was too severe to be borne by the inmates. The in-sanitary condition of the prison life was responsible for cholera which swept away so much of the jail population. Some of the prison officials were corrupt. The prisoners were paid daily subsistence allowances. This allowance system however, was abused by the jailors who made the most out of the prisoners catering arrangements. There was in-sufficient numbers of warders. The prisoners were left without proper guidance. A tip to the warden meant that the prisoner could have articles which were prohibited under the jail rules. There was not even a separate ward for women prisoners[27].

The prison enquiry committee in 1836 was a landmark in the history of penal administration in India. The systems of work on public roads were terminated and immediate steps were taken to put a check on the corrupt practices of the prison authorities. The committee took a serious view of the lack of sanitary conditions of persons and ill-health of the inmates.

The Prison Enquiry Committee again suggested some more reforms in 1864 which were implemented by the year 1886. These included better arrangement for women inmates, relief to the prisoners from cholera and other infectious diseases and humanitarian treatment to criminals. In 1867, fixed diet scales and the system of remission of sentences were introduced[28].

The committee recommended for the classification of prisoners on the basis of crimes and advised the administration that a prisoner who was exempted

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[26] C.D.Macleane, *Manual of the Administration of India,* (vol 1, 1932), p.51.

[27] *Ibid.*

[28] R. H.Lowie, *Primitive Society* (1929), p.388.

from hard labour should not be made to work in prison. Thus a new classification was introduced for imprisonment, simple and rigorous imprisonment[29].

The policy of the Government during those days was to construct central jails only at places where military was stationed, so that if there was any disorder inside the jails, military could be called up to suppress the law-breakers. It was after the committee's recommendations that a chain of central prisons were constructed. In 1848, the first central prison was established at Agra. It was followed by Bareilly central Jail in 1848, Banaras, Meerut and Jabalpur central Jail came later into existence followed by the Lucknow central Jail and Fatehgarh central jail was the last to be constructed.

The recommendation made by the third jail committee of 1877 proved quite unproductive but the reports of the committee appointed in 1889 and 1892 led to the passing of the prisons Act of 1894. The penal policy as reflected through the Act continued to be far from reformative and contemporary as deterrence was the basis of the Act[30].

In 1919-20 another Indian Jails Committee was appointed under the chairmanship of Sir Alexander Cardiff. The recommendation of this committee has brought about the historical change in the outlook of Indian prisons. For the first time, the principle of reformation of the convict was accepted. The Indian prison Administration had failed till then to regard the prisoner as an individual; on the other hand, he was considered a unit in the jail administrative machinery. There were no humanizing and civilizing influences. No attention was paid to the possibility of moral or intellectual improvement[31]. The jail committee 1919-20 recommended that the maximum intake capacity of every jail should be fixed depending upon its shape and size and the number of inmates at no time should exceed this limit and also solitary confinement was abolished.

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29 Quoted in the Report of the Indian Jails Committee, 1919.

30 Vidhya Bhushan, *Prison Administration in India* (1970), p.20-21.

31 Report of the Indian Jails Committee, 1919, p.32.

After Montague – Chelmsford scheme of 1921, the prison department became a provincial subject, but it was not placed under a minister; it remained under the charge of an executive councillor. On the recommendation made by the committee the Government of India stopped sending prisoners to Andaman's for some time, which they again started in 1932 in the case of political prisoners and had to stop it again owing to the wide agitations in the country.

In 1935 the prison Administration came under the control of the Ministers owing to the abolition of diarchy in the provinces, and during the ministership of Mr. Rafi Ahamd Kidwai another jail expert committee (1937-39) was appointed consisting only of officers.

In 1938 the U.P. Government passed three Acts. The first Act was U.P. First Offenders Probation Act under which the offender could be released under certain conditions and on the basis of his conduct. It was also provided that the convicts below 24 years of age should be left under the supervision of a probation officer. The second act related to the release of those prisoners who had not been sentenced under any serious crime and who had under gone 1/3 of their sentence in jail. The third Act was the Borstal Act which provided for starting Borstal institutions for offenders below the age of 21 years.

In 1949, the practice of payment of wages to inmates for their work was initiated for the first time. It was first introduced in the state of Bombay and laid down that every prisoner should be paid, for his work in prison, at the current market rate so that he may not feel he was under paid. For his food and clothing in prison, Government could retain four fifth, the remaining one-fifth to be paid to the prisoner in cash. The prisoners were permitted to remit part of their wages to their families. The treatment of prisoner's psychological and psychiatric considerations began from this year, which eventually led to the establishment of several reformatories, women institutions and clinics. The establishment of model prison in Lucknow, U.P. in 1949 was a very important step towards progress.

Dr. W. C. Reckless, an expert of the U.N.O. on Crime Prevention and Treatment of Offenders, was invited in 1951 to make his recommendations on

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prison reforms. In 1957 a committee was appointed to prepare an All India Jail Manual on the basis of the suggestions made by Dr. Walter Reckless. An all India Conference of Inspector General of Prisons was also convened. Consequent of these efforts, some major policy guidelines regarding reformation and rehabilitation of prisoners were unanimously accepted[32].

The Travancore – Cochin Jail Reforms Committee 1953-54 headed by Justice R. Sankara Narayana Iyer made strong recommendations for improvements of living conditions in jails. The Government of India had appointed many committees for the modernisation of prisons such as M.M. Ismail Commission report 1976-77, All India Jail Reforms Committee (1980-83) with Justice A.N. Mulla as its Chairman; National Expert Committee on Women Prisoners headed by Justice V.R. Krishna Iyer, submitted its report in February 1988. In December 1993 a comprehensive report was submitted by Kerala Jail reforms Committee headed by A P. Udayabanu. Malimath committee report 2003. Unfortunately many of the recommendations made by these committees had not been implemented.

Objectives of Prison

According to Gillin, there are three objectives at which the prison aims. First, the prison must be made as nearly self-supporting as possible. This function is called the management. Prison management is thus concerned with the economic aspects of the prison life. The second object is reformation of the prisoners so that they may return to society as useful members instead of social menaces. This function of prison administration is called discipline. In actual practice, management and discipline must go hand in hand and each serves both purposes. The third purpose is to protect the society from the ravages of those who have in free life menaced their fellows. The prison must take every effort to

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[32] Following are the some of major guidelines accepted:- (1) The correctional services should form an integral part of the Home Department of each State and a Central Bureau of Correctional services should be established at the Centre; (2) The reformative methods of probation and parole should be used to lesson the burden of prisons; (3) Establishment of State After Care Organisation in every State; (4) Abolition of solitary confinement as a mode of punishment; (5) Classification of prisoners according to their needs in terms of personality; (6) Periodic revision of Jail Manuals in the states. Macleane, *op.cit,* at 150.

keep the inmates within its control. Both management and discipline are directed to this purpose[33].

In the Reports of the Commissioners of Prison for 1925-26[34], it was stated that, " prisons exist to protect society, and they can only give efficient protection in one of two ways, either (a) by removing the antisocial person from the community altogether or for a very long period, (b) or by brining about some change in him. Any general application of the first method would not be supported by public opinion. The prison administration must therefore do its utmost to apply the second, which is to say to restore the man who has been imprisoned to ordinary standards of citizenship so far as this can be done within the limits of his sentence. The objective of prison sentence must be to make the prisoner a better human being, who is more useful to the society. Achieving this objective is obviously a stupendous task since it involves the reconciliation of two apparently conflicting forces; on the one hand there is the compulsive element of detention with all the evil consequences in terms of the social relationships and of the individual personality of the offender. On the other hand there are the efforts of the society to reform him. This clearly is a contradictory situation to bring about. Correction and rehabilitation of offenders is a very difficult task. Measures of correction and rehabilitation of offenders will be different for different categories of offenders. Hardened criminals obviously do not have much likelihood of changing themselves. There may be, on the other extreme, convicts who might have committed even serious offences like murder in a highly exceptional situation and do not really need any reformation since they are not criminals in the true sense. Then there may be differences in response of criminals to reformation owing to the age, social background etc.

The basic requirement for efficient management of any institution is its manpower. The Prison Institutions are managed by 3 categories of personnel viz., Jail Cadre Staff, Correctional Staff and Medical Staff. The number of inmates per official is a real indicator of how well inmates are looked after in prisons.

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33 J. L. Gillin, *op.cit*,at p.428.

34 The Report of the Commissioners of Prisons 1925-26, p.17-38.

During the year 2003 the total number of prisoners in the jails of Kerala was 6464. The number of Jail officials was 1196. Number of inmates per Jail official was five. Number of correctional staff was five. Number of inmates per correctional staff was 1293. Number of Medical staff was 52. Number of inmates per medical staff was 124[35]. From all these jail officials, those who came in direct contact with the prisoners were very few. This may result in not providing proper attention to the prisoners.

Most jail personals recognize the fact that great majority of persons committed to their custody have some problems of a personal, social, or medical nature, that such problems vary according to the individual, and that the community and jail personnel should be doing far more to help to resolve the problems of prisoners, if the real and sensible objectives of the jail is to be accomplished. That objective is properly to confine, supervise, and help solve the problems that prisoners have, so that they are less likely to come into further conflict with the law after release. If these functions of custody and treatment are effectively performed, future crimes by current prisoners will be reduced. Thus, the community will be a better and safer place in which to live for the prisoner and the citizen in the community[36]. The treatment programme must help the jail inmates solve personal and social problems and must address the problem of both the sentenced prisoners as well as those who are in custody while going through the various phases of the judicial process still innocent in the eyes of the law but confronted by serious legal problems. The treatment activities are as varied as they are intense and they must meet the needs of the different types of inmates. The treatment programmes include the obvious ones of medical psychological, physical conditioning, counseling and guidance on a one to one relationship, therapy in groups or individual sessions for problem solving or

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[35] The total number of prisoners in all prisons in India is 326519. Number of jail official is 41950, number of inmates per jail official is 8. Number of correctional staff is 701; number of inmates per correctional staff is 466. Number of medical staff is 1523; number of inmates per medical staff is 214. Prison Statistics India 2003, p.130, National Crime Records Bureau, Ministry of Home Affaires.

[36] National sheriff's Association Manual on Jail Administration (Washington D, C. National Sheriff's Association Inc, (1970), P. 190. Quoted by Thomas. F. Adam's, *Introduction to the Administration of Justice, An over view of the justice system and its components* (1975), p. 187.

behaviour modification, educational programmes to enable the inmate to experience genuine success in some significant way, religious participation and an organised system of recreational activities. Occupational programmes should also be incorporated[37].

The treatment of prisoners should emphasize not their exclusion from the community, but their continued participation in it. The institution should utilize all the remedial, moral, spiritual and other forces and forms of assistance which are appropriate and available[38]. No law procedure or system of correction should deprive any offender of the hope and the possibility of his ultimate return to full responsible membership of the society.

Inmate Population and Overcrowding in Prison

An important aspect of prison administration is the number of prisoners that the authorities have to handle in the prisons. A major problem that is being faced in most of the Indian jails is overcrowding of prisons resulting in inadequate infrastructure facilities, insufficient number of prison staff and lack of essential services for the prison inmates.

Overcrowding contributes to a greater risk of disease, higher noise levels, which affect the health of the prisoners, and adversely affect the hygienic conditions, surveillance difficulties, which increase the danger level. This apart, life is more difficult for inmates and work is more onerous for staff when prisoners are in over capacity. In Chapter 9 of the 78th Report of the Law Commission of India on "congestion of under trial prisoners in jails" had made some recommendations. Acceptance of which would relieve congestion in jails[39].

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37 *Ibid.*

38 K.D.Gaur, *Human Rights of Detainees and Prisoners, Suggestion's for prison Reform* (2002), p.373.

39 These suggestions include liberalization of conditions of release on bail. Overcrowding may also be taken care of by taking recourse to alternatives to incarceration.

The occupancy in any jail changes daily due to the addition of new prisoners as well as due to the release of old ones. So there is no fixed number of prisoners. In every jail there is maximum available capacity. But from the data available (table I) we can see that the number of prisoners present in the jails far exceeds the available capacity.

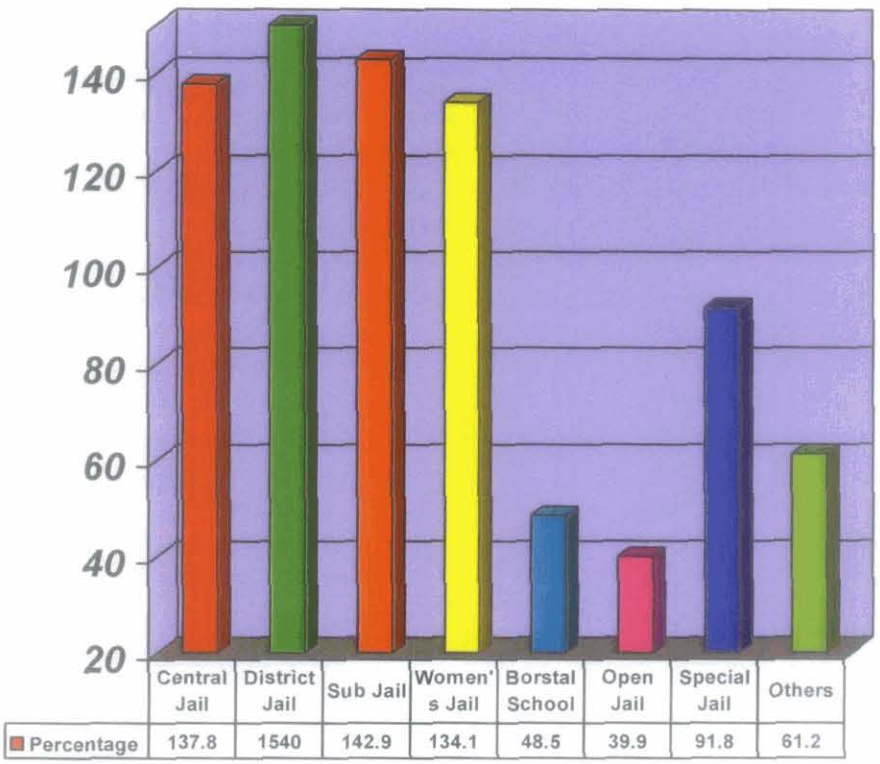
TABLE 1

Capacity and category wise distribution of Jail inmates at the end of 2003[40] in various jails in India

Type	Capacity	Convicts	Under trials	Sentences	Others	Total
Central Jail	1,07,484	67,345	71,803	2,030	6,896	1,48,074
District Jail	76,663	17,300	98,624	1,805	349	1,18,078
Sub Jail	34,851	2,792	42,236	54	4,733	49,815
Women's Jail	2,085	1,072	1,095	79	550	2,796
Borstal School	2,266	551	530	0	18	1099
Open Jail	4,353	1,736	0	0	0	1,736
Special Jail	4,406	754	2,708	40	541	4,043
Others	1,435	216	662	0	0	878
Total	2,33,543	91,766	2,17,658	4,008	13,087	3,26,519

[40] National Crime Records Bureau, *Prison Statistics India* (2003).

Occupancy Rate in various types of jails in the country during 2003 [41]
Chart 1



In the jails in India, the total capacity is 233,543 and the inmates present at the end of 2003 are 326,519. The prisons have 92,976 prisoners more than its capacity. In the central jail the total capacity is 107,484 and it holds 148,074 prisoners, which is 40,590 prisoners more than its capacity. The district jails have 41,415 prisoners more than its capacity. Sub jails have an excess of 14,964 prisoners. The number of under trials in the prisons far exceeds the convicts. 85% of the inmates in the sub jail were under trials. 84% of the prisoners in district jails were under trials. Even in central jail, almost half (49%) were under trials. This mainly contributes to the overcrowding of the prisons. This makes it difficult to administer correctional techniques for their reformation, only convicts are administered this. Under trials are merely kept in the prison. The occupancy rate for 2003 as seen from the Chart 1, the central jail, district jail,

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41 *Ibid.*

sub jail and women's jail have more number of inmates than its maximum available capacity.

In 2002[42], the total capacity is 229,874 and the total inmates present are 322,357, i.e., 92,483 prisoners more than its capacity. The Central Jail, which has a capacity of 105,449 prisoners hold 141,063 prisoners, an excess of 35,614 prisoners. The district jails have a capacity of 75,470, holds 120,252 prisoners, an excess of 44,782 prisoners. The sub jail, whose capacity is 34,700, holds 50,975, an excess of 16,275 prisoners.

TABLE 2

Occupancy rate in State/Union Territories[43]

No.	State/UT	2001	2002	2003
1.	Andra Pradesh	116.1	117.4	122.7
2	Arunachal Pradesh	-	-	-
3.	Assam	105.6	114.7	122.9
4.	Bihar	175.5	172.9	173.0
5.	Chattisgarh	212.8	221.2	188.8
6.	Goa	133.3	102.6	149.4
7.	Gujarat	164.7	86.1	185.7
8.	Haryana	203.8	205.0	178.3
9.	Himachal Pradesh	103.9	90.8	100.3
10.	Jammu & Kashmir	53.1	82.4	61.1
11.	Jharkhand	280.5	256.9	282.6
12.	Karnataka	106.0	113.3	118.6
13.	Kerala	91.8	88.5	110.3
14.	Madhya Pradesh	175.8	162.9	156.9
15.	Maharashtra	138.6	135.5	139.0
16.	Manipur	39.5	46.1	47.5
17.	Meghalaya	107.3	106.4	111.0
18.	Mizoram	85.1	87.1	83.4
19.	Nagaland	57.3	54.4	49.0
20.	Orissa	154.8	167.6	171.9
21.	Punjab	122.3	122.9	142.4
22.	Rajasthan	82.7	78.9	80.8
			(Table	Continued.....

[42] National Crime Records Bureau, *Prison Statistics India* (2002).

[43] National Crime Records Bureau, *Prison Statistics India* (2001, 2002, 2003).

23.	Sikkim	186.0	172.0	171.0
24.	Tamil Nadu	110.5	119.6	123.4
25.	Tripura	144.6	142.2	177.1
26.	Uttar Pradesh	158.0	154.3	147.7
27.	Uttaranchal	93.4	96.2	99.9
28.	West Bengal	62.8	95.3	82.8
29.	A&N Islands	142.4	123.0	110.0
30.	Chandigarh	42.6	45.6	52.5
31.	D&N Haveli	332.0	320.0	344.0
32.	Daman & Diu	34.2	27.5	27.5
33.	New Delhi	303.1	331.0	305.3
34.	Lakshdweep	5.0	100. 0	6.3
35.	Pondicherry	85.9	80.7	91.1
Total State		**134.3**	**137.7**	**137.4**
Total U.T.		**227.8**	**246.1**	**232.6**
Total all India		**136.5**	**140.2**	**139.8**

The occupancy rate[44] or percentage of inmates' population against the capacity provided has been calculated to determine the 'crowding of prisons'. As per the information in Table 2 we can see that in general the prisons are getting over crowded with each passing year. However the occupancy rate at all India level has slightly decreased from 140.2 to 139.8. Some major states and Union Territories have reported huge overcrowding in their prisons. D&N Haveli has reported the highest overcrowding of prisons (332, 320 and 344 respectively for the years 2002, 2002 and 2003). This is followed by Delhi (303.1, 331, and 305.3). Thus D&N Haveli and Delhi had inmates more than three times the capacity of prisons. In Jharkhand more than two times the capacity of its prisons. (280.5, 256.9 and 282.6).

From the table (3) below we can see that in Kerala during 1996 the prison is filled below its capacity. In 1997 it is almost 100% full. In 1998 the prison population exceeds its capacity. In 1999 the difference is more than 1200 and in 2000 it is more than 1500. In 2001 it is about 850 and in 2002 it is more than 1000. The actual number of prisoners the authorities have to deal with is very

[44] Occupancy rate = Inmate population/Total Capacity X 100

high than the number of prisoners remaining. It is actually the total prisoners present and that is a very exorbitant number considering the capacity of prisons.

TABLE 3

Capacity and Inmate population in the Jails of Kerala

Year	Available Capacity			Total Prisoners present in that year			Released prisoners			Remaining prisoners		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total
1996	5218	441	5659	39075	2103	41178	34105	1836	35941	4970	267	5237
1997	5218	441	5659	44066	2375	46441	38748	2038	40786	5318	337	5655
1998	5218	441	5659	55668	3977	59645	49992	3651	53643	5676	326	6002
1999	5218	441	5659	49685	2219	51904	42969	1859	44828	6716	360	7076
2000	5422	437	5859	47250	2350	49600	40437	1773	42210	6813	577	7390
2001	5422	437	5859	52371	2494	54865	46022	2112	48134	6349	382	6731
2002	5422	437	5859	63568	2849	66417	56999	2501	59500	6569	348	6917

From all these available data we can definitely say that our prisons are overcrowded. This may indirectly affect the increase in recidivism due to lack of correctional staff, correctional facilities and infrastructure needed for the reformation of prisoners.

Classification

Individualization of treatment of offenders means that the personality of each offender is to be assessed and prison programmes are designed to meet the individual requirements as far as possible. For that, it is of utmost importance that offenders are classified. A provision for a rational classification of prisoners is the most important factor of a correctional programme for making orderly diagnosis, treatment and planning on an individual basis[45].

It is necessary to classify prisoners on a scientific basis, by considering factors such as age, physical and mental health, and length of sentence, degree of criminality, requirements and possibilities of training. Like wise other factors such as prisoners criminal behaviour, social processing, sophistication in crime, possibilities of functioning as a contamination risk or discipline or escape risk, requirements of gradation in custody, education and vocational training needs, urban-rural backgrounds, possibilities of social readjustment, prospects after

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[45] Classification is a method by which the study of offender, diagnosis, treatment planning, execution of treatment programme and adjusting and changing the treatment according to requirements are coordinated in the individual case. It is also a method by which the treatment programme is kept adjusted to the inmates changing needs. Classification procedure should not end with initial diagnosis and planning of programme. It has to be a dynamic process functioning from the time of admission of the prisoner till his release. Model Prison Manual, (1970), p. 110.

release and rehabilitation needs are also to be considered[46]. Classification alone can provide an individualized treatment programme[47].

According to Kerala Prison Manual the purpose of classification programme comprise of (1) the study of the offender as an individual, to understand the sequence of his criminal behaviour and the problems presented by him; (2) to segregate prisoners into homogeneous groups for the purpose of treatment; (3) to organise individualized training and treatment programmes; (4) to co-ordinate and integrate all institutional activities and to develop a system of constructive institutional discipline; (5) to ensure maximum utilization of resources and facilities available in the institution (6) to review inmates response to institutional activities and treatment and to adjust the programme to suit his needs[48].

Prisoners sentenced to periods of imprisonment of one year and above are eligible for being classified for the purpose of study of the offender, diagnosis, treatment, planning, and execution of treatment programme etc. [49]. In each central prison and District Jail there is a classification committee headed by the superintendent[50].

According to section 291 of the Kerala Prison Manual, classification and reclassification work should be phased as (1) admission, quarantine, orientation (2) Study of the offender through interview, collection of social information, tests

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46 See *Ibid.*, at p.113. Report of the All India Jail Reforms Committee, 1980-83, p.112. it has provided the guidelines for the following factors: (a) Sex (b) age i.e.; whether the prisoner is child young offender, adult or old, (c) the kind of law, civil or criminal under which confined (d) stage of investigation and trial e.g. Whether remanded or under –trial prisoner, (e) nature or long terms of imprisonment, life imprisonment or death sentence (f) casual or habitual offender (g) disease or infirmity, criminal lunatic, lepers or T. B. Patient, (h) socio-economic status, i.e.,A, B or C class.

47 J. J. Panakal, *Classification in correctional Institutions* (Dec.1961) XXII (3) Indian Journal of Social Works, 259 at p.261.

48 Section 288 Kerala Prison Manual Vol. 1. 1981, p.103-104.

49 *Ibid.*,Section 289, p.104.

50 *Ibid.*,Section 290, p. 104. The Committee consists of the following personnel (a) Chairman – Superintendent (b) Vice-chairman – Jailor, (c) Members – Assistant Jailor, Medical officer,welfare officer, technical officer in charge of vocational training or senior most Forman among the various manufactory units, Psychologist/Psychiatrist (d) Member secretary – welfare Officer.

and examinations, and observation (3) Analysis of the collected material, compilation of various reports preparation of case file etc, (4) Planning of training and treatment, (5) Review of progress and reclassifications (6) Planning post-release rehabilitation programme in collaboration with the aftercare agencies (7) Pre release preparation (8) release procedure[51].

Security

As regards the classification of prisons, one way to do it is in terms, of their security. Prisons with maximum security lay emphasis on efficiency in terms of guard force and other measures taken for risk-free custody. They are used for dangerous and escape-prone convicts. On the other hand, selected prisoners on the basis of their trustworthiness are kept in minimum-security prisons. The methods to be used for reforming the hardened criminals as well as the moderate criminals are different. If they are put together giving different treatment will not be possible. In India also prisoners were classified according to the security risks of the offenders.

Age

Section 27(2) of the Prisons Act,[52] states that prisoners less than 21 years of age should not be confined with adult prisoners. The young inmates must be separated and freed from exploitation by adults[53]. During the study it was found that we also have the classification according to age. There are Juvenile homes,

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51 *Ibid.*,Section 293, p. 106, Classification Committee have the power to take decisions on the recommendations for inter-state transfer or to any other institutions, gradation in custody viz. maximum or medium or minimum security and the type of supervision and restriction required, place of work, his movement, activity, medical matters, individual problems, work, employment training, education, recreation etc.

52 Section 27 of the Prisoner's Act States: The requisitions of this Act with respect to separations of prisoners are as follows: - (2) in a prison where male prisoners under the age of 21 are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have not; (3) Unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners.

53 Supreme Court in Sunil Batra (ii) case, observed that it is inhuman and unreasonable to throw young boys to the sex starved adult prisoners or to run menial jobs for the affluvent or tough prisoners. *Sunil Batra* (ii) v.*Delhi Administration,* (1980), 3 SCC 488 at p.511.

Brostal schools and adult prisons. Offenders are sent to these institutions according to their age.

Mental Health

Model Prison manual also specify that a proper classification should be made on the basis of mental health of the prisoners. Punishment is intended to act on the mind of the person punished and to alter the direction in which his mind has been working so far. If the mind was not in substance a party to the conduct, then the question of changing the direction of mind cannot arise". This is most clearly the case with mentally disordered offenders. A considerable number of people in prison ought properly to be dealt with else where[54]. It is true that in some instances the mental disorder may have been exacerbated or even caused by the experience of imprisonment[55].

Level of Maturity

One of the newer classification systems, contributed by behavioural scientists categorizes offenders according to level of maturity. This system not only offers great promise in the treatment of offenders, but also contributes an important concept to the prevention of crime and delinquency[56].

A mature adult is aware of both others and himself. In a classification of maturity, maturity is conceived as the range of levels of awareness of others stretching between these two extremes of no awareness of others and complete awareness of both self and others[57].

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54 Prof. P. M. Bhaskhi," Limiting the Criminal Liability"(1994) 36 *JIL* 1, p.53.

55 Andrew Ashworth, *Sentencing and Penal Policy*, (1983), p.366. Successive deaths of as many as six non-criminal lunatics (NCL) over a period of just three months in the Guahati District Jail alone has cast a serious doubt of not separating the normal and insane persons in the prison. Guahati High Court has directed the Assam Government to file a report on the incidents. All the six have been reported to be non-criminal lunatics who should under normal circumstances have been lodged in a lunatic asylum or metal hospital. See Indian Express on Saturday, December 4th and 7th, 1993, p.9.

56 Alan R. Coffey, *The Prevention of Crime and Delinquency* (1975), p.28.

57 Building on the general concept of maturity, Dr. Margurite Warren developed as Interpersonal maturity level system which seeks to approach seeks (fn. cont...to next page)

Nature of Offence

On the basis of nature of offence, the inmates are divided into civil, criminal and security offender. On the basis of the frequency of the commission of crime, the inmates are classified as casuals and habitual[58]. Casual offenders are divided into star class and ordinary[59]. Habituals are sub classified into professional and non-professional. A casual prisoner is "one who is a first offender and who lapses into crime not because he has a criminal mentality, but on account of his surroundings, physical disability or mental deficiency ". Casual prisoner whose previous character was good, antecedents not criminal and whose crime does not indicate grave cruelty and moral turpitude or depravity of mind are classified into the 'star' sub-category. Other casual prisoners are placed in the 'general' sub category[60].

Non – professional habituals are those prisoners who lapse into crime owing to their surroundings or some physical or mental defect, and who are not first offenders. In the other sub- category are included all other habitual prisoners, for instance, those who are men with an object, sound in mind and mostly sound

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to relate the classification system to the treatment system that is to provide the basis for differential treatment. To isolate a particular level of maturity is also to suggest a particular type of treatment. It is this capacity of the I- level system to differentiate various types of offenders or potential offenders that offers considerable promise to the prevention of recidivism and crime. M. Q. Warren, *Correctional Treatment in the Community Setting: A report of current Research*, National Institute of Mental Health Department of Health Education and Welfare, Pub. No, (HSM) 72-9120 9Washington, D. C.:U.S. Government, Printing Office, (1972), p.1-5.

58 Section 280, Kerala Prison Manual, 1981, p.100. The classification of a convicted person as a habitual shall ordinarily be made by the convicting court, but if the convicting court omits to do so, such classification may be made by the District Magistrate in the absence of such an order by convicting court or the District Magistrate the Superintendent or the officer-in-charge of the prison where such convicts is confined shall address the court concerned to classify a prisoner as habitual furnishing the particulars of previous convictions. Section 280(4) every habitual criminal shall as far as possible be confined in a special prison in which no prisoner other than habitual criminals shall ordinarily be kept. Section 282, when not confined in habitual prison, habitual convicts shall as far as possible be separated from others. A separate barrack or ward shall be set apart for habitual convicts, and by these means, separation at meals, parades, etc. shall be generally effected.

59 *Ibid.*,Section 287, p.102 star class is selected by the superintendent (subject to the control of the inspector general of Prisons) on the ground that their previous character has been good, that their crimes do not indicate grave cruelty or gross moral turpitude, or depravity of mind.

60 Vidya Bhushan, *Prison Administration in India* (1970), p.68 and 69.

in body, often highly skilled who deliberately and with their eyes open prefer a life of crime and know the manoeuvre necessary for that life.

Separate Institution for Males and Females

The model prison manual[61] states that the institution for women offenders should be separated and detached from the institution for men offenders. Regarding the accommodation, the model prison manual specifies that women convicts sentenced up to one week may be put in annexes of Central or District Prisons or in enclosures of class I sub jails. If sentenced to more than one week and up to one month they may be put in annexes of Central or District prisons, but if sentenced to more than one month they shall be put in institutions meant for women offenders only. Kerala Prison Rules also state[62] that female prisoners should be classified and separated.

From the empirical study it was found that actually, the scientific principles of classification are not followed in many of our prisons. The under trial prisoners, prisoners sentenced to short, medium and long terms of imprisonment, prisoners sentenced to simple imprisonment, habitual offenders, lifer, hard and dangerous, women offenders, civil prisoners, prisoners sentenced under court martial, criminal and non-criminal lunatics, detenus under National Security Act, Smugglers etc; were all kept in the same institution and the arrangements for their segregation even in different wards were not effective. The most important reason for this is there is not enough space for them to be segregated and kept due to overcrowding.

Hence it is pertinent to refer to the segregation put forward by the All India Jail Reform Committee 1980-83[63].

1) Separate prisons or annexes for under trials.

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61 See model prison manual 1970, p.294.

62 Rule 818 of the Kerala Prison Rules, 1958 which reads as follows:- " Female Prisoners shall as far as possible, be classified and separated not only the unconvicted but also adolescent from other prisoners, habitual from non habituals and prostitutes, procuresses from respectable women". In Kerala there is a separate prison for women at Neyyattinkkara.

63 Report of the All India Jail Reforms Committee, 1980–83, p.110-111

2) Separate prisons or annexes for women.

3) Separate camps for prisoners courting arrests in connection with socio-economic movements and protests.

4) Separate institutions for young offenders which should be semi-open with medium security arrangements.

5) Separate prison yards and enclosures for non-habitual offenders.

6) Maximum security prisons for habitual offenders, professional and organised criminals, sophisticated criminals and criminal careerists.

7) Special security prisons for difficult discipline cases, escape risks and dangerous and violent prisoners

Prison Education

Education in prison is not about reeducation or careers, nor is it uniquely about vocational training. It is and must be an opportunity for the detainees to have access to the tools that will help them understand their life, and build their present and their future. These tools are reading, writing and non formal education. Education in prison is about individuals, their history, their situation and their environment. In these conditions, teaching and learning in prison require specific conditions, specific expertise and specific motivation[64].

Education and rehabilitation are directly connected. Better education leads to better earning capacity and school is regarded as the cure for all evils. It is education which channelises good thoughts, which initiates new habits and which reforms the character. In India due to mass illiteracy, most of the prisoners do not have even elementary education. Kerala is said to be totally literate, yet a large percentage of prisoners are illiterates. Only very few have passed the X^{th} standard or gone to the college[65].

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[64] The Dimensions of Education in prison. (International conference under the auspices of the Minister of Justice of Romania, Bucharest, 21-24 Sep. 2005) SY UNESCO Institute for education, CRED (Romanian center for Education and Human Development). WWW. Unesco.org/Education/UIC/Documentation/Education in Prison. 5-12-2005

[65] See table VIII, Educational Qualification of Prisoners, in Chapter III.

It appears, then, that the chances of a criminal turning away from crime can be increased if he receives some education while he is in prison. Further more, prison education can reduce disciplinary problems, show prisoners why they should co-operate with prison authorities, built up inmate's morale, train him to work in the institution, and increase his productivity while he is there. It helps him to lead a better life when he comes out of the prison and not going back to the crimnalistic way of life i.e.; not to become a recidivist. From all this we can see that education affects the behaviour pattern of a person.

The recidivists are also part of the society. When they come out of the prison they have to live within the society itself and mingle with other persons. So while they are in the prison they must be trained in order to make them good enough to come back to the society. For this, education is an important element for improving the personality of the inmates. It provides them an opportunity for reformation of their character, and behaviour. It equips them for better co-operation in society after release.

According to MacCormick, prison education should have the following components, so that individual needs of the prisoners may be fulfilled by some or any of them[66].

1) Fundamental academic education, designed to provide the intellectual tools needed in study and training and in his every day life.

2) Vocational education, designed to give training for an occupation.

3) Health education designed to teach the fundamentals of personal and community health.

4) Cultural education embracing the non-utilitarian fields which one enters for intellectual or aesthetic satisfaction alone.

5) Social education to which all other types of education and all the activities of the institution should contribute.

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[66] A.H.MacCormick, *The Education of Adult Prisoners*, p.34.156.

All India Jail Manual Committee also expressed the view that diversified education is the principal channel of correctional treatment[67]. Academic education gives a sense of achievement to the prisoner, which goes a long way in exercising the corrective influences. In the Indian prisons, a big handicap is the lack of adequate number of teachers. In the Central Prison Poojapura, having a total capacity of thousand prisoners, and holding 1,672 prisoners at the end of 2005 has only two primary teachers. In central prison Viyyur, having the total capacity 397 prisoners holding 518 prisoners at the end of 2005 has only one permanent primary teacher and three part time teachers. As mostly the teachers who were appointed to the prison were females and since they are not willing to serve in prison the post is vacant almost all the time. Only part time teachers are there. In Kannur central jail having the capacity of 1,457 prisoners and holding 1,580 prisoners at the end of the 2005 has only three teachers. How can these nine teachers teach about four thousand prisoners in different central jails in Kerala. There are no posts for teachers in open prison and women prison[68].

In the year 2003 out of 6,464 prisoners in the State of Kerala only 138 benefited from elementary education, 35 from adult education and six from higher education. There is only nine teachers' post for 6,464 prisoners. Mostly these posts are vacant. Posts of teachers are only in Central Jails, District and Sub Jails have no teachers. Looking on the all India statistics, out of 326,519 prisoners only 26,594 were given elementary education, 42,852 adult education and 1,627 higher education.

It is difficult to send prisoners outside prison for education due to security considerations. Routines and traditions in the prison contribute to preventing the inmates from participating in school programme. The transfer of prisoners between prisons can take place irrespective of the prisoners school programme. The transfer from one cellblock to another in prison may imply that the programme is discontinued. Long periods in pre-trial detention, cramped and

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[67] Report of All India Jail Manual Committee, 1954 –59, p.46.

[68] Data collected from the Central Jails, Open Prison and Women Prison.

partly unsuitable schoolrooms may impede the educational programme and the teachers find it very difficult to cooperate with the prison[69].

In Tihar jail where inmate population is 10509, only 498 people participate in educational programmes[70]. The Model Prison Manual[71] specifies that, education of illiterate adolescent and adult prisoners shall be compulsory. There may be wide variations in the interests and intelligence of the inmates. Hence it is necessary to adopt diverse educational programmes to suit their needs. It should help the inmate to become an effective member of the social group by elimination of complexes and development of willingness to adjust in society. More than that; it must help the prisoners to develop insight into the problems of criminality and its consequences. It also stated that the education has to be organised at three levels (1) for the beginners, (2) for the intermediates and (3) for the advanced.

A study of the Federal Bureau of Prisons found that "Recidivism rates were inversely related to educational programme participation in prison. The more educational programmes successfully completed for each six months confined, the lower the recidivism rate. For inmates successfully completing one or more courses per six months of their prison term, 35.5% recidivated compared to 44.1% of those who successfully completed any course during their prison term."[72]

In the year 2002, of the 82,121 convicts undergoing sentences in various jails in the country, 28,216 were illiterate and 38,183 were below X^{th} Class. These two categories accounted for 34.4% and 46.5% respectively which took together constituted 80.9% of total inmates. Of the 223,038 under-trials whose information on educational qualification is available, 88,844 were illiterate and 90,539 were below X^{th} Class. The two categories accounted for 39.8% and 40.6% respectively which took together constituted 80.4% of the total under-trial

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69 Torfinn Langelid, *School in Prison – Support to the Prisoners or the Prison System* (1986), p.7.

70 Portal. Unesco.org/education.28-03-2005

71 The Model Prison Manual (1970), p.134.

72 Bernad Loputo, *Prison Education, http:/adulted.about.com/cs/prison education/a prison-ed-2 htm.* 23-11-2005.

inmates. Among the 4,832 detenues, 2,126 were illiterate and 1,788 were below X^{th} Class. The two categories accounted for 44% and 37% respectively which took together constituted 81% of total detenues. Of the 12,366 unspecified prisoners, 6,140 were illiterate and 4,219 were below X^{th} Class. The two categories accounted for 49.6% and 34.1% respectively which took together constituted 83.7% of total of such inmates.

In the year 2003, of the 91,766 convicts kept in various jails in the country, the educational qualifications of 2,773 convicts from Karnataka are not available. Of the remaining 88,993 convicts undergoing sentences 31,425 were illiterate and 39,466 were educated below X^{th} Class. These two categories accounted for 35.3% and 44.3% respectively which together constituted 79.6% of total convicts. Of the 209,683 under-trial prisoners whose information on educational qualification is available, 82,789 were illiterate and 79,059 were educated below X^{th} Class. These two categories accounted for 39.5% and 37.7% respectively which took together constituted 77.2% of the total under-trial inmates. Among the 3,875 detenues, 1,123 were illiterate and 1,327 were educated below X^{th} Class. These two categories accounted for 29% and 34.2% respectively which took together constituted 63.2% of total detenues. Of the 13,066 unspecified prisoners, 3,341 are illiterate and 5,592 are educated below X^{th} Class. These two categories accounted for 25.6% and 45.9% respectively which took together constituted 71.5% of total inmates.

In 2002, among the 1,711 convicts, 214 were illiterates, 1,217 below X^{th} Class, 242 above X^{th} and below graduate, 20 graduates, 12 post graduates, 6 holding technical degree or diploma. 71.1% were below X^{th} Class and 12.5% were illiterates, which taken together accounted for 83.6% of the convicts. In 2003, among the total 2,192 convicts, 313 were illiterate, 1,483 below X^{th} Class, 300 above X^{th} and below graduate, 32 graduates, 30 post graduates, 34 holding technical degree or diploma. 14.3% were illiterates and 67.7% were below X^{th} Class, which taken together accounted for 82%.

As the educational qualifications of the recidivists are very low[73], it is important that they should be taught in the prisons so that they will be equipped when they are released to face the world as a normal person and not become a recidivist.

Vocational Education

Vocational education prepares inmates for employment with job skills training, to increase productivity while working in prison jobs and in employment in the community upon release, by increasing their sense of accomplishment and ability. These training programmes provide opportunities for the prison inmates to engage themselves in fruitful pursuits during the term of their sentence in jails, and also it helps them to inculcate value for one's work. Many prisoners have a poor employment history and have limited vocational skills. This is acknowledged as contributing to the risk of recidivism.

Importance should be given to vocational education, to the sort of which the convict would be exposed to after completing the sentence[74]. There is not much use for the degree or post graduate degree to the prisoners as they will not be in a position to get any white color jobs as ex-prisoners. They can aspire mainly for self employment. For that, vocational education will help them. Some type of job training should be imparted to them, which will help them when they come out of the prison to lead a decent life. In India, out of 322,357 inmates in

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[73] See table VIII, Educational Qualification of Prisoners. Chapter III.

[74] The Indian Jails Committee 1919 –20, recommended educational facilities for the inmates, especially for those who are below 25 years of age. The Jail Expert Committee of 1935 recommended that all prisoners below the age of 45 to be taught. The All India Jail Manual Committee 1957-59 also looked into the educational programmes run by the Jails in the country and urged for a diversified programme of education for inmates. The working group appointed in 1972 recommended the treatment services in prison should include diversified education, vocational training, correctional social work etc.

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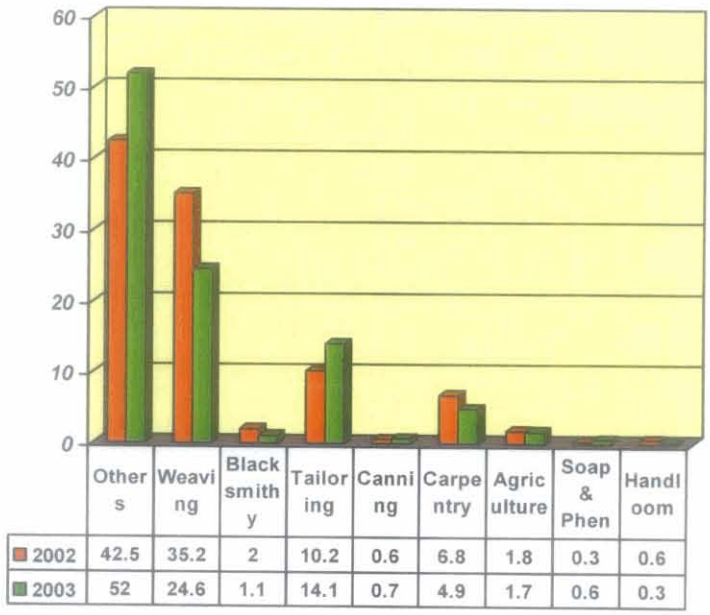
2002 only 50,586 were given any vocational education[75]. In 2003, out of 326,519 prisoners 40,403 were given vocational training[76].

TABLE 4

Vocational education imparted to prisoners

	Weaving	Industrial	Tailoring	Carpentry	Black smithy	Agricultural	Computer	No Training	Total
Total Prisoners	18	2	14	3	1	28	1	83	150
percentage	12	1.3	9.3	2	.7	18.7	0.6	55.4	100
No. Recidivists	3	-	4	-	-	17	-	81	105
percentage	2.9	-	3.8	-	-	16.2	-	77.1	100

Chart 2



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75 See Prison Statistics India, 2002.

76 See Prison Statistics India, 2003.

Out of the total prisoners 9.3% said that they were taught tailoring, 12% weaving, 1.3% industrial training, 2% carpentry, 0.07% black smithy, 18.7% agriculture training 0.6%, computer education but unfortunately 55.4% said that they were not provided with any type of vocational education.

In the case of recidivists also majority of recidivists i.e.; 77.1% said that they have not been provided with any vocational training only 22.9% got some type of vocational training of that 16.2% were given agricultural training. From this we can see that no effective vocational education is being imparted to the recidivists. If this had been effectively done then the occurrence of recidivism could be checked to a large extent.

In order to impart vocational training there should be adequate properly trained instructors. There are only three posts of weaving instructors one in central prison Thiruvanathapuram, one in central prison Viyyur and the other in central prison Kannur. Like wise there are only three posts of carpentry instructors. There is only one black smithy instructor. He is posted in central prison Thiruvanathapuram. Two industrial instructor's one in central prison Thiruvanathapuram, and the other at Kannur. Five tailoring instructors, two at Thiruvanathapuram, one at Viyyur, one at Kannur and one at Women's Prison. With these very few instructors how can this over flooded prison population be vocationally educated?

Religious and Moral Education

Religious education reforms the conscience and inculcates moral attitudes among inmates. The time in the correctional house was to supply a moral rearmament. This especially takes place through religious activities, moral preaching.

The recognition of the importance of religious education in the American prisons is reflected in one of the principles of the American Correctional Association's "Declaration of principles" which says: "Religion represents a rich resource in the moral and spiritual regeneration of mankind. Especially trained Chaplin's religious instruction and counselling together with adequate facilities for

group worship of the inmates own choice are essential elements in the programme of a correctional association[77].

Researchers[78] say that prisoners who come under religious influence while they are behind the walls do better once they are back on the outside and in society than those who lack the religious influence. It was found that prisoners who received religious instruction while in prison had a lower rate of recidivism after being freed than did those who had no such instruction. The religion trained ones had a 11% point lower recidivism rate than the control group. 40% of the religion schooled group committed new offences, while 51% of the others committed new offence. The recidivism rate for women who took religious training was even lower, only 19% compared to 47% among the control group of women.

In India, rules in the jail manuals recognise the significance of religion and religious instruction for the reformation of prisoners. Prisoners of all the communities are offered facilities for their religious observances. Honorary teachers in religion and morality are invited to give lectures to the inmates and inmates are allowed to read religious scriptures. Important festivals are celebrated and the significance is explained to them.

While thinking about ways to reduce recidivism the court emphasized on the Transcendental Meditation as one of the reformative exercises to be given to the prisoners[79]. Religious programming for inmates is being applauded by some as the latest answer to recidivism. Policy makers and correctional officials alike are among the supporters of these programmes that go well beyond conventional prison ministry. The emphasis in promoting the expansion of religion based

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77 Declaration of Principle of the American Correctional Association , *http://www.allbusiness.com/public-adsministration/justice-public-order/1046312-1html* 28-7-2005

78 George Cornnel, *Rehabilitation Statistics: Study on Effectiveness of Prison Ministeries* (1990). *http://www.prisonministry.org/cgi-bin/zoomsearch/search.cgi? zoom.* 28-7-2005.

79 *Hiralal v. State of Bihar,* AIR 1977 SC 2236 at p.2244.

programmes indeed lies in the claim that faith in a higher power prevents relapse into criminal activity better than secular strategies[80].

The path of crime is opposed to the path of religion. If a man strictly adheres to the path of the religion, he cannot commit crime. One of the best ways to correct the criminals is to lead him gradually towards the path of religion. This has been explained by Lord Krishna in the Bhagavath Gita[81]. In Tihar jail Vipassana Meditation[82], Art of Living by Sri. Sri. Ravisankar etc has been put in to practice. Art of Living is introduced in many jails in Karnataka and Kerala. The religious, dedicated and honest life of the sages, saints and Bhaktas undoubtedly inspires even the hard-core criminals. They will have to be considered with sympathy to solve their problems. A man can live in this world by strictly adhering to the path of Honesty. A hard-core criminal shall have to be convinced that "you can live and lead an honest life, if you live by avoiding the path of crime"[83]. Thus exclusive devotion to god is the best way of correction of a criminal. His criminal qualities gradually disappear due to this devotion to the Almighty. All the three qualities, the Tamo Guna and the Rajo Guna gradually disappear and at last he becomes stayed in the Sattva Guna which is the best quality. In the stage of

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80 Whether this claim can be consistently validated remains unclear. Moreover, the sustained focus on religious utility in preventing future criminal conduct diminishes religions immediate value to the inmate during the term of incarceration. Todd R. Clear, Patricia L Hardy Man, Bruce Stout, Karol Lucken, Hary R Dammer, The value of Religion in Prison: An Inmate Perspective. (2000) Vol.16 No.1 *Journel of Contemporary Criminal Justice,* p.53.

81 Lord Krishna in the Bhagawad Gita 4th chapter said that "Api cedasi papebhyah sarvebhayah papa krllamah sarvam jnanaplavenaiva vrjinam samtarisyasi" (4/36). Stated that even if thou are the most sinful of all sinners, thou shalt undoubtedly cross, all sins by the boat of knowledge (wisdom) alone: (1) The sinful, (2) the more sinful, (3) the most sinful. Here the lord uses the superlative degree to emphasis the fact that even the most sinful of all sinners can cross the ocean of sin by the boat of the knowledge of the self. The lord assures the strives that not to talk of the strivers who are engaged in spiritual practice, having renounced sins, even those who have committed innumerable sins, need not lose heart as far as attainment of salvation is concerned".

82 Vipassana Meditation is believed to be a technique that facilitates deeper psychological introspection and to bring about lasting behavioural changes. It is a genuine Methodology for mind control and purification. It helps the inmates introspect and examine themselves and possibly understand the purpose of life better.

83 D.P.Das, "Religion Crime and Correction", in N.K.Chakrabarti (ed.), *Administration of Criminal Justice: The Correctional Service: Perception and Practice* (1997), Vol.1, p.107.

Sattva Guna his criminal propensities almost disappear and he becomes almost a sage[84].

Complete surrender to god, always thinking about Him, reading religious books, hearing religious songs, attending religious lectures and mixing with religious minded persons can be the best way of corrections for a criminal. We can see from our Puranas that a dangerous hard core criminal like 'Ratnakar Dasyu' was converted to a sage like 'Valmiki' by chanting Ram Nam for long years. So it is possible for a criminal to be converted at least to a normal man of the community if he has strong will power and determination to become a good man. Thus correction through religious practice will be very much helpful in our society, which has a long heritage of religious preaching and practices. When enquired about this to the prison officials it was found that most of the prisoners utilize the facility available in the prison as they have plenty of time left in their hand and pray without fear of being disturbed by any one. From their experience they said that if a prisoner has found peace in moral and religious ways there is a good chance that he will lead a good life when he comes out of the prison.

Prison Labour

One way of improving the conditions of prisoners will be by introducing work culture in prisons. Simple imprisonment leaves the prisoner idle, with leisure for idle thoughts. Work will provide necessary therapy against this. The prisoner can earn wages, develop work habits, gain experience in trades and acquire skills. This will ease boredom. That apart, the vast human resources can be turned productive.

John Lewis Gillin[85] refers to that the work culture can change prison life. The purpose of prison labour are (a) to make the prisoners disciplined and to help them to have self-discipline (b) to make the prisoners self sufficient and to

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84 *Ibid.*

85 The purpose of labour in prison are for (1) The alleviation of the tedium of prison life. (2) repression of crime (3) the production of economic commodities to decrease the cost of support (4) reformation (5) prison discipline. See J. L. Gillin, *op.cit*, at p.399.

preserve their physical and mental health (c) to prepare the prisoners for return to society as individuals having specialized training for livelihood and finally (d) to give a punitive value for punishment.

In 1956, the Norwegian Prison Reform Commission which prepared the Norwegian Prison Act of 1956 had the following to say about work. "Maximum effort should be made to make the work programme of the institution resemble work conditions on the outside, and work should take place under conditions and in surroundings which stimulate work habits and work interests". When choosing type of work for the inmate, his wishes and interest as well as his abilities and skills must be taken into consideration. When deciding work placement one must also take into account the individual's particular possibilities to find a job after release. For young inmates and for inmates with long sentences a more or less systematic work training programme should be carried out as far as possible[86].

In 1836 the Jail Enquiry Committee of which Lord Macaulay was a member, reported that prison labour will help the prisoner to acquire gainful skills. The 1919 Committee recommended machinery to be installed in jails and whatever work is taken out of the prisoners in jail the underlying idea always should be to reform them. So from that time onwards the idea of prison labour and reformation was interconnected.

Exhaustive provisions are made in chapter XXII of the Kerala Prison Rules 1958 concerning convict labour. Rule 377 envisages three main classes of labour, hard, medium and light and the scale of tasks is arranged according to these classes.

The stand taken by the Government in case of compelling prisoners sentenced for simple imprisonment is that, 'work is given only on the basis of their written request and subject to the physical fitness certified by the medical officer. Evidently therefore, the stand taken is that they are voluntarily rendering their services which they have no obligation to render. It is further stated that the prisoners sentenced to rigorous imprisonment are generally put to labour. It is

[86] Thomas Mathiesen, *Prison on Trial* (1990), p.26.

said that they are so put to labour in the jails subject to the terms of rigorous imprisonment defined by the penal laws, for serving the purpose of inculcating a sense of reliance. It is also said that this is intended to give them proper orientation and training in different kinds of trades and industries'[87].

Even though international covenants and conventions condemn forced labour as violation of human rights, they make an exception in respect of prison labour[88]. The First U.N. Congress[89] recommended that the work should be a 'means of furthering the rehabilitation of the prisoner, his training for work and the forming of better work habits'. The XII[th] International Penal and Penitentiary Conference held at Hague in 1950 suggested 'work as a best alternative to channelize the energies of prisoners in a rightful way and for useful purpose'. Keeping the inmates engaged in productive work would be helpful for their physical and mental fitness. It would also infuse self-confidence among the prisoners and they can think of going back to the society as normal men.

To hold employable offenders in correctional institutions, with out the opportunity to engage in productive work, is to violate the concept of the essential

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87 *In the matter of prison reforms Enhancement of wages of prisoners,* 1983 K. L. T. 512 at 516 Subrahmanian potti Ag. C. J. and Chandrasekhara Menon, J.

88 Article 8(3) (a) and (b) of the international Convent on civil and political rights provides "3(a) No one shall be required to perform forced or compulsory labour; (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of sentence to such imprisonment by a competent court."

Article 4(2) of the European convention on Human Rights provides: No one shall be required to perform forced or compulsory labour.

Clause 3(a) of article 4 makes the following exception:-

"for the purpose of this article the term forced or compulsory labour shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of article 5 of this convention or during conditional release from such detention."

Article 5 of the Convention referred to above covers the case of a lawful detention of a person after conviction by a competent court. For the text of the convent and Convention, see, H. F. Van Panhuys, L. J. Brinkhost and H.H. Maas (ed), *International Organisation and Integration* (1968), p.258 and 929.

89 United Nations Resolution and Recommendations adopted by the First United Nations Congress on the Prevention of Crime and The Treatment of Offenders (August 29, 1955), p.70.

objectives of rehabilitation. The greatest advantage of putting the inmates to work, as envisaged under the penitentiary programme is that the wages earned by the prisoners can be utilized for supporting their family and dependents. In this way the inmates can help to support their family from inside the prison itself. Thus it would save the entire family of the prisoner from being ruined. In short, work would be beneficial to the inmates and at the same remuneration to the state.

Chettur Sankaran Nair, J. observed [90] that prisoners should be employed in conventional industries like hand weaving, tailoring, carpentry, smithy etc. There are several skilled persons like painters, artisans, carpenters etc. coming to prisons. They can be profitably employed, generating the economic wealth. Vegetable gardens, dairies, etc should be developed. Binding of textbooks, making of file boards and tags and similar activities can be entrusted with prisoners. Saving can be effected by Government and possible kick back can be avoided.

The Jail Committee of 1980-83 has made recommendations that the State shall endeavour to develop vocational training and work programme in prisons for all inmates eligible for work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation[91].

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90 *In. Re A prisoner* ,1993 (2) KLT 10 at 16.

91 The philosophy of reformation and rehabilitation of prisoners through work training has found support from the Supreme Court in, *Dharambir v. State of U. P.,* (1979) 3 SCC645, they reiterated its support to the work training progress in the following words: - "We are told that the two prisoners are agriculturists by profession. It is better, therefore that they are put to use as agriculturists whether within or without the prison campus.

Being young they should also be trained in any other useful craft, if they have aptitude, therefore, so that when eventually they emerge from the prison walls, they may become sensitive citizens and that when prisoners are made to work as these two ought be under our directions, a small amount by way of wages could be paid and should be paid so that the healing effect on their minds is fully felt. Moreover, proper utilization of services of prisoners in some meaningful employment, whether as cultivates or as craftsman or even in creative labour will be good from the societies angle as it reduces the burden on the public exchequer and the tension within".

The work group[92] recommended that the prisons should have facilities for work programmes aimed at equipping the offenders for return to society with skills to help in their socio-economic rehabilitation. The interests of prisoners and of vocational training should not be subordinated to consideration of financial gain from prison agriculture and industry.

Some times, prisoners are given work which they do not like and which may be to them a mechanical punishment as long as detention lasts, and of no use after release. Labour must be of an interesting type which helps the self-expression of the worker. Each prisoner should be, by a proper individualization and thorough determination of the value of the work (after release), assigned suitable work. There must be some intelligent method for individualization of labour, according to the needs and the interest of the prisoner and according to his character and aptitude.

Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. 'Hard labour' in section 53 of the Prisons Act has to receive a humane meaning. So a vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs violates the law's mandate. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs[93].

If prison labour is to serve its true purpose it is necessary that the allocation of work to prisoners should be on the basis of their aptitude and also taking into consideration of the possibilities of his pursuing[94] that work outside, to earn a livelihood, when released. Majority of the prisoners said that, with the work they were engaged there was no scope of earning a livelihood. Some of the offenders who were engaged in weaving said that they came from an area where there was no scope for earning their livelihood by weaving. So the time he

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92 Working group on prison appointed by Government of India in 1972 to examine measures for streaming and improving the jail administration and conditions of living in the prison.

93 *Sunil Batra (II) v. Delhi Administration*, (1980) 5 S.C.C. 488 at 511 (Krishna Iyer, J.)

94 N. S. Chandrasekharan, "Prison Labour – Reformative and Rehabilitative Aspects", (1981) *C.U.L.R.* 167.

spends on this work in prison may be of no use when he goes out. Moreover he cannot start a weaving industry on his own, for it requires huge capital which will be outside his capacity.

From the study conducted it has been found that there is a feeling among the prisoners that only the influential will get good work. It is likely to have a demoralizing effect on the prisoners. The allotment of work should be made transparent in order to avoid this feeling among the prisoners or else it will have a detrimental effect on the prisoners instead of reforming him.

A prisoner worker will be initially engaged in class II category for a period of six months. The superintendent of prison on assessment of the performance of the prisoner will engage him in class I after six months. Prisoners newly engaged will be trained for categories of skilled workers for a period of three months in book binding, carpentry, tailoring, smithy, leather work, weaving, rubber tapping, printing[95] etc.

TABLE 5

TYPE OF WORK ASSIGNED TO RECIDIDVISTS

Work	Menial duties	Engaged in useful work	Total
Numbers	81	23	104
percentage	77.9	22.1	100

During the study it was found that most of the prisoners (77.9 %) were allocated work of menial category such as sweeping, cleaning, watering plants, kitchen work etc. Only 22.1% were given useful work.

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[95] As per G.O. (Ms.) No. 77/2000/ Home dt. 3-4-2000.

Since most of the prisoners have committed offences due to poverty[96] it will be very helpful to prevent recidivism to train the prisoners in any skill for self-employment. In our prisons steps are not taken to train the prisoners even if the machineries are available. Trained teachers are not made available to the prison. Over crowding of the prison makes it impossible to train all the prisoners in useful crafts to make them self reliant when they go out of the prison. Idleness is an inlet to disorder and makes way for licentiousness. People who have nothing to do are quickly tired of their own company. Like an idle brain is the devil's workshop.

Wages

Wages are provided to the prisoners with a view to offering incentive and stimulus for effort, work, industry and creativeness, make prison work purposive meaningful and remunerative, to develop a sense of self-responsibility and self-respect amongst the inmates and their family; to enable prisoners to purchase their sundry daily extra requirements and to help the inmates to save for their post release rehabilitation and also for extending economic help to their families.

The Supreme Court in Gujarat Case[97] decided that imposition of hard labour on the prisoners under going rigorous imprisonment is constitutional under Article 23 of the Constitution. Court also held that the prisoners are entitled to receive 'equitable wages'. It is permissible for a state to deduct a reasonable amount to be fixed by taking into account the average amount spend by the government per prisoner for providing food, cloths and other amenities to him, from the minimum wages.

There is a wide disparity between the wages paid outside the prison and the wages paid inside the prison for the same work[98]. This seems to be unsatisfactory and in as much as the present system of assessment may take

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96 See table Table X of chapter 3.

97 *State of Gujarat v. Hon'ble High Court of Gujarat,* AIR 1988 SC 3164.

98 For a skilled carpenter the daily wages given inside the prison is Rs. 19 for ordinary task and Rs. 23 for extra task. At the same time a Carpenter outside will get about 250 to 300 rupees.

away the incentive of the prisoner to be more productive. More over the present system of assessment borders on sheer exploitation of labour.

In this context the observation of Prof. Sethna is quite pertinent. "The prisoner should be paid such adequate wages as would enable him to pay for his meals and to buy and pay for some articles in prison and to remit some money for the benefit of his dependents at home. If inadequate wages are paid, that would affect the sense of self-respect of the prisoner. He should feel that his labour is not that of a slave or a condemned man, and there is as much nobility in his work as that of a free man"[99].

Prisoners can be usefully employed and their earnings can support not only their families, but the families of the victims of their crimes. The Kerala Jail Rules, 1985 makes provision for payment of wages to prisoners, who work. The payment ranges from Rs.9/- to Rs.23/-[100]. That will not offer any motivation either to work or to feel the dignity of work. Of course, prisoners cannot expect the same wages as those outside. But reasonable wages after meeting the supporting costs or what is known as the 'user fee' must be paid. This will induce prisoners to work and part of the earnings could be ear-marked for the victims, or a fund for victim compensation that the state may maintain[101].

According to the Supreme Court[102] Judgment prisoners should be paid equitable wages for the work done by them and in order to determine the quantum of equitable wages payable to prisoners the State Government concerned shall constitute as early as possible a wage fixation body for making recommendations. Every prisoner must be paid wages for the work done by him

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99 J.M.J.Sethna, *Society and the Criminal* (1980), p.292.

100 The wage for ordinary task for weaving, coin making Khadi spinning tailoring, book binding, carpentry unskilled is Rs. 13/- and for extra task is Rs. 19/-. For skilled carpenter is Rs. 19/- for ordinary task and Rs. 23/- for a extra task. For untasked labour for sweeping, gardening paddy growing, maintenance of building road for class III prisoners is Rs. 9/- for class II is 13/- for class I is Rs. 18/-. For class store attenders, cattle keeping skilled work is Rs. 23/- for class II is 13. see GO(Ms) No. 77/2000/Home dt 3-4-2000.

101 In *Re A Prisoner*, 1993 (2) KLT. 10 at 16.

102 Crl. A. No. 308/86. on 24-9-98.

at the rates fixed by Govt. Accordingly orders were issued by the State of Kerala enhancing the wages of prisoners by 50%[103] as an interim arrangement until recommendation of wage fixation board is made by the Government[104]. They made the decision and it was accepted by the Government committee and recommended equitable wages to the prisoners. The recommended rates including the maintenance cost which comes to rupees 40/= and above[105].

According to the prison authorities low wages keep the inmates out of mischief and develop habits of industry and obedience. They also maintain that the State is providing food, shelter and cloths to the inmates and is also paying permissible wages whereas majority of ordinary families, in spite of hard work, are unable to meet these bare necessities of life. The inmates of the prison are according to them, comparatively in a better situation than ordinary families.

The principle of full pay for prison work is gradually gaining ground in the west. The Board of Trustees of the National Council on Crime and Delinquency urged the introduction of 'Federal and State Legislation requiring that an inmate employed at productive work in a federal, state or local institution shall be paid no less than the minimum wage operative nationally or in his state[106].

Rule 384 of Kerala Prison Rules 1958 deals with utilization of wages. That Rule envisages utilization of one-third of wages earned by a convict for his personal needs in jail. One-third could be sent to the family for its needs and the remaining one-third is to be reserved for being paid to the prisoner on his release. One-third to be utilized by the prisoner in jails is given to the prisoner in the form of coupons for making purchase from the jail canteen. He could even purchase remission from the wages so paid to him.

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103 G.O. (Ms.) No. 358/98/Home dt 27-11-98.

104 G.O. (Ms.) No. 357/98/Home dt 27-11-98.

105 G.O. (Ms.) No. 77/98/Home dt 3-4-2000.

106 Benedict S.Alpher, *Prisons Inside –out Alternatives in correctional Reform* (1974), p.82.

Payment of reasonable wages to a prisoner would enable him to have sufficient funds to meet the minimum personal requirements in jail. Payment of very nominal wages in the prison at the same time giving permission to spend money from outside in the canteen builds discontentment. Those who get financial assistance from their family are at an advantageous position compared to those whose economic position is low. It may help the prisoner in providing his dependents, may be an old mother, an invalid father or orphaned children with the minimum to keep them, not in comfort, but out of hunger. That may go a long way to remedy an evil which is necessarily attendant upon imprisonment. Quite often it is not merely the criminal who is punished, of course, he under goes the sentence. But the people who solely depend upon him such as old parents who may be unable to make a living for themselves. The wife and children of the prisoner may have no means to answer their primary needs. In these circumstances the dependents are severely punished, in fact more than the criminal himself. That would be quite unfair. No civilized law can conceive of imposing a punishment, the impact of which is on the innocent dependents. To some extent, this unfairness and injustice envisaged in our present penological approach could be mitigated by making a provision for minimum sentence for dependents which would be the case if one-third or even one-half of the reasonable wages is passed on to them. Though that by itself may not be sufficient to maintain them that will go a long way to keep them from utter starvation and misery.

The Kerala High Court *In the Matter of Prison Reforms Enhancement of Wages of Prisoners*[107] held that free labour by the prisoners was held to be violative of Article 23(1) of the Constitution. The Court justified the ruling by pointing out that what is authorised by section 53 of the Penal Code is hard labour and not free labour.

The court also directed that the Government make arrangements to pay to the inmates of the prisoners, who are put to work, wages at Rs. 8/- per day, part of which they may utilize for themselves, part of which they could arrange to remit

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[107] 1983 K.L.T 512, at p. 518-519.

to their dependents and part accumulated to be paid to them at the time of the release.

The advantages of giving wages to a prisoner as envisaged by the court are[108]:-

1. The punishment would appear to be just and fair and not as an exhibition of vindictiveness.

2. There would be a possibility of the prisoner being rehabilitated on release.

3. The severity of the resultant punishment on the dependents of the prisoner may be softened by payment of a substantial part of the fair wages due to the prisoner to them.

4. Any provision for payment of wages to prisoner is recognition of his human hood, his right as an individual. That may preserve his self-respect.

5. Such a measure would take away reasons for nursing vengeance against the society.

6. A humane approach would make it easier for the prison authorities to enforce discipline.

7. The prisoner may be induced to dedicate himself to the work.

8. The State can absolve itself of the charge that it is exploiting the prisoners by taking free labour, a charge which in the case of a civilized Government is certainly not commendable.

The Jail Committee of 1980-83[109] observed that payment of fair wages and other incentives shall be associated with work programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening of family ties and early return to society.

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[108] *Ibid.*

[109] Report of All India Jail Reform Committee, 1980-83, p. 344.

So the prisoners should be given fair wages like any ordinary labourer. He should pay for his food, lodging and clothing like the non-criminal labourers and workers outside the prison. Such a policy besides being logical and fair would also ensure 'recognition of his human hood' and 'self respect' and would greatly reduce the burden of the tax-payers, towards the maintenance of prison and prisoners[110].

Prison Management and Discipline

In many institutions where congregate life is encouraged some customary regulations for group life become inevitable and necessary for its management and discipline. A court conviction means either rightly or wrongly that the convict needs some self-discipline. Jail authorities; therefore impose several disciplinary measures for transforming the inmate into a self-disciplined and reformed citizen.

The prison discipline involves the enforcement of rules and regulations in the management of prison system. Life in prison is filled with order and obedience. This treatment should consist of teaching the difference between good and evil and attracting the prisoners towards the good.

The jail manual put the following as offences against prison discipline. They are:

(1) those connected with work – omitting to report, loss, breakage or injury caused to prison properties, manufacturing some article without the knowledge or permission of the prison authorities, performing any portion of work allotted to another inmate etc.,

(2) those connected with quarrellings, assaults and mutiny-doing or omitting to do some act with intent to cause any illness, injury or disability to oneself, taking part in any attack against the inmates or prison staff, causing or omitting to assist in suppressing violence or insubordination of any kind etc.

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[110] Ahmad Siddiqie, *Criminology-Problems and Perspective* (3rd ed., 1993) p.135

(3) those connected with the possession of contraband articles-eating or appropriating any food not assigned to the prisoner, keeping any weapon, clothing or eatables which are not permitted,

(4) miscellaneous – omitting or refusing to keep the prison clean, removing, defacing or altering any distinctive marks or badge, committing any nuisance in any part of the prison, spitting on the floor, wall etc. The punishment for the inmates to these offences varies depending upon the nature of the offence. Minor punishment may include a formal warning, change of labour for a stated period to some irksome or severe form, forfeiture of the remission earned by the inmate or of prison privileges, separate confinement not exceeding 14 days, etc[111].

The prison system puts absolute discretion and day-to-day power over every aspect of a prisoner's life in the hands of prison guards and head wardens who brush with the prison inmates. It is this part of the prison life which causes the deepest resentment among prisoners for, to a large extent, the manner in which an inmate is treated by guards determines the severity of conditions he will have to endure. It is a double irony that the lower level of authority in prison (from warden down to guard) the greater the discretion that is vested in the prison official and the less willing the courts are to review their decisions. Thus, whether it be a request for medical treatment, the right to go to the yard or prison library, or the potentially more serious matter of prison discipline and punishment, the guard on the block holds ultimate power over the prisoner. Complete discretion in the context of prison life where no remedies exist to correct it; can be catastrophic[112].

The Central Bureau of Correctional Services[113], describe the role of the welfare officer, as "the welfare officer is the key worker in the prison who plays an important role in the treatment and correction of the offender. As soon as the offender is admitted, the worker studies him, interprets to him the institutional

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[111] Vidyabhushan, *Prison Administration in India* (1970), p.78

[112] David Rudovski, *The Rights of Prisoners* (1990), p.23.

[113] N.C.R.B, *Prisons in India* (1969), p.9.

programme, helps him to find a positive adjustment with the new situations and encourages him to make a constructive use of the correctional measures. The worker handles his individual problems and helps him to relate meaningfully with his co-inmates in an institutional environment. He assists the prison authorities to formulate the treatment plan for the prisoner in terms of his individual needs. He encourages the prisoner to maintain, develop and strengthen family ties and also provide necessary help to his family to face the consequences of his imprisonment. He helps the prisoner to change himself into a law abiding, socially acceptable and dignified individual and prepares him to re-adjust and get rehabilitated to a normal citizen after his release. Thus, the welfare officer becomes an important link between the administration and the prisoner and between prisoner and the community. He is instrumental in the individualized treatment of the offender and in the process of his adjustment."

There are only nine welfare officers in the prisons in Kerala whose population was 6,464 in 2003. So each welfare officer has to deal with about 719 prisoners. From the prison statistics India 2003, it can be seen that out of nine sanctioned post of welfare officers only five were filled. These five welfare officers were to look after a total of 6,464 inmates. Thus for about 1,293 prisoners the service of only one welfare officer was available[114]. The accepted policy was that for at least 200 convicted prisoners there must be one welfare officer. Actually not only the convict prisoners need the assistance of welfare officers but also the under trial prisoners, detenues, coffeposa prisoners etc are also in need of their assistance as these prisoners need to be rehabilitated. In prisons in Kerala there were 2,192 convict prisoners, 4,258 under trial prisoners, 8 detenues, and 6 other category prisoners present at the end of 2003[115].

Thiruvanathapuram Central Jail has got two welfare officers, Viyyur got one welfare officer, Kannur central jail three, women prison one, open prison one, Kozhikode district jail one. In the central jail Thiruvananthapuram in 2005 there were a total of 1,678 prisoners, 1,645 male and 33 females, 1,132 were convicted

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[114] National Crime Records Bureau, *Prison statistics India* (2003), p.11, Ministry of home affairs India, New Delhi.

[115] *Ibid* at p.33-334.

prisoners. For them only two welfare officers are present. So for about 839 prisoners there is only one welfare officer[116]. In the Central Jail Kannur there are a total of 1.580 prisoners, 1,506 males and 74 females. Here there are three welfare officers. So for about 527 prisoners service of one welfare officer is available[117]. In Central jail Viyyur there are a total of 513 prisoners, 493 males and 20 females. 302 were convicted prisoners. Here there is only one post of welfare officer. So for 513 prisoners there is only one welfare officer[118].

Social workers are considered as 'key workers' in the prison's team of helping professionals. They even now occupy a low-key position in the pyramid of prison bureaucracy. Social workers are the best suited functionaries who can coordinate the contents and contours of treatment activities of other professionals and para professional. In order to become effective the social worker should have some additional knowledge, skills and attitudes. Studit[119] explained it as (1) Knowledge of delinquent and criminal behaviour, the psychological and social strains which, in various constellations, press individuals towards such behaviour. (2) Skills in identifying the social and psychological factors in the causation of particular delinquent criminal behaviour. (3) Attitudes of acceptance of delinquent, and criminal deviant without condoning anti-social behaviour, readiness to work experimentally and without undue discouragement in a field where present knowledge is limited, prognosis is uncertain and failures frequent.

In Kerala the $^{2}/_{3}$ post of welfare officers are filled by direct public service commission appointment. For that the qualification needed is a degree along with degree or diploma in social work or social service from a recoganised university or institution. $^{1}/_{3}$ post is filled by transfer of service from the officers of jail department will a maximum age limit of 50 years[120].

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116 Administrative report, 2005 of Central Jail Thiruvanathapuram.

117 Administrative report 2005, of Central Jail Kannur.

118 Administrative report 2005, of Central Jail Viyyur.

119 E.Studit, *Education for social workers in the correctional field* (1959), p.33.

120 G. O. (Ms.) No. 8/80/Home dated 2nd January 1980.

Casework and group work are the most commonly used method in correctional social work[121]. Casework is "a method of social work which intervenes in the psychological aspects of a person's life to improve, restore, maintain or enhance his social functioning by improving his role performance. The intervention takes place through a professional relationship between the worker and the person, and also between the worker and other individuals whose intervention with the person affects his role performance"[122]. In case work method the immediate and long range problems of social adjustments in the family, prison and personal relationship are examined in a personal, face to face basis and helpful guidance is given in order to solve them.

Usually casework method is a long-term treatment involving the gradual unfolding of relationship. Realistic problem identification and goal-directed treatment should be the aim. Mangrum[123] assures that, to be effective the short-term programme must focus on practical problem solving; not on character building or personality destructing but on a behaviour change through resolution of problems which give rise to illegal or antisocial conduct. All criminal behaviour does not arise from personality deficiencies-many criminal behaviour problems result from the individual's inability to cope with the very practical problems of every day existence and corrections should focus more on developing methods by which the client is assisted to learn to cope with his situations. Firstly there must be the identification and separation of client's problems into components small enough for him to handle. Although some of these problems will be internal and psychological most will be external and environmental. It is the latter which are of great concern to the client, are the most readily recognizable and usually the simplest to resolve. Secondly, once the problems are identified, goals must be set as to what must be done to resolve the problem. These goals must revolve round the specific problem areas and realistically attainable ends. It is a piece by piece, block by block, layer by layer method of steadily building a strong structure. It is the development of a plan of action, kept flexible to take due note

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121 W.W.Boehm, *The Social Case Work Method In Social Work Evaluation* (1959), p. 44.

122 *Ibid.*

123 C.T.Mangrum, *The Professional Practitioner in probation* (1976), p.234-249.

of 'ups and downs' in life, which enables one to steadfastedly remain on course. It is taking the client where he is and moving at a pace he can handle towards the goals.

Group work is the second method which has been considered to possess enormous potential for correctional treatment. It aims at the enhancement of a person's social functioning through purposeful group experiences[124]. The group worker enables various types of groups to function in such a way that group interaction and programme activity contribute to the growth of the individual and the achievement of the desirable social goals. The objectives of the group work include provision for personal growth according to the individual capacity and need, the adjustment of the individual to other persons, to group and to society, the recognition by the individual of his own rights, limitations and abilities as well as his acceptance of the rights, abilities and differences of others[125].

The researcher enquired about whether the welfare officer who also occupies the role of a social worker properly functioned to achieve the above mentioned rules. The study revealed that they are not able to provide all the help to the prisoners as each welfare officer has to look after about 719 prisoners[126]. Due to overcrowding they were not in a position to take care of the individual needs of the prisoners as well as to provide them with their personal attention, the prisoners needed to make their reformation possible.

The need now is to confront that demand in its essentials to take a fresh look at our underlying concepts to try to fashion, a rational system of criminal justice, which will be consistent as well as effective. Reliance upon the community for the treatment and rehabilitation of offenders comes to be seen as more effective than the fixed institution which serves only to warehouse offender until they are ultimately discharged back into the same communities.

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[124] M.Murphy, *The social Group work method in social work education* (1959), p.64.

[125] G.Konopka, "The social group work method: its use in the correctional field" (1956),Vol.20 No1, *Federal Probation,* p. 27.

[126] See*Supra* page 313.

The Standard Minimum Rules[127], put out by United Nations Agencies stated Imprisonment and other measures which result in cutting off an offender from the outside world are effective by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore, the prison system shall not in the name of maintenance of discipline, aggravate the suffering inherent in such a situation.

The big problem in discipline is to be able to organize a prison that each man may be studied and treated according to his needs. To a prisoner, the most important thing for his release to liberty is the remission of sentence. Hence, doubtlessly, the best incentive is to put the advancement of the day of his release in his own hands. In prison life, the forfeiture of 'remission marks' has long been regarded as the root of convict discipline. Introduction of parole to eligible inmates can be another incentive for prison discipline. The withholding of prisoners' privileges may work as a good tool for prison discipline.

Contact with Family and Friends

The only method by which a prisoner is able to maintain contact with the outside world is through interviews and correspondence. Once it is realized that the object of imprisonment is to treat the offender so as to enable him to come out as a reformed individual to join the mainstream of the society, the old notions about interviews and correspondence must necessarily change. The greater the facilities for interviews and correspondence, the greater are the chance for the offender getting reformed.

Rule 80 of the Standard Minimum Rules[128] of United Nations provides "from the beginning of a prisoner's sentence, consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or

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[127] Rule 57 of Standard Minimum Rules put out by 1st United Nations Congress on the prevention of crime and the treatment of the offenders August, 30, 1955. N.V Paranjape, *op.cit*, at p.246

[128] *Ibid.*, Rule 80.

establish such relation with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation."

Cut away from all family ties and all friendly contacts, a prisoner becomes emotionally and psychologically pervert, incapable of becoming a normal human being. The only method of preventing this consequence is to enable him to keep contact with the members of his family, relatives and friends so that the family tie and the friendly attachment will continue and spur him on to reform himself and to become a man of good behaviour and create in him an interest to obtain release early, by his good conduct and join the family.

The absence of any such liberal facilities for interviews and correspondence has resulted not only in completely dehumanizing the prisoner, but also in wrecking his family as well as ruining the members of the family. Take for instance, a case where a prisoner undergoes a long-term imprisonment, cut of completely from the out side world and he does not have interviews with his wife and children either because they are living at a place distant from the place where the prison is located and therefore are not able to meet him regularly or because they cannot afford to make such visits. In such a context, the tie between the prisoner and his family is completely snapped. During the period when he is in prison, his wife may marry somebody else and the children may become destitute. In such a situation, when the prisoner comes out after his release, the picture which he sees will not make him behave like a normal human being and he may turn to crime again.

The quality of relationships prior to prison is related to the frequency and type of family contact during prison as well as the quality of family relationships and level of family support after release. The level and type of family contact typically mediate the effect of pre prison relationship quality on both post prison family relationship quality and support but that in prison contact can be a negative influence if intimate partner relationships are already poor[129].

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[129] Nancy G La Vigne, Rebecca L Naser Lisa E Brooks, Jennifer L Castro, "Examining the effect of incarceration and In-Prison family contact on prisoners family Relationships" (2005) Vol.21, No.4, *Journal of contemporary criminal Justice,* p.314.

If the prisoner is the sole earning member of the family, the financial situation of the family will be in a terrible situation. The other partner will carry the added burden of running the home and caring for the children alone. The husband (or the wife) will suffer from his (or her) very inability to do anything to help.

Letters and visits are the means of communication available. Letters are limited to once a week, and are usually censored. Visits are normally limited to once a month. Even then, it is often difficult for a wife to visit as often as she is allowed. This may be because the husband is imprisoned in a remote part of the country, the cost of the journey, the problems of providing for the children, under these poor conditions the prison visit by the family often does not take place.

'Man is not an island unto himself'. He is dependent on others as a child, and he requires sexual partners with the onset of puberty[130]. The continued long absence from normal society and the family deprives the inmates of their sex gratification which is one of the vital urges of human life. Consequently, haunted by sex desire, these unfortunate prisoners resort all sorts of unnatural indulgences to pacify their sex impulses. The prisoner's adjustment to sexual deprivation all too often takes the form of homosexual behaviour. Moreover, the emotionally disturbed man would muster courage to do anything to give vent to his pent up aspirations.

Dr. Havelock Ellis observes: "The prison, in which the criminal is confined alone, or with persons of the same sex, serves to develop perverted sexual habits to a high degree. And criminals usually resort and have resorted often from a very early age to all forms of sexual excitement, natural and unnatural"[131].

To suppress this menace, certain European Countries have permitted periodical private meetings of the inmates with their spouses so as to offer them

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[130] Hans Toch, *Living in Prison –the ecology of survival* (1977), p.51.

[131] Dr. Havelock Ellis, *The Criminal* (1901), p.169.

a legitimate opportunity to pacify their sex urge and thus eliminate the crime of this nature in the institution.

The system of parole also serves a similar purpose. However, in India, these facilities are restricted to only a limited number of corrigible inmates while the majority of them remain completely deprived of their marital life, thus leading to an enormous increase in sex crimes.

In this context the observation of Prof. Sethna is quite pertinent. "For prisoners of good conduct a week's holiday every three months, or holidays aggregating to 14 days every six months, or so, would prove desirable. That would tend to encourage good conduct in prisoners and be a remedy so far as the problem of their sexual life is concerned"[132].

Except in the case of incorrigibles, permanent perverts and persons having irreversible mental aberration in all other cases there is every hope of redeeming an offender and retrieving him from his criminality. Such contacts with family and friends will speed up the process of rehabilitation and reformation[133]. The modern view regards the maintenance of close touch between a prisoner and his family and respectable friends, as desirable and beneficial in it and so far as conditions permit progress is likely to be towards encouraging rather than restricting such humanizing influences. The Model Prison Manual provides for assisting the inmates to develop contacts with his family and also providing assistance to the inmate family members[134].

When there has been conflict between the system interests and considerations of rehabilitation, the former interests have systematically won the battle and received priority. The government should not consider any amount of money spent on prisons and prison life as luxury. So long as prisoners have not been cast out of society and they continue to be members of the society, though

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[132] See J.M.J. Sethna, *Society and the Criminal* (1971), p.359.

[133] Christopher Hibbert, *The Roots of Evil – A Social History of Crime and Punishment* (1963), p.412.

[134] See *Model Prison Manual* (1970), p.44-55.

segregated temporarily, but are expected to rejoin the mainstream of the society after their release, it is the duty of the State to spend for their rehabilitation, reformation and re-entry into the mainstream of the society.

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CHAPTER VIII

CHAPTER VIII

Aftercare and Rehabilitation

Aftercare is affectionate care and attention following any type of traumatic or mentally challenging event. It is a period of necessary 'recovery'. This is a fundamental recovery of the self into a form competent and 'safe' to independently interact with other people. Aftercare is based on the understanding of the needs and outlook of the person who is going out of a correctional institution to face an unkind and inhospitable world outside[1]. The released prisoner start with a trauma, a psychological damage to his personality and he is conscious of having been rejected. Aftercare services have to heal this rejection trauma by way of restoring his lost self-confidence and rehabilitate him back in the community as a productive and useful citizen.

'Aftercare' is the package of support that needs to be in place after the offender reaches the end of a prison based treatment programme. It is not one simple discrete process involving only treatment but includes access to additional support for issues which may include mental health, housing, managing finance, family problems, learning new skills and employment.

The programme and services organised for the rehabilitation of inmates from correctional institutions can be referred to as after-care. Aftercare programmes for the released prisoners need to be viewed as necessary steps in the complete rehabilitation of the individual. The all India Jail Manual

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[1] Ananya Das Gupta has stated that Aftercare as a concept is a micro-constituent of the principle of social defence, which is a term used in the correctional frame of reference. The true social defence lies, in doing away with the system of barbarious punishment and making and attempt to curb and control criminogenic influences by adopting a sound correctional policy. See Ananya Das Gupta, "Aftercare of institutionalized Juveniles in Historical perspective", in N.K. Chakrabarti (ed.) *Administration of Criminal Justice. The correctional Services. Institutional corrections* (vol.2 ,1997),p.15-16.

Committee had rightly remarked that "aftercare is the released Prisoner's Convalescence. It is the process which carries him from artificial and restrictive environment of institutional custody to satisfactory citizenship, resettlement and to ultimate rehabilitation in the free community" [2]. The Model Prison Manual which describes it as "a bridge which can carry the offender or any other socially or physically handicapped individual from the artificial and restricted environments of institutional custody, from doubts and difficulties and from hesitations and handicaps to satisfactory citizenship, resettlement and to ultimate rehabilitation in the free community". [3]

The main aim of after-care services is to reconstruct and restore institutionalized persons to social positions of self-respect and also to enable them in settling down as law-abiding citizens in the community[4]. In essence aftercare is a forward step in the direction of complete rehabilitation of the institutionalized persons and as a form of post-release assistance is closely interlinked with the institutional training and treatment.

Aftercare as the harbinger of any rehabilitative endeavour and as a vital link in the correctional cycle, has been considered as an approach and as a service designed to reduce the offender's social isolation and dependence, to help him to get over his social handicap, to remove the social stigma that darkens his present and future life and finally to accelerate the process of his rehabilitation as a socially useful and productive citizen in the country. Aftercare is not a benevolent activity intended to rescue either a fallen individual or a sort of patronage extended by superior prisoners. Aftercare is rather based on the understanding of the needs and outlook of the person who is going out of a correctional institution to face an unkind and inhospitable world outside[5].

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2 All India Jail Manual Committee, 1957.

3 Government of India, *Model Prison Manual* (1970), p.270.

4 Government of Uttar Pradesh, Report of the United Provinces Jail Reforms Committee (1946) p. 54.

5 Dr. B.N. Chattoraj, Ways and means for enhancing the aftercare and rehabilitative programmes for released offenders: An Indian perspective: *http://www.acpf.org/wc8th /agenda Item 5/15 pp. Chattraj India.html*.dt. 28/6/2006.

Origin and History of Aftercare in India

The importance of the aftercare of the released prisoners had been appreciated in India for a long time. The Indian Jail Conference of 1877 for the first time discussed the question of helping ex-convicts but did not take any positive steps to implement it. However a Discharged Prisoners Aid Society was organised as a non-official agency in U.P. in 1894. Similar societies were organised in Bengal in 1907 and in Bombay in 1914, but these societies could not continue to function for want of government support and public sympathy. Like U.P. Jail Reforms Committee 1946, some committees were established in few states in order to help the prisoners on their release. Simultaneously, steps were taken by the provincial governments to help the discharged prisoners, and the Discharged Prisoner's Aid Societies were formed in many provinces in the country. Mainly the object of such societies was to help the released prisoners in their social and economic rehabilitation in the community.

An Advisory Committee on After-Care Programmes was appointed by the Central Social Welfare Board in 1954 under the Chairmanship of Professor M.S.Gore to study, among other things, the nature and size of the problem of these adults and juveniles who have been discharged from correctional institutions, to determine the scope of after-care programmes for these individuals, to assess the extent to which the existing after-care services meet the needs of the situation and specify the manner in which they need to be developed and modified. The committee recommended for a very solid and a practical base for the aftercare infrastructure and programmes in this country[6].

In pursuance of the Gore Committee's report, a comprehensive aftercare programme was started during the Second and Third Five Year Plans at the instance of the Central Social Welfare Board and a few aftercare homes and shelter were setup in some states. The government of India also constituted a working group (1972-73), which defined correctional aftercare as a very essential step in the criminal justice system. The Action Plan was brought up by the All

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[6] Children Aid's Society's Report, 1955.

India Committee on Jail Reforms (1980-83), which also emphasized on establishment of Aftercare Homes to meet the immediate needs of released prisoners for their proper readjustment in the society.

A well-rounded scheme for the welfare of prisoners in terms of their aftercare and rehabilitation, as formulated under the seventh five-year plan, was circulated among all the states and Union Territories for consideration.

The All India Committee on Jail Reforms 1983 also strongly recommended that after care of prisoners discharged from prison and allied institutions should be the statutory function of the Department of Prison and Correctional Services.

The characteristics of an aftercare service can be said as (1) it is a service intended for a person or persons who have undergone a certain period of 'care' and training within an institution. (2) It is a facility for a person or group of persons who has been found to be in special need by reason of a social, physical or mental handicap. (3) It is intended to complete the process of rehabilitation of an individual and to prevent the possibility of his/her release into a life of dependence or custodial care. This would involve the strengthening of his/her moral and emotional fibre and the removal of any stigma that may be attached to his/her previous institutionalization[7].

There are mainly three main approaches to aftercare provided[8], - (1) supported referral case management approach; (2) probation led case management approach and (3) prison link worker approach.

The main responsibility of the workers in supported referral case management approach was in referring clients to appropriate care services. All workers also considered themselves responsible for general support and advocacy for their clients and for some level of progress monitoring. In general it

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[7] Report of the Advisory Committee on Aftercare Programme, Center Social Welfare Board, Government of India, (1955) p.1-2.

[8] Anne Fox (*et.al*), *Throughcare and Aftercare approaches and promising practice in service delivery for clients released from prison or leaving residential rehabilitation*, Home Office onlineReport 01/05. *http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr 0105.pdf.* 27/8/2005.

emphasized on, (a) drug use prevention, health promotion and harm minimization; (b) sustaining engagement in treatment; (c) flexibility in meeting the client's needs, such as client-friendly appointment times; (d) gentle persistence in encouraging clients to attend appointments; (e) a need-led client-centered approach.

The 'supported referral' approach can be sub divided into two groups: short term and long term support. Long term approach offers clients ongoing assistance, monitoring and review of progress, even after the client had been referred on to other agencies for assistance. Short term approach offers assistance up to three months after release from prison geared towards linking clients up quickly with other main stream services.

The greatest advantage of this approach appeared to be its flexibility in meeting the client's needs. Although supportive-referral agencies provided a temporary safety net for clients, they could not sustain and support them indefinitely. The main disadvantage of the supported referral approach was the lack of a coherent system to dovetail different inter agency packages of aftercare. Without close liaison with other agencies, there was the potential danger for duplication of activity. This resulted in some needs remaining unmet as aftercare contact came to a close.

The key features of problem led case management approach are, (a) an organisational goal of public protection and a focus upon the enforcement of statutory law; (b) probation officers overseen by probation management; (c) frequent meeting with client and probation officers.

The work of the probation service is governed by Probation of Offenders Act and other laws which provide clear guidance as to how those on probation should be managed by workers The three major aftercare needs of released prisoners that are really important is having motivation to change, having stable housing, and having aftercare workers on release. These three factors makes a person feel really good.

Most of the ex-prisoners valued having regular access to someone who could help with practical and psychological issues associated with re-settlement. But majority of the offenders said that they have not got any help to deal with stress and day-to-day problems.

The primary objectives of the aftercare services are two fold, (1) to facilitate the inmate's rehabilitation and their subsequent reintegration into the community through fostering rapport between inmates, their families and the staff; and (2) to help inmates to lead a law-abiding and industrious life after release.

In the prison link worker approach the worker would engage with clients in custody before release and is aimed to construct holistic release plans. Clients were then referred on to community agencies. Workers will monitor plans and follow clients in the community up to three, four months after release.

Different types of service may suit different clients at different times in their life. Some clients need or want close and intense supervision. Others can maintain the progress they made in prison with minimum involvement with community programmes.

What types of supervision to be applied on a particular client or the type of clients to be selected for a particular supervision, the duration of supervision, methods of supervision, responses to breach of conditions and misconduct by releases, depends on evaluation methods for effectiveness of such treatment and evaluation feedback.

The amount of time that after care staff spent with clients varied from service to service and it was often difficult to find consistent strategies for matching the level of intervention to the degree of need or risk presented by an individual. Mostly the general pattern was for time-intensive involvement in the first few weeks after release, and then gradually decreasing involvement as clients stabilized.

In order to help the ex-prisoners in the society the aftercare agencies and other like organizations have been established in almost all developed and developing countries. In England the guidance, help, supervision and resocialisation of the released prisoners were done by Central After-Care Association[9]. The association work through local associates, usually probation officers. Adequate arrangements are made to meet the intermediate needs and to secure the employment of the discharged prisoners.

In the United States[10], After-Care Agencies serve to (1) provide some continuity with education and training programmes begun in the Correctional institutions. (2) Assist the offender in obtaining the adequate employment. (3) Increase utilization of community resources. (4) Provide needed support during the difficult initial period of adjustment.

In India, for the help and to provide assistance for the ex-prisoners there are many elaborate arrangements made. The Model Prison Manual provides[11] that after-care service should be extended to all needy persons, released from the institution, conditionally or unconditionally or on license. Various states have established different committees in order to help the prisoners on their release from prison.

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9 In 1949, the Central After-care Association was set up to provide for the supervision and aftercare of those prisoners who were released. The association consists of three sections. The Men's After Care section, the Women's After Care section and the Borstal After Care Section. Efforts are being made to provide hostels for homeless ex-prisoners.

10 B.S.Griggs, G.R. Mc Cune, "Community based correctional programmes: A survey and analysis", (June 1972) vol. 36, *Federal Probation*, p.12.

11 The object of aftercare service has been outlined by Model Prison Manual as (1) to extend help, guidance counselling, support and protection (2) to help a released person overcome his/her mental, social and economic difficulties (3) to help in the removal of any social stigma that may be attached to the inmate or his/her family because of incarceration (4) to impress upon the individual the need, to adjust his habits, attitudes, approaches and value scheme on a rational appreciation of social responsibilities and obligations, and also of requirements of community living, (5) to help the individual make a smooth adjustment to his/her post release environment (6) to encourage, the individual in making satisfactory adjustments with his/her family neighbourhood, work group and community, (7) to assist the individual in functioning as a self dependent and self-reliant socially useful citizen (8) to assist in the process of individual's vocational, economic , social and attitudinal post release readjustment and ultimate rehabilitation and (9) to complete in all respects the process of inmate's final readjustment, resettlement and rehabilitation in the free community. Model Prison Manual (1970) p.270, 271.

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To complete the process of transition from the stage of lawbreakers to law abiders needs a lot of support and assistance from aftercare agencies. Study among the recidivists shows that unfortunately, many correctional programmes involving offenders who have remained in or been released in to the community are viewed as being merely custodial or supervisory, or as simply extensions of institutional programmes, and are administered as if they are totally unrelated to community prevention efforts. Majority of the prisoners said that they were not provided with any type of correctional care or aftercare.

TABLE 1

After care assistance, guidance and supervision received by recidivists

Opinion	Good Aftercare	Average	Inadequate	Total
NUMBER	0	2	102	104
PERCENTAGE	0	1.93	98.07	100

Data from table 1 shows that 98.07% of the recidivists have not received any aftercare. Only 1.93 of the recidivists have received at least a little bit of aftercare. Now it is generally recognized that the efforts made inside the prison to reclaim the prisoner may be futile, unless the difficult transition to life in the world outside the prison gate is helped and guided by a human and efficient system of aftercare[12].

Study further reveals that among the one percent who receives a little bit of aftercare is by way of moral preaching's and advice. They admitted that in their condition it is of little use. In general the evidence indicates that the method of providing concrete guidance and help or advice in problems of daily living within

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[12] M.S.Sanis, "Social Defence and The Community Problems and Prospects", (July 1976) vol.XII, No.45, *Social Defece*, p. 9-11.

the community is more beneficial[13]. If continuity has been established between treatment inside the institution and the community, recidivism would surely be likely to decline, more importantly, when the community counselling is focused on aiding the offender to meet immediate problems within the community. Programmes do not change people: people change people through efficient programmes[14]. When coming out of the prison their most immediate need is in getting financial assistance, job placement, place of residence. Without these basic needs they cannot lead a decent life. When their family is hungry there will be no chance of them listening to any advice.

Opinion from lawyers, judges, police officials, prison officers, academicians about the role of the aftercare in the resocialisation of the ex-prisoners and their responses are as under:

TABLE 2

Aftercare help in early resocialisation of the ex-prisoners

S. No:	Respondents	Yes %	No %	Average %	Total %
1.	Lawyer	77	2	21	100
2.	Judges	83	1	16	100
3.	Police Officers	64	8	28	100
4.	Prison Officers	75	6	19	100
5.	Academicians	79	3	18	100
	Mean value	75.6	4	20.4	100

Table 2 shows that the help rendered by providing After-care goes a long way in the early resocialisation of the prisoners, as 75.6% of the respondents

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[13] D.Lipton,R. Maritson, and J. Wilks, *The Effectiveness of Correctional Treatment: A survey of Treatment Evaluation Studies* (1976), p. 523.

[14] L.P.Carney, *Introduction to Correctional Science* (1974), p.9

answered in the affirmative. The aftercare agencies provide a sort of link between the penal institution and community, and thereby to some extent protect the ex-prisoners, from the criminogenic exposure.

TABLE 3

Financial Assistance, Job Placement and Place of Residence provided for Recidivists

Recidivists	Financial assistance			Job placement			Place of residence		
	Yes	No	Total	Yes	No	Total	Yes	No	Total
Number	0	104	104	0	104	104	0	104	104
Percentage	0	100	100	0	100	100	0	100	100

It can be seen that hardly any financial assistance is given to recidivists. As the only money they have when they come out of the prison is the little amount they got by way of doing prison labour, most of them said that, that the amount will not be sufficient for them for their transportation and food. When they reach their home that money will be exhausted. No one has provided them with any financial assistance in that transitional period to get them on their own feet.

During this period of widespread unemployment it can be said that hardly anyone is willing to employ an ex-convict. Even to do the manual jobs no one is willing to employ them, as ordinary persons are available why take the risk of engaging ex-convicts. These persons were also not taught, nor trained to engage in any self-employment. To overcome this disability no help has been rendered from any quarters.

No help has been provided for these recidivists in finding suitable place of residence. Majority of them wanted to change their place of residence as the same circumstances that made them a criminal still exist in that locality. No one

has provided any help in overcoming this. Also with hardly any money they were not in any position to change their residence, which largely contributed to making them recidivists. Some of them were not allowed to enter their homes. Rejected by their family and with no place of residence they gradually drifted to a criminal way of life. Here also no one has helped them in finding a place of residence.

The opinion obtained from the recidivists is in consensus that they were not provided with the basic necessities like financial assistance, job placement, place of residence etc. If they had received any assistance in this they would not have become recidivists.

When enquired about whether in actual practice these aftercare agencies are of any use to resocialisation, 78% of the respondents answered that help from these agencies are not been made available to the ex-prisoners. Only very few ex-prisoners were fortunate to get their help.

Crime is a social fact and human act, the process of dealing with a criminal does not come to an end after the offence has been legally defined and penalty imposed on the offender in accordance with law. It is necessary to understand the crime as a social and individual phenomenon and the need to prevent its commission or repetition by adopting an attitude conducive to the resocialisation and reformation of the criminal. Correctional process is to alter the behaviour of the offender so that his actions are more acceptable to the society.

Rehabilitation

Rehabilitation is the idea of 'curing an offender of his or her criminal tendencies. It consists of changing an offender's personality, outlook, habits or opportunities; so as to make him or her less inclined to commit crimes[15]. If an offender is successfully rehabilitated the ultimate benefits is to the society who receives a law abiding citizen as well as the less likelihood of being victimized by that offender.

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[15] Andrew Von Hirsch, "Rehabilitation", in Andrew Von Hirsch, Andrew Ashworth (ed), *Principled Sentencing. Readings on Theory and Policy* (2nd ed.,1998), p.1.

The rate of recidivism reflects the degree to which released inmates have been rehabilitated and the role correctional programmes play in reintegrating prisoners into society. Attention to rates of recidivism is an important way to monitor the role of prisons in rehabilitating inmates. Prisons have traditionally been designed to punish and confine those who break laws. However as more and more money is spent in correction budgets, public opinion and public policy increasingly are demanding that prisons expand programmes that rehabilitate inmates and prepare them for return to their communities.

Rehabilitation programmes, in prison and for released inmates provide opportunities for prisoners to change behaviours associated with criminal activity and learn more positive and productive ones. Success in reducing recidivism can translate into improvements in public safety and reintegration of former prisoners into the labour force, families, communities, schools and religious organizations[16].

Reducing recidivism has scope of far reaching benefits to communities where released prisoners reside, often in their former neighbourhoods. These communities typically experience significant disadvantage in terms of high rates of crime, unemployment, failing public schools and prevalence of low income house holds, etc.

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[16] Amy L.Solomon, Michelle Waul, Asheley Van Ness, Jermey Travis, "Outside the Walls: A National Snapshot of community based prisoner Re-entry programmes", Re-entry National Media outreach campaign, January 27, 2004, *http://www.urban.org/uphloaded.pdf/ 410911_OTW Resource Guide.pdf*.23-11-2005

TABLE – 4

Rehabilitation given to prisoners during 2002[17]-2003[18]

Sl. No.	STATE	No. of prisoners to whom financial assistance provided on release		Convicts released during		No. of convicts rehabilitated	
		2002	2003	2002	2003	2002	2003
1.	Andhra Pradesh	37	0	12671	15440	108	0
2.	Arunachal Pradesh	-	0	-	-	-	0
3.	Assam	0	0	2161	2628	0	0
4.	Bihar	8	0	12712	307	23	0
5.	Chattisgarh	0	0	4389	6750	0	0
6.	Goa	0	0	91	102	0	0
7.	Gujarat	17	0	5117	6988	0	0
8.	Haryana	0	158	3017	4582	0	0
9.	Himachal Pradesh	0	0	230	249	0	0
10.	Jammu & Kashmir	0	0	188	227	10	0
11.	Jharkhand	0	0	3357	9882	45	32
12.	Karnataka	0	0	4254	4641	0	0
13.	Kerala	0	0	1005	1744	0	0
14.	Madhya Pradesh	0	360	17751	19170	15	0
15.	Maharashtra	0	36	42628	35363	0	25
16.	Manipur	0	0	6	13	0	0
17.	Meghalaya	0	0	75	67	0	0
18.	Mizoram	200	0	3967	4051	50	0
19.	Nagaland	0	0	38	4	0	0
20.	Orissa	0	0	3153	3420	55	63
21.	Punjab	0	0	1773	1077	425	411
22.	Rajasthan	0	0	8461	8270	278	0

Table Cont.....

[17] NCRB, *Prison Statistics India 2002* (2004) p.175.

[18] NCRB, *Prison Statistics India 2003* (2005) p.162.

23.	Sikkim	0	0	0	40	0	0
24.	Tamil Nadu	73	75	7035	7174	789	791
25.	Thripura	0	0	704	633	0	0
26.	Uttar Pradesh	969	1159	58809	51197	0	76
27.	Uttaranchal	142	22	881	995	0	0
28.	West Bengal	0	0	21743	17314	0	0
	Total States	*1446*	*1810*	*216216*	*202328*	*1798*	*1398*
	UNION TERRITORY						
29.	A&N Islands	NA	0	19	443	NA	0
30.	Chandigarh	0	0	87	110	0	0
31.	D&N Haveli	0	0	10	0	0	0
32.	Daman & Diu	0	0	5	0	0	0
33.	Delhi	105	106	9209	10396	5	6
34.	Lakshadweep	0	0	3	0	0	0
35.	Pondicherry	0	0	441	441	18	22
	Total (UT)	*105*	*106*	*9774*	*11390*	*23*	*28*
	Total (All India)	**1551**	**1916**	**225990**	**213718**	**1821**	**1426**

Analysing the rehabilitation given to the prisoners released during the year 2002 (see table 4) we can see that on an all India basis 225,990 prisoners were released during 2002 among them only 1,551 were given any financial assistance and 1,821 ex-prisoners were rehabilitated. In total 216,216 prisoners were released among them 1,446 were given financial assistance and 1,798 rehabilitated. In the Union Territories 9,774 prisoners were released and only 105 were given financial assistance and 23 rehabilitated only very few States have given any financial assistance that too only to a very few prisoners. Among the 12,671 prisoners released in Andhra Pradesh only 37 were given financial assistance and 108 were rehabilitated. Among the 12,712 prisoners released in Bihar only 8 prisoners were given financial assistance and 23 rehabilitated. In Gujarat among the 5,117 released 17 were given financial assistance and in these states no one was rehabilitated. In Jharkhand among the 3,357 released, 45 persons were rehabilitated and in Madhya Pradesh among the 17,751 released only 15 were rehabilitated, no one was given any financial assistance.

In Mizoram among the 3,967 released, 200 were given financial assistance and 50 were rehabilitated. In Jammu & Kashmir among 188 released only 10 were rehabilitated. In Orissa, 3,153 were released only 55 were rehabilitated, in Punjab among the 1,773 released, 425 were rehabilitated, in Rajasthan among the 8,461 released, 278 were rehabilitated, no financial assistance were given in these states. In Tamil Nadu among the 7,035 released, 73 were given financial assistance and 789 rehabilitated. In Uttar Pradesh among the 58,809 released, 969 were given financial assistance, no one was rehabilitated. In Uttaranchal also only financial assistance was provided to 142 out of 881 released. Among the Union Territories only Delhi provided financial assistance to 105 among 9,209 released and five were rehabilitated. Pondichery gave financial assistance to 18 out of 441 released. In the State of Kerala 1,005 convicts were released and no one was given any financial assistance and rehabilitated. In West Bengal 21,743 convicts were released but no one was rehabilitated or given financial assistance. Assam, Chattisgarh, Goa, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Nagaland, Sikkim, Tripura, West Bengal, A&N Islands, Chandigarh, D&N Haveli, Daman Diu, Lakshadweep, did not provide any rehabilitation or financial assistance.

Analysing the rehabilitation given to the prisoners released during 2003, (see table 4) we can see that on an all India basis among the total States 202,328 prisoners were released during 2003 only 1,810 prisoners were given any financial assistance and only 1,398 prisoners were rehabilitated. In the Union Territories 11,390 convicts released only 106 prisoners were provided with financial assistance and 28 were rehabilitated. Many States did not provide any financial assistance to the prisoners released and also no one was rehabilitated. Taking the case of Kerala 1,744 prisoners were released but no one was provided any financial assistance or rehabilitation. Among the 28 States, only Haryana, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh and Uttranchal gave at least a little bit of financial assistance. Jharkhand, Maharashtra, Orissa, Punjab, Tamil Nadu, Uttar Pradesh rehabilitated some convicts released. Out of 1,077 released, Punjab had rehabilitated 411 prisoners. This is the only State which has provided rehabilitation for 38% of the prisoners released. Out of released 213,718 prisoners through out India, only

1,916 (0.89%) were given financial assistance and 1,426 (0.66%) were rehabilitated.

Analysing this data we can say that the increase in recidivism is definitely due to the lack of financial assistance and absence of rehabilitation work.

Rehabilitation of Offenders Act

In England the Rehabilitation of Offenders Act, 1974[19] enables some criminal convictions to become 'spent' or ignored, after a 'rehabilitation period'. A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention their conviction when applying for a job or obtaining insurance or when involved in criminal or civil proceedings. The Act is more likely to help people with few or minor convictions because of the way further convictions extend the rehabilitation period. People with many convictions, especially serious convictions, may not benefit from the Act unless the last conviction was very old. The length of the rehabilitation period depends on the sentence given, not the offence committed. A persons offence will still remain on the Police National Computer even after it has become spent, it will not be deleted.

In Jamaica[20], a conviction of a person will be removed from one's criminal/ police record after a specific period of time has elapsed and after certain requirements has been met. The statute authorizing the expungement is the Criminal Records (Rehabilitation of Offenders) Act, 1988. In order to qualify for expungement, two essential conditions must be satisfied by an individual: (1) The offence in question must be one which attracts a non-custodial sentence or sentence of imprisonment not exceeding three years (2) The person in question must not have any other conviction(s) during a specified period of time referred to as the rehabilitation period.

The rehabilitation period is simply the waiting period that a person must wait before an application can be made for the expungement of a conviction. This

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19 *http://www.crb.gov.uk* 17-9-2005

20 .*http://www.moj.gov.jm/expungement* 5-6-2006

period varies according to the sentence imposed, and ranges from a minimum of six years for non-custodial sentences to a maximum of 20 years for custodial sentences. The Rehabilitation period is calculated from the date of the expiry of the term of imprisonment in the case of custodial sentences, and in other cases, upon the satisfaction of the court's sentence.

After the approval of the expungement a written notification is sent to the applicant and the relevant police authority is notified to seal the record of the arrest and/or conviction, in the expunge case and remove it from public access. Then in the eyes of the law, that arrest or conviction did not occur and therefore did not exist.

In Japan there is a law which is specifically designed for the rehabilitation of offenders[21]. There are also organizations like Rehabilitation Bureau which functions under the direct control of Ministry of Justice, Government of Japan. This organization would continuously review and monitor the rehabilitation work since the day they enter the prison, till they are settled in normal life.

In Queensland[22] the rehabilitation period is ten years for adult offenders and five years for juveniles. The conviction in relation to which a rehabilitation period is applicable is if the offender is not ordered to serve any period in custody or the offender is ordered to serve a period not exceeding 30 months in custody. A conviction that is set aside or quashed is not part of the criminal history of any person. A person shall not be required or asked to disclose and if so required or asked shall not be obliged to disclose for any purpose a conviction that is not part of the person's criminal history. Where the rehabilitation period has expired in relation to a conviction recorded against any person and the conviction has not been revived in respect of the person it is lawful to claim upon oath or otherwise, that the person has not suffered the conviction except on occasion provided by the Act.

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[21] Law for Offenders Rehabilitation Services (1995).

[22] Criminal Law (Rehabilitation of offenders) Act 1986.

Many people with a criminal record subsequently establish themselves as respectable members of the community. The only criminal history that many ex-offenders get involved relatively minor offences, often committed when they were young. Despite subsequent lengthy periods of crime-free behaviour, a substantial proportion of these people may be unable to live down past offences because they are required to reveal their criminal history to employers, insurers, licensing bodies and the like, thereby often becoming the target of discrimination. Even people who have suffered no real problems as a result of having an old criminal record may feel insecure because of the possibility that one day they may be embarrassed by details of their past convictions being revealed.

Spent conviction schemes are designed to give people a chance to live down a minor criminal conviction. The concept of spent conviction laws is linked to a value which has considerable influence in our society that people who do wrong should be given a second chance because they have the capacity to reform their ways.

A further justification for establishing spent conviction schemes is the fair administration of justice. The law prescribes a punishment to be imposed for the commission of an offence and once that has been served the offender has paid his or her "dues' to society. When society is satisfied that the person is not likely to re-offend, it should relieve that person of the stigmatising effect of his or her criminal conviction. Otherwise the punishment, in effect, extends beyond that imposed by the court and the system does not meet its fundamental objective of making the punishment just.

Similarly, it can be argued that continued discrimination after a person has fulfilled the terms of their criminal conviction is a violation of human rights. Most societies recognise that it is in both the individual's and the community's best interests to accept offenders back into the community after the sentence has been completed, and welfare and advisory services are commonly provided to assist with rehabilitation. Spent conviction schemes carry this step further by allowing some ex-offenders too effectively 'bury' their past at least as far as the general community is concerned. The schemes are based on the assumption that

the longer an ex-offender lives crime-free; their criminal history is a less adequate predictor of future behaviour. Such schemes attempt to remove any unfair barrier a criminal record imposes and which could possibly harm the ex-offender's prospects of resuming a normal place in society.

Spent conviction legislation should not be seen as a sign that governments are "going soft' on criminals but as a method of ensuring that the punishment suffered by an individual with criminal convictions is fair and just and in accordance with the law.

One widely-adopted approach is to conceal the criminal record or to treat it as if it has not occurred. This approach, favoured by most European countries, including the UK, allows the record to be either sealed or 'expunged' where a person is considered to be rehabilitated. Either way, the record is effectively hidden from the public eye.

However, in certain circumstances all relevant criminal information needs to be accessible. In view of these cases, it has been argued that complete expungement, where all records are destroyed, may not be appropriate. When a record is expunged, it is treated in law as if it never happened. Alternatively, where a record is sealed, disclosure of the conviction after the expiry date would in most cases be prohibited. However, the record of the conviction would remain and in certain cases the person would still be required to disclose the conviction. The main criticism of this approach is that it creates a 'statutory lie', as a person whose conviction is covered by the scheme is able to lawfully, but untruthfully, say 'I have no convictions'.

The Crimes Legislation Amendment Bill in Australia, which included a part dealing with pardons, quashed convictions and spent convictions. It became law on 30 June 1989 and the spent conviction scheme which it established commenced on 1 July 1990. An individual is not required to disclose a conviction or the related charge if the conviction has been the subject of a pardon, has been quashed, or is 'spent'. A conviction is spent if a pardon was granted for other than wrongful conviction or if it meets all of the following conditions: (a) It is ten years or more since the date of the conviction, or five years since the date of the

conviction if the person dealt with was a juvenile (b) The sentence imposed (not what was actually served) was a fine, bond, community service order or imprisonment for a period of less than 30 months. (c)There have not been any further offences in the ten (or five) year period (d) exclusion does not apply. This protection applies throughout Australia with regard to Commonwealth and Territory laws. It also applies to State laws when the individual is dealing with a Commonwealth Agency.

In order to be rehabilitated some help must be given or to be provided. These were usually rendered by the rehabilitative agencies. In this field a large number of voluntary agencies are rendering valuable services to the social and vocational rehabilitation of offenders.

The Tamilnadu Government has undertaken projects for the rehabilitation of the habitual offenders, through the police department, by forming Industrial Colonies in selected areas[23]. In Maharashtra, the establishment of Nava Jivan Mandals (Released Prisoner's Act Societies) and establishment of Juvenile Delinquency prevention centers have been doing good work for discharged prisoners[24]. Jobs were often found by the society for discharged prisoners, those for whom job could not be, or till a job was found, were afforded boarding and lodging at the society's Home at Agripade, Bombay[25].

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23 S.Srinivasan,"Correctional and Rehabilitation extent and scope of community involvement", (1977),*The journal of Correctional Works*, p. 46.

24 S,D.Gokhale, " Role of voluntary Agencies and People"(July 1974), vol. X,no.37 *Social Defence*, p.35.

25 J.M.J.Sethna, *Society and the Criminal* (1971), p.342-345.

TABLE 5

Whether any help is provided by the N.G.O. and Voluntary Agencies

	Help provided by voluntary agencies provided			
	Good	In adequate	Average	Total
Number	0	103	1	104
Percentage	0	99.04	0.96	100

Mainly the rehabilitative agencies who work in this area are voluntary agencies, N.G.O.'s etc. Hardly any governmental agencies work in Kerala. At least some work has been done by the probation officers. There are N.G.O's working for the reformation and rehabilitation of prisoners. They are mainly religious groups[26], who visit prisons and give moral instructions, giving counselling and family visits.

It may be noted that even though some N.G.O's and voluntary agencies are working among the prisoners and ex-convicts, their work field has not been extended to the recidivists. Only one percent of them said that they got some help but that also was not in the way of providing or creating a good environment that was conducive to lead a normal life. Majority of them said that no help had been received by them from these agencies.

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[26] Aswasa Bhavan, Pampady, Kottayam is an example of such N.G.O. who work among prisoners in Kerala. Their main aim is for the rehabilitation of prisoners and giving a light to them through Jesus Christ.

Snehasramam, Vettukadu in Trissur District. They also work for the rehabilitation and for reformation of prisoners and their family. Mainly they take care of the families.

Social Welfare Department

The Department of Social Welfare[27] was formed in the State of Kerala in 1975 for the implementation of social welfare and social defence programmes. The social welfare services are intended to provide social security and social defence to the vulnerable sections of the society. By providing such services, these poor sections that otherwise would be the worst sufferers and the most neglected would be enabled to rise to a minimum standard in society. One of the objectives of the department are the over all care, protection, treatment, training, development and rehabilitation of women and children in conflict with law and in difficult circumstances.

Regulatory functions covering social defence activities e.g. (a) probation and aftercare services under the Probation of Offenders Act, 1958 and the Rules there under, Kerala Prison Rules, (b) Juvenile Justice Services under the Juvenile Justice Act, 1986 and the Rules there under; (c) Institutional services under the Prevention of Immoral Traffic Act 1985 and the Rule there under.

Welfare of children under Juvenile Justice Act

Juvenile Justice Act 1986[28] is a comprehensive Act of the Parliament which provides for care, protection, training and rehabilitation of neglected and delinquent juveniles. It has come into force with effect from 2-8-1988 with the enforcement of Juvenile Justice Rules.

Central Juvenile Justice Act of 2000[29] was enacted to rehabilitate children below 18 years who are in conflict with law and who need care and protection under Juvenile Justice Act. As part of implementing the Central Juvenile Justice Law, in the State Juvenile Justice Rules of Kerala was published in the year 2003. For providing rehabilitation, care and protection to these children

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27 *http://www.kerala.gov.in/dept_socialwelfare/objective.in.htm.*13-12-2006

28 The Juvenile Justice Act 1986 aims at providing all facilities and opportunities for the development of boys and girls below the age of 18 years who are destitute neglected and delinquent.

29 Central Juvenile Justice Act 2000 has came into force with effect from 1-4-2001.I

specialized bodies such as Juvenile Justice Board, Child Welfare Committee, Special Juvenile Police Units, Juvenile Probation Service, Juvenile Justice Institutions are constituted under the provisions of the Juvenile Justice Act.

In order to deal with the cases of destitute and neglected children who are in conflict with law Juvenile Justice Boards have been set up in nine Districts[30]. The Chief Judicial Magistrates are functioning as Juvenile Court[31]. Child Welfare Committees are to be set up in 14 districts. District Level Juvenile Police Units have been formed under the Crime Detachment Dy.S.P. In order to settle the juvenile cases, special probation officers are appointed in Thiruvananthapuram, Ernakulam and Thrissur Districts. In other districts, juvenile cases are handled by probation officers who are appointed in accordance with the Probation of Offenders Act. In Kerala there are 17 District Probation Officers Grade I and 21 District Probation Officers Grade II.

The major functions of programme development and monitoring cell are, (1) implementation and monitoring of Juvenile Justice Act, (2) programme development and support to State Government for formulation and effective implementation of programmes and services of children; (3) implementation and monitoring of UNICEF assistance programmes; (4) creation of awareness programmes on Juvenile Justice Act and Child Rights Convention, etc.

For the children coming under the Juvenile Justice Act, there are six Juvenile Homes, two special home for children and thirteen observation homes. The Government Juvenile Homes are meant for children who are in need of care and protection under Juvenile Justice Act. The main services provided in juvenile homes are providing shelter, food, education, medical care, rehabilitation development opportunities and exposure for socialization, etc. There are five juvenile homes for boys and one juvenile home for girls which are situated at Kollam, Kottayam, Thrissur, Kozhikode and Thiruvananthapuram. Destitute uncontrollable and neglected juveniles are admitted in the juvenile homes. The

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30 Juvenile Justice Boards have to be set up in Kollam, Idukki, Ernakulam, Thrissur and Kozhikode districts.

31 As per the Official Memorandum No.E4-34092/88 date d7-6-1988.

total capacity of juvenile homes is 800 and the number of inmates present is 450. Only about half of the total capacity in juvenile homes is being utilised. That does not mean that there are no such children to be admitted to these institutions.

Special home for children are meant for the rehabilitation of children who are involved in crime, when their case is disposed by the Juvenile Justice Board, with no other provision for their rehabilitation. Two homes are functioning under the Social Welfare Department one in Thiruvananthapuram and one in Kozhikode. It has got a total capacity of 200, with only six children present. There are many children who come into conflict with the law, who are also from poor socio-economic background who are in great need to be admitted to these type of homes to be rehabilitated successfully to be good citizens. Unfortunately this has not been adequately utilized by the rehabilitation agencies.

Observation homes are centres for temporary reception of children below 18 years who are in conflict with law and who are involved in crime. Observation homes for boys have been set up in all the districts in Kerala except Idukki. There is only one for girls that is functioning in Vellimadkunnu in Kozhikode District. The total capacity is 450 and the children present were 60 only.

In the aftercare home for adolescent males released from Borstal school, balamandir, juvenile homes, poor homes, orphanages on attainment of the age limit shall be admitted. The boys between 16 years and 21 years are eligible for admission. All expenses will be met by the Government.

Scheme for Rehabilitation of Women

There are 12 Mahila Mandirams which provide shelter to women who have nobody to look after. There is one such institution in every district except at Idukki and Wayanad with a capacity of 25 inmates. Those seeking admission have to apply directly to the Superintendent of the Institution showing the reason for getting admission. Women shall also be admitted with a recommendation letter of District Probation Officer.

Aftercare Hostel is meant for the care and protection of the women released from the Mahila Mandir, Rescue Home and Correctional Institutions. All the expenses of the inmates are met by the Government. In addition to shelter and protection they shall be trained in any vocation suitable for them for their welfare and rehabilitation. There is one such institution at Mudavanmughal in Thiruvananthapuram with a capacity of 50 inmates.

Two Rescue Homes are maintained to provide care and protection to women who are arrested under Immoral Traffic Prevention Act and women prone to moral danger and provide rehabilitation to bring them into the mainstream of society.

Aftercare homes are meant for those women released from the correctional institutions under Social Welfare Department. The eligibility for admission for girls is between the age of 14 years and 21 years. There are three such institutions with a capacity of 100 inmates each. The inmates were allowed to continue their education or to be trained in any vocation which would help them in their early rehabilitation. Admission is provided only with the producing of recommendation letter from the Superintendent of the institution from where they are released or on the basis of recommendation letter from the District Probation Officer.

All these institutions providing rehabilitatory facilities to women ex-prisoners are so overcrowded that they are not in a position to provide adequate rehabilitation. The only thing is that they will be getting a roof over their head and food. Nothing is provided there which would help them in their smooth reinculcation into the society.

Assistance to Aftercare Programmes

In order to mitigate the grave difficulty for the social rehabilitation of ex-convicts and offenders placed under supervision, which are of poor economic condition; this scheme provides some financial assistance to them. This aftercare programme is intended to rehabilitate released prisoners and probationers coming under the supervision of district Probation Officers. By

utilizing this amount they can start some industry, craft or small trade or some small scale income generating activities so as to enable them to earn a livelihood. The amount of assistance is Rs.10,000/- per head. If this amount provided is insufficient for meeting the expenses this can be attached with some bank loan. [32]

All the recidivists interviewed by the researcher answered that they were not provided with this amount when they come out of the prison. Moreover most of them said that they did not know about this facility.

One of the significant hurdles which came in the way of released prisoners was the lack of meaningful workable communication between the institutional authorities and the governmental and non governmental agencies working in the field of aftercare and rehabilitation services for the released offenders. The existing communication channel between the released offenders and the aftercare institution has been found to be inadequate to bridge the gap between what an institution can offer and what a released inmate can really avail of. In most of the cases it was observed that correctional institutions and aftercare and rehabilitation agencies were working in isolation and not as complimentary to each other. In fact, neither correctional institutions nor rehabilitation agencies were found to be taking it as a personal responsibility to see that a particular released offender was really rehabilitated to the society. Rehabilitative facilities were found to be very meagre in proportion to the necessity. Most of the prisoners were found to be totally unaware and ignorant about whatever facilities that was available.

The probation officers, who are expected to supervise and assist the selected prisoners, are always over burdened. They are not in a position to give full attention to the difficulties of an ex-prisoner. All the probation officers, interviewed responded that they were overloaded and were not in a position to meet the demands of the ex-prisoners. Consequently the ex-prisoner find himself on the cross-roads, without the proper advice and help, with so many

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[32] *http://www.kerala.gov.in/dept_socialwelfare/objective.in.htm*.13-12-2006

temptations, resulting in the numerous difficulties that come in the way of his resocialisation.

Attitude of Society

The reformative theory of punishment envisages the social rehabilitation of the offender by preparing him to re-enter the society as a law-abiding citizen. But this cannot be attained unless the offenders feel that they are part of the community, and in their welfare the community takes a continuing interest. In order to complete a successful rehabilitation the public co-operation and participation is a necessity.

As crime is a social phenomenon, no system for its prevention and control could ever be conceived without an active participation of the public. In fact, public participation is an inseparable ingredient of the process that defines a behaviour as crime and strives to tackle it. The positive role of the public in preventing conditions which precipitate crime and in facilitating the offender to mend his behaviour and to reintegrate into society has yet to be fully recognized. The civil society is to be encouraged to take a balanced view and to guide the public in subscribing to a system that protects society against crime without impinging on the human rights of all those involved, whether as offenders or victims. For this purpose, civil society must be closely associated with the planning and execution of crime prevention and criminal justice strategies, so that it sets a direction for a momentum to public participation in this field, at the individual, group and community levels[33].

The future of various non-custodial measures is tied with not only the offender's responsiveness to community correction but also the extent to which the public is prepared to extend its helping hand in the correctional process and to accept the offender within its fold. Besides adopting a positive attitude towards the rationale and efficacy of community based treatment, the public can substantially contribute to the reformative process by providing social and

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[33] Dr.Hira Singh, *Social Defence (Vision 2020) http://planningcommission.nic.in/reports/genrep/bkpap2020/2_bg2020.pdf.*7-5-2005

material inputs. In the sphere of institutional treatment, the public can play a significant role, mainly in two ways first by supplementing correctional programmes in custodial institutions and secondly by serving as a bridge for the offender's transition from custody to free society.

Community could play a vital role in the resocialisation of the ex-prisoners. No programme of prisoner's rehabilitation is likely to succeed if it lacks vigorous and uninhibited community support. The correction and rehabilitation of offenders will succeed only if, the community's attitude towards the offenders is changed.

TABLE 6

Attitude of society towards prisoners

OPINION	GOOD	BAD	INDIFFERENT	TOTAL
NUMBER	3	111	36	150
PERCENTAGE	2	74	24	100

Table 6 shows that 74% feels that the attitudes of the society towards them were very bad. Even if they try to live a good and honest life they were treated like criminals. If there is any criminal act done by any other person they were the number one suspects. Every one will look upon them as the culprits till the real one is arrested. Due to these attitudes they were not able to lead a good life and this slowly pushes them into criminal way of life as even though leading an honest life they were always accused and looked with suspicion they think it better to be accused for a criminal act. 24% think that the attitude of the society is indifferent. They are not bothered about what happens around them and to help these ex-convicts to adjust to the good way of life, to give a helping hand. Only 2% feels that the attitude of very few persons in the society is good.

TABLE 7

Attitude of society towards recidivists

OPINION	GOOD	BAD	INDIFFERENT	TOTAL
NUMBER	0	81	23	104
PERCENTAGE	0	77.88	22.12	100

From the table 7 we can see that 77.88% of recidivists opined that the attitude of the society when they had come out of the prison were very bad. 22.12% felt that the attitude of the society was indifferent. From table 6 and 7 we can see that no one has given the opinion that they were treated by the society in a good manner.

Common people were found to be least concerned about the rehabilitative needs of the released prisoner's[34].They were equally unaware about the prison treatment programmes and their impact on prisoners.

A good citizen is not only a law-abiding person but also a person ready to serve the state at the cost of personal convenience. He is willing to help in combating anti-social activities and anxious to work for creating better condition of social life[35]. In the developed countries there is a tendency towards a much greater reliance on the participation and support of the public in the prevention of crime. In India, the potential of the public participation in crime prevention may be greater but unfortunately so far it has remained largely unexplored. The main

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[34] B.N.Chattoraj,"Aftercare Services for the Rehabilitation of Offenders in India", 1988 vol.VIII no.1 *Journal of Criminology & Criminalistics*,p.26

[35] J.Jeya Singh,"Community Participation in correction and Rehabilitation."(Jan1979) vol. XI no.35 *Social Defence* p. 16.

reason for this is that the public sees the social defence exclusively in terms of law enforcement agencies such as police, courts and correctional institutions. Another reason may be the apprehension that the public, having been encouraged to take an active part in prevention would act too vigorously and without sufficient reason[36].

However, no programme of prisoner's rehabilitation is likely to succeed if it lacks vigorous and uninhibited community support. The majority of the respondents interviewed (87%) expressed their view that the community could play vital a role in the resocialisation of the ex-prisoners. But this can be achieved only if the community's attitude towards the offenders is changed.

Peno-correctional programmes should go hand in hand with follow up and after care programmes. The rehabilitation of the offenders is a joint effort involving the offender, professional worker and the community. Unless, the community accepts its responsibility and indeed plays a strategic role, successful rehabilitation of the offender will be jeopardized[37].

Most of the recidivists interviewed said that when they come out of the prison the situation they had to face was that they were always followed by suspicious eyes, what ever they did would be frowned upon by the society as a shade to do their illegal activities. Even their own family would be against them, they were not able to get any job as in the age of unemployment ordinary citizens were not able to get any job no one was willing to give jobs to ex-convicts. Most of the ex-prisoners did not have a place to go as the family members threw them out. With no place to go and no money they would automatically be thrown into the ways of criminal activity as the only persons who were willing to help them were their old criminal associates or other like persons. This association would certainly make them recidivists.

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[36] R.S.Agrawal, "Participation of Public in Prevention and Control of Crime", (Oct.1973) vol IX, no.34 *Social Defence* p. 20.

[37] R.J.Margolin, "Post Institutional Rehabilitation Of the Penal Offender: A Community Effect". (March 1967) vol. 31,no.1 *Federal Probation*, p. 46.

CHAPTER IX

Chapter IX

Conclusion and Suggestions

Despite far-reaching development in correctional practices and improvement in criminal justice, there is a steep rise in the crime rate, out of which, many of them are recidivists. Recidivism is perhaps one of the most important indicators of the impact of criminal justice intervention. It provides information that has value for all facets of the criminal justice system.

Criminal Justice System is primarily concerned with the risk of re-offending and the type of interventions required to effectively manage that risk. Many studies conducted in countries like United Kingdom, United States, Sweden, Finland, Canada, Australia, and New Zealand show common predictors of reoffending.

(1) Gender is one of the top spot factors. Males tend to reoffend more than women.

2) Recidivism rate against property offence seems to be higher than offences against person. Even though initially a person may have committed offence against a person, majority of his later offences were against property. It is a rare occurrence that a murderer repeatedly commits murder. But we can find in plenty the recurrence of theft

(3) Re-conviction rates of young offenders are high. As the age of release of prisoners increased, the probability of reoffending decreases;

(4) The age of first offence is very important as the younger the age of first offence higher the probability of them becoming recidivists. It has been found that majority of the juvenile offenders later on become recidivists.

(5) Recidivism rates were higher for those with more previous convictions. The more convictions they have, chances of them repeating the offence is more.

(6) Education is an important predictor in recidivism. As the education goes up, the chance of reconviction decreases. In almost all the studies it has been found that the educational levels of recidivists are very low. Majority of them have reached only up to the high school.

(7) Reconviction rates of prisoners discharged from longer sentences is found to be lower. Recidivism among short term offenders is very high.

(8) If an ex-prisoner remains without reconviction for a longer period, then the likelihood of him committing another offence is very low. The longer the period of conviction, the lesser the chance of re-conviction.

(9) Offenders using illicit drugs prior to the present offence have higher recidivism rate.

(10) Race and ethnicity of the offender is related to the recidivism rate.

(11) The offenders who have stable employment reoffend less.

In India no major study has been conducted among the recidivists. The researcher in the study of the prisoners in Kerala found that all the common predictors which cause recidivism stated above are present here also.

Compared to western countries the recidivism rates in India is low. Among the convicts it has increased from 5.6% in 2002 to 7.3% in 2003. But when we consider state-wise statistics it has been found that some states show a very high recidivism rate, like Meghalaya (75.9%), Sikkim (58.6%), Tamil Nadu (51.8%), Bihar (38.8%), Mizoram (31.9%), Kerala (25.3%), etc. All these States show very high rate of increase from previous year. Only very few States show a decreasing trend. The rate of recidivism has increased in majority of States as well as at the national level. If this trend continues the rate of recidivism will certainly go up in future.

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The study has analysed State-wise recidivism for offences committed under the Indian Penal Code during the period from 1995 to 2005 to find out the recidivism rate in India. Even though the recidivism rate has come down slightly in some years, the all India statistics on the rate of recidivism shows an upward trend. Only very few States like Goa, Maharashtra, Orissa, Uttar Pradesh show consistently lower recidivism rate than the national level. Towards the end of the study it was found that some States like Gujarat, Himachal Pradesh, Jammu & Kashmir, Tripura, and Bihar showed a decreasing trend even though during some years in between they had shown an increase in the rate of recidivism. Certain other states like Punjab, Rajasthan, Haryana, Meghalaya, Mizoram, Nagaland, Tamilnadu, Tripura shows a decreasing trend in the end, but that also seems to be way above the national mark. In all other states the trend is for increase in the rate of recidivism. In Kerala, in some years the rate is low, but it has increased to 43.2% in 2004 and became the national topper among the States. Looking through the recidivism rate in all the States of India we can see that it has gone up even in the Union Territories.

The researcher conducted an empirical study on the recidivism of persons admitted in all the Central Jails, District Jails, Sub Jails, Special Sub Jails, Women's Prison and Open Prison in Kerala during 1996 to 2002. In all the Central Prisons the recidivism rate has gone up. In Central Prisons during the years 1997 and 1998 the recidivism rate is 80.9% and 79.33% respectively. Even though the rate has decreased in 1998, the rate of recidivism is very high in all the other years. The rate of recidivism among female offenders is very high in Central Prison Thiruvananthapuram when compared to other central prisons in Kerala.

Among the District Prisons also the rate of recidivism is high even though it fluctuates. Here also the female rate of recidivism is low and shows definitely a decreasing trend. In the case of Sub Jails and Special Sub Jails the recidivism rate is very high as it has not come under the 30% mark in all the years. In some years it has crossed the 50% mark. Studying all these rates of recidivism we can see that the phenomenon of recidivism is on the increase. If this menace is not

curbed our prisons will be filled with recidivists, which produce a cycle of release and imprisonment. This revolving door phenomenon has to be stopped.

Social forces to a great extent contribute in precipitating criminal tendency. It is now believed that the criminal is not born as such, but his criminality is mainly the product of social, economical and political circumstances. Thus in order to achieve the main objective of punishment, i.e., prevention and control of the crime, the components of the criminal justice system is not supposed to focus upon the gravity of the crime alone, but its causes are also to be taken into consideration.

An individual's behaviour towards society, his social position, society's attitude towards him will always depend upon his family. It is the first and important bridge between him and the society. The atmosphere within the family clearly modulates the formation of his personality-social or antisocial. We can clearly see that 72.38% of the recidivists have more members in the family so that they are not in a position to get proper care from their parents.

Broken families and delinquent bahaviour have got obvious relationship in producing criminals especially recidivists. Among the total prisoners 89.33% are from broken families and in the case of recidivists it is 96.19%. This is mainly because apart from the formulation of one's behaviour they do not have any support during or after their incarceration. Within them they harbour hatred towards their own families and the society. To convert them into normal citizens is a difficult task.

When individuals are arrested at an early age they will be forced to carry the additional burden of stigma of incarceration, social ostracisation, lack of proper friends, education, and even family support. All these have to be faced at an immature age. 56.19% of the recidivists were arrested when they were below 18 years of age. Emphasis has to be given to provide some other alternative to imprisonment to bring down recidivism to a great extent.

If there is any criminal member in the family the children will definitely be attracted to a way of crime as they do not find any fault in this. They will certainly be branded as criminal family. Even if any member tries to live honestly the society will not let him. If there is a suspicion about any crime the fingers will be definitely pointed towards him. 38.67% of the total prisoners and 54.29% of the recidivists have got criminal members in the family. It will be very difficult to reform him by removing all preconceived notions imbibed by him from birth and subsequent growing up.

Nearly 2/3 prisoners in the central jails in Kerala are married. So apart from their own social adjustment problems they have to think about their families also. Among recidivists 46.67% were married and we can see that there is a relationship between crime committed and marital status. Unmarried persons are mostly involved in property offences. It is found from the study that recidivists mainly commit offences against property, against local and special laws. Recidivists after two or three crimes either divorce or get separated from their spouses. If it is not so then their spouses will be their accomplices. For committing the first offence marital status do not have that much influence but in creating recidivists it is a prime factor. To pull oneself back from crime require a lot of family support and help.

The environment in which a person lives has got definite connection in the making of a criminal and also the type of crime, he commits. Opportunity to commit a crime is an important factor. From the study it can be seen that all the persons who were prosecuted for the violation of offences under local and special laws resided in cities. Among the recidivists, 87.62% were living in towns and 12.38% were living in villages at the time of their last offence. Majority of recidivists live in towns mainly for the opportunity to commit further crime and to live away from the place where they are known. So recidivism prevails over urban areas.

There is a mixed trend in the crime committed by Hindus, Muslims and Christians admitted in the Central Jails in Kerala. The proportion of Hindus

decreased from 58.54% in 1996 to 47.44% in 2002. In the case of Muslims it increased from 20.32% in 1996 to 24.73% in 2002. The ratio of Christians is 21.14% in 1996 to 27.83% in 2002. The rate of recidivism among Hindus shows a downward trend while among Muslims and Christians, an upward trend is seen. Among the recidivists interviewed 41.9% were Hindus, 36.2% were Muslims and 21.9% were Christians. We can definitely say that recidivism among the Muslim community is very high considering their minority status in the population. Among Hindus and Christians majority belongs to backward castes.

We can see that there is a direct connection between crime committed and the age of the offender. Among the prisoners admitted in Central Jails in Kerala majority were below 40 years. After the age of 60 very few commit crime. Among the recidivists studied 84.76% were below 40 years of age.

Even though the rate of illiteracy has decreased from 22.1% in 1996 to 12.6% in 2002 among the prisoners admitted to central jails in Kerala we can see that there are a lot of illiterates still in the prison. Even among the literates, the persons who have college education can be counted on our fingers. More than half of the prisoners interviewed said that they only know how to write and read their names. From this we can say that there is a direct relationship between education, crime and recidivism.

Among the prisoners admitted to the central jail very few prisoners have permanent jobs. It reveals a direct relationship between employment and crime. Majority of the prisoners studied maintained their household with great difficulty as their percapita income was very low. Among recidivists, 70% had no independent earnings. Economic factor surely does have a great effect in producing offenders as well as repeaters.

Many people commit crime as all human bahaviour is a result of an interaction between a large number of factors, some of which reside within the individual, and some are to be found in the external environment. It is found from this study that the majority of prisoners especially recidivists have low or poor

socio-economic background. Many socio-economic factors thus have a direct bearing on recidivism.

If crime is sought to be mitigated, if freedom from recidivism is to be attained, we should look to education, employment, diagnosing of the cause or causes of the crime in the case of each individual offender and device proper measures to deal with him.

The personal causes of crime are those which are dormant in the individual and which becomes evident only under the stimulus of environment. The modern objective of making the treatment fit the offender supplements the old one of making the punishment fit the crime. Dr.Gillin suggests personal and social reconstruction. The individual and the society of which he is a member must be so constituted that conflict is avoided and harmony results[1]. Find out why a man does wrong and make it not worth his while.

Recidivism has human and financial costs. Expenses related to major state criminal justice functions such as prosecution, policing and imprisonment is very high. The average annual cost to house a prisoner in 2002 was Rs.8,649.7 and in 2003 it has reached to Rs.11,901.3.

Government coffers are stretched to the limit on facility construction and operation. This budget crunch has an impact on education and job skill programme offerings.

On the human side, crime committed by recidivists creates new victims, social unrest and demand for additional prisons. The economic burden of recidivism is three fold,- (1) the cost of non-employment in lost income taxes or contribution to the economy, waste of man power, (2) the cost of the crime event itself compounded by police, prosecution and court expenses and (3) the cost of incarceration. In short recidivism costs are high for society and the offender.

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[1] J.L.Gillin, *Social Pathology* (1933), p.590.

Many nations around the world have enacted provisions for controlling the dangerous offenders from the beginning of nineteenth century itself. These laws were enacted as the ordinary laws made for general public is not enough for them to prevent them from committing further offences.

In the United Kingdom, Australia, Netherlands, United States of America, Canada many legislations have been made to curtail further criminal activities of recidivists. Primarily the main aims of these laws were incapacitation. The common features we can see from all these laws are enhancement of punishment for habitual offenders and preventive detention to reform them.

If gangrene is formed in some part of the body there is no other option other than to cut it off or remove it. Likewise if a recidivist has been given punishment for the offence committed even then as soon as he is out of the prison he commits another crime. If that person is left in the society he will be committing further crimes. So there is no option left on the part of the Government other than to lock him up and try to administer some corrective measures. It has got two advantages one is for himself that is he will be stopped from committing further offences and there is a chance of attaining his reformation. Secondly, the society will be free from his threatening presence. Public can live without the fear of him committing further crime.

The protective sentencing provisions are in violation of the human rights of offenders as they are subject to periods of incarceration longer than warranted by their offences; in essence, they are detained for offences not yet committed. Although this may seem counter-initiative at first glance, it is fair to say that incarcerating a person for an undue period of time could be detrimental to the offender's chances of rehabilitation and reintegration into society. The longer a person remains in prison, the more he becomes "institutionalized" and loses his ability to function as a productive member of society when released. Community notification heightens fear within communities and increases recidivism among released offenders who are often ostracised, harassed and prevented from finding work.

In India also there are many Acts which deal with the recidivists. In the Criminal Procedure Code, Section 110 provides for the execution of bond by the recidivists for good bahaviour. The Supreme Court in many cases has upheld the validity of this section again and again. These provisions are made with a view to prevent crime and ensure public safety. Under Section 110 Cr.P.C. action is taken without formal trial. Under Section 356, preventive action is taken after the trial and conviction. Thus further punishment can be imposed on the recidivist to prevent him from committing further crime. Indian Penal Code provides for aggravated punishment under Section 75. This is mainly for the protection of the society. Courts can impose longer sentence on a recidivist.

In the Indian Evidence Act normally the character of a person is irrelevant, but there is an exception under Section 53 the good character of an accused is relevant. The previous offence or the fact that he is a recidivist itself shows his bad character. This can be considered as evidence in the case where to rebut the fact that he has given evidence of good character and also in case where the bad character of the accused is itself a fact in issue.

The laws on habitual offenders enacted by the State are with a view to meet those an exceptional case in which ordinary criminal law is not enough to take action against the bad characters and undesirable elements of the society. In such situations, secret surveillance is necessary to prevent crime. Such laws certainly curtail the personal liberty of a citizen. But such restraints have to be sustained in the larger interests of the society. The freedom of comparatively fewer numbers of people may be restrained, so that majority of the community may move and live in peace and harmony and carry on their peaceful avocation untrammelled by any threat of violence or fear to their person and property. The right of the individual has to yield to the larger interest of the community in such exceptional situations.

Even though the Kerala Government has enacted Kerala Habitual Offenders Act in 1960 and its Rules in 1963, its application has been found very rarely. In this Act there are elaborate provisions for the registration of habitual

offenders, issuing of identification roll, procedure for change of residence, when going to other places for visit, restriction of movements, establishing and maintaining correctional institutions, placing habitual offenders in these institutions, penalties for disobedience or non-compliance of procedures are given. From the empirical study it has been found that nothing has been done on the basis of this Act, but on the basis of the Police Act, Police Manual, Police Standing Orders, I.P.C., Cr.P.C. Evidence Act, etc. A register of habitual offender is maintained in which all the details are written. Their change of residence, their movements, whether absent, etc. is recorded in the register.

Different types of registers are maintained in the Police Station like K.D.History Sheet, History Sheet of other habitual offenders, Rowdy Sheets, bad character rolls, suspect history sheet, K.D.Check register, Ex-convict register, loose leaf index, etc. In these records almost all the details of the persons under observation is recorded. The result of surveillance will also be recorded. Looking through these registers all the habitual offenders in the station limit can be identified and watched over. If they have been absent from their residence that can be looked into. If any relative or friend of the recidivist is absent they will also be under the scanner.

Going through these sheets recorded by the Police it was found that in majority of the records it has been stated that "checked the rowdy" or "history sheeter", etc. This is not sufficient. Their full details at the time of checking have to be recorded. During the periodic checking only details that they had been checked, is recorded. It is from these registers the details of the recidivists can be obtained. That has to be maintained properly to curtail their illegal activities.

Even after all these provisions in our laws, we can see that there are many a number of habitual offenders left free to roam the streets terrorizing the people. The numbers of recidivists who repeat their offences are on the increase. There should be strict surveillance over the recidivists as soon as they leave the prison. If there is any suspicion that they would commit another offence then they should be taken into custody or some restrictions should be put on them, there by

preventing the commission of crime. Strong intelligence on the part of the police plus the community help can go a long way in reforming a recidivist

The main aim of sentencing is to provide appropriate punishments to the offender for his offence, at the same time it should be suitable for that prisoner so that he will be reformed to an extent that he will not go back to crime, i.e., to stop recidivism. This in effect will ultimately reduce crime. It is the sentencing authority who will decide on the sentence to be imposed on a particular offender. Providing sentence on a recidivist is a challenging job as some sort of a sentence would have been imposed on them when they committed an earlier offence. This was not sufficient to keep away from committing further offence

While deciding what type of sentence to be imposed, the sentencers are helped and guided by different theories of punishment. The phenomenon of recidivism brings forth the question of retribution, prevention, or incapacitation and reformation as the advisable form of punishment. The judges can use a single theory of punishment or a mixture of theories which will suit that particular offender.

Punishment should be provided immediately to impress the offender as well as the society on the connection of punishment with the crime. In our criminal justice system where the courts are over flooded with cases, to get a judgment from one court itself takes a long time. As there is provision of appeal it will take years for a judgment to become final.

The vision of reformative theory is to reform the offender as a person, so that he may become a normal law-abiding member of the community once again. Here the emphasis is placed not on the crime itself, the harm caused or the deterrence effect which punishment may have, but on the person and the personality of the offender.

It is not an easy task to convince the offender of the justification of punishment so that he willingly accepts it and in the process is reformed. A

programme of reformation or rehabilitation must contain both positive and negative elements, both pleasure and pain and both persuasion and authority and to be most effective it must be based on intensive study of the individual. It must include treatment of physical defects, the reduction of personality mal-adjustment the reduction of influences detrimental to organized society and inculcation of the principles of good citizenship. The reformative procedure must not be so pleasant either as it may encourage further criminal activities; it must be so designed as to produce desirable change in the personalities of the offenders.

The treatment of criminals by society is for the protection of society. But since such treatment is directed to the criminal rather than the crime, its greater object should be his moral regeneration. Hence, the supreme aim of correction is the reformation of criminals, not the infliction of vindictive suffering.

Since hope is more potent an agent than fear, it should be made an ever present force in the minds of prisoners by a well devised and skillfully applied system of reward for good conduct, industry and attention to learning. Rewards, more than punishments are essential to every good prison system.

The prisoner's destiny should be placed measurably in his own hands he must be put into circumstances where he will be able, through his own exertion, to continually better his own conditions. A regulated self – interest must be brought into play, and made constantly operative.

The prisoner's self respect should be cultivated to the utmost and every effort made to give back to him his manhood. There is no greater mistake in the whole compass of penal discipline than its studied imposition of degradation as a part of punishment. Such imposition destroys the better impulse and aspiration. It crushes the weak, irritates the strong. Brute force may make good prisoners, moral training alone will make good citizens.

The rehabilitative approach indicates that the sentences should be tailored to suit the needs of a particular offender, as it needs individualization of

treatment and this would in turn imply that such a need based approach places no limits on the extent of intervention and thereby this theory conflicts with the idea of a right not to be punished disproportionately.

Human beings are neither putty nor plastic. They cannot be remoulded to any behaviour by benevolent intention. Besides, the cost of reform contemplated in this theory is too great and is likely to create an impression among the public at large that actually crime is being rewarded. The theory ignores the complexity of human behaviour and its basic impulses.

By the perusal of these theories of punishment one cannot simply swallow the sophisticated view that the only purpose of sentencing is the rehabilitation of the individual offender. Deterrence through punishment, prevention through restraint and the gratification of the sentiment of denunciation by the community are also important goals of criminal law. There is no one reason why a person commits a crime, so no one type of punishment fits all criminals. Some criminals are sensitive to pain, others to humiliation, others to confinement and yet others may require guidance and treatment.

To make an appropriate and just sentence the sentencers should have an understanding of each of the goals of punishment and methods of achieving them. They should also recognize the limitations of each theory, so that they may strike to invoke those methods in sentencing which will help achieve, not impede, the attainment of the desired goal. To determine a proper sentence, judicial officers must take a range of mitigating and aggravating factors unique to the trial in question into account. Moreover, previous sentencing, decisions by other courts, legislation, and theories of punishment all play a role in the sentence which a court can impose.

Sentencing is a complicated process for the courts, involving the appraisal of a range of factors, circumstances and theories. For the public, especially in a country ravaged by high levels of violent crime, this process is often confusing and frustrating when people convicted of horrendous crimes receive what appear to be lenient sentences. The 'crime': the degree of harm caused by the offender,

or the seriousness of the crime (retributive theory); the 'criminal': the personal circumstances of the offender (reformative theory), such as whether he is a repeat offender or was provoked into committing the crime; and the 'interests of society': society must be protected from a dangerous criminal (preventive theory), or the community must be deterred from crime (general deterrence theory), or society's abhorrence of the crime is recognised (retributive theory).

Courts seek to find a balance between these three factors. "A court should not emphasize any of them at the expense of the others." The courts have also adopted the view that each case and accused is unique. As a result, considerable emphasis is placed on the individualisation of sentences.

In most of the countries around the world the recidivists were sentenced more severely than first offenders. While pronouncing sentence, the sentencers will look into their previous conviction to find out whether aggravated punishment should be given. Most commonly the period of imprisonment is found to be increased in the case of recidivists.

The Supreme Court of India in many cases have pronounced that the imposition of sentence as a complex process while deciding what sentence to be given, theories of punishment, age, socio-economic background, type of offence, circumstance of offence, scale of penalty for that offence, his future chance of offending, etc. have to be looked into. After giving due deliberations to all these aspects the judges have to decide what sentence should be awarded which would bring forth his reformation and later his rehabilitation into the society as a law abiding citizen.

While awarding a reformative sentence the judge should not loose sight on the offence committed, the harmful effect on the victim and to the society. This offence might have ruined many people's lives. So the Court has to give justice to the society and the victim on the one hand at the same time to the offender on the other which will ultimately benefit the society itself. In order to give a sentence proper balance must be given to all these aspects.

It is obviously repugnant to one's sense of justice that the judgment meted out to an offender should depend to a large extent on a purely fortuitous circumstance, namely the personality of the particular judge before whom the case happens to come for disposition. The judge has the most visible role in the sentencing process, as he formally announces the quantum of punishment to be imposed on the offender. Sentencing disparity compromises the ideal of equal treatment under law. The judges must be instructed on how to calculate the quantum of punishment by looking though the criminal's history, offence, chance of reformation, etc.

The studies conducted in many countries about the length of sentence found that those persons who are serving a shorter prison sentence were more likely to be reconvicted than inmates released after serving a longer prison sentence. This can be attributed mainly to the fact that during a shorter sentence the prisoners were not able to be administered the proper correctional techniques which would help them in reformation. More than that, it brings them into closer contact with the hardened criminals which reversely affect their reformation. Instead of becoming reformed they become better offenders. As soon as they come out, they will put it into practice, thereby becoming recidivist.

In the State of Kerala during the period 1996 to 2002, the majority of the prisoners (above 80%) were sentenced for a period below one year. Only 12% of offenders were given punishment above two years. From the interview conducted on the recidivists the majority were given less than one year. Within that, majority were punished for a period less than three months. Putting these short time sentencers inside the prison will only result in producing recidivists as they do not get any corrective training inside the prison. Instead they get training and acquire better skills and contacts to commit further crimes. The prisons will be over-crowded resulting in the failure to provide infrastructure, adequate correctional treatment to the needy ones and also increase in the cost of their maintenance. So the present sentencing should be re-structured so that we produce fewer recidivists.

The absence of a rational, well defined and well publicised criminal policy hampers the effort to prevent crime and protect the society. It leads to fragmentation and segregation of a criminal justice system which needs to be united around common objectives and a shared philosophy. An effective strategy of crime prevention and control requires that every component of the system views itself not as an entity which can (and should) act independently and unilaterally, but as an integral part of a total system. No system can function efficiently when its components adopt contradictory or conflicting philosophies.

The sentencing decisions practiced today is almost invariably unsatisfactory in terms of pointing out its objectives, its effectiveness and its consistency. It is essential that efforts should be taken towards developing a far more structured, streamlined and articulate policy than that which exists today. It should not only take account of the sentencing rationales and statistical analysis but must also consider the general realities of India, introducing the reform oriented programmes, the socio – economic factors. For example if the sole breadwinner of a poverty stricken family is incarcerated for a long time, there is a great possibility of his family members getting into criminal way of life, and in his mind there will be hatred towards the society which make him commit more crimes and become a recidivist. If possible to give any other punishment to such a person would mitigate the sufferings of the family and prevents the production of another set of criminals. Only a realistic, compassionate and yet objective understanding of the impact, which the sentence may have, will render such sentence effective, so that, more criminals and recidivists are not born.

The development of sentencing policy and guidance; and the means to implement it, needs to be accompanied by the on-going monitoring to determine whether the desired results are being achieved, and whether amendments are necessary. Mechanisms are also needed to ensure adequate provision of information to judge, for instance through a sentencing information system and/or seminars.

While imprisonment is necessary in many cases involving violent offenders, it does not constitute a panacea with regard either to crime prevention

or to the social reintegration of offenders. More over, the prison system faces major challenges because of over-crowded and out dated facilities with the result that prisoners often find themselves in deplorable conditions of detention that can have adverse effect on their physical and mental health and impede their educational and vocational training. There by, also affecting their chances of future adjustment to an ordinary life in the community. The impact of long term imprisonment on a person's family and work life is also considerable. The United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) emphasized the importance of developing and implementing useful measures to help offenders while keeping them in the community.

The wider use of alternatives reflect a fundamental change in the approach to crime, offenders and their place in the society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the vulnerable members of society to lead a life without having to relapse into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long term, better protection for society.

Probation is a very significant development in criminal justice system. It is a method of dealing with offenders within the community. It was developed as an alternative to imprisonment or institutionalisation which is applicable to cases where guilt is established but where the judiciary considers that imposing of a prison sentence would do no good.

Probation services help such individuals by restoring them to their families and society by persuading them to behave in socially acceptable manner and become useful productive members of society. Thus probation is an alternative to imprisonment, a method of non-institutional community based treatment of offenders. Probation keeps the offender away from the criminal world. Further, the fear of punishment in case of violation of probation law has a psychological effect on the offender. It deters him from law breaking during the period of probation. Thus probation indirectly prevents an offender from adopting a

revengeful attitude towards the society. Moreover, sentencing an offender to a term of imprisonment carries with it a stigma; this makes his rehabilitation in society difficult. The release of the offender on probation saves him from stigmatisation and thus prepares him for an upright living.

Probation seeks to socialise the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The probation officer would guide the offender to rehabilitate himself and also try and wean him away from criminal tendencies. An analysis of crime statistics would show that a large segment of offenders consists of the poor, the illiterate and the unskilled. Such offenders are seen to be victimised twice: once, when they are denied their basic human needs in open society and forced to live in a sub-culture of social marginality, and, again, when they are grinded in the mill of criminal justice for having infringed the law. Probation would thus be an effective means to deliver justice to them, they would not be incarcerated and also they would be trained, which would improve their life later.

The main object of society, that all its members play a positive role by seeking their self-rehabilitation is achieved by the probation system; it is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control. The lower judiciary in India has not at all taken into consideration the objects and reasons of this act, while applying its discretion in regard to grant of probation. In an umpteen number of cases the accused had to move the High Court and even the Supreme Court to get the relief of probation. If an accused gets relief of probation only in the High Court or the Supreme Court after passing through the turmoil of a long and cumbersome judicial process, he would, psychologically be affected and the whole purpose of the Act would be forfeited. Variation or discharge of the probationer is based solely on the report of the probation officer; this leaves the probationer at the mercy of the probation officer.

The probation services are not very effective. Thus, even considering that a sentence of probation has been passed and the offender is placed under supervision it is nothing more than a regular visit to the officer. There is no scientific process of rehabilitation and the Probation Officers aren't adequately trained. Due importance must be given to the reports of the probation officers by making necessary amendments in section 4(2) and section 6(2) of the Act. Probation must be based on thorough investigation into the case history of the offender and the circumstances associated with his crime. United Nations Standard Minimum Rules for Non-custodial Measures also provides that the judicial authority must avail of such a report. Further an increased investment on correctional services for the poor, illiterate and unskilled would be most productive not only in reducing crime but also in improving the quality of life among the strata they come from and ultimately return to. Thus, in conclusion it can be said that the concept of probation would be effective only where the judiciary and the administration work together. There must be a common understanding between the Magistrate (or) Judge and the Probation Officer. Probation would be effective only when there is a sincere attempt made to implement it. Thereby we can prevent persons from becoming recidivists.

Admonition is very useful to prevent recidivism as when they commit their first offence itself, they are awarded admonition they shall not suffer the disqualification attached to the conviction of the offence. The stigma attached to the offence is taken away and importance is given to the rehabilitation and re-socialisation of the offenders.

Fine is one of the best alternative to imprisonment. This will keep the offenders away from hardened offenders in the prison. It does not disrupt his family life. When putting constraints on his pocket, he will have to work harder and this will keep him away from crime.

As the prisoners have to come out of the prison and lead a normal life in society, the method of sending them out on parole is very good. Because it will help them in their proper reinculcation into the society and also they will be properly watched over to prevent them from going back to the criminal way of life.

If they show such a tendency then they can be brought back to the prison for administering further reformative techniques. Before sending them on parole they have to be studied to find out whether they are reformed or not. It will provide a chance to review whether they are ready to be sent back to the society.

What is happening today is very far from the theory. Mainly those prisoners who have got influence go out of the prison on parole without considering their crime committed or their chance of reinculcation into the society, etc., while those hapless prisoners who are more than ready to be sent out on parole languish inside the prison.

Suspended sentence is a very good punishment by which the over-crowding in the prison can be reduced as well as preventing them from becoming recidivists. By this method the court can impose the punishment but at the same time its implementation is left in the hands of the offender himself. So it is he who decides whether or not to go to the prison. It will act as a deterrent force to leading a criminal life.

Mainly the majority of recidivists commit offences to gain monetary benefits. If they are asked to forfeit the gains they get out of their criminal ways they will not be lured into further crimes. If this can be strictly adhered to, they will surely see that for them the only thing that comes out of their crime is punishment and bad name, they will automatically think of some legal way in which they can obtain monetary benefits.

In most cases the offenders are not bothered or do not know about their victims. If they are made to pay compensation to the victims it will make them aware of the situation they left behind by their criminal act. They should be made to pay the compensation to mitigate some of the sufferings of the victims. For the victims after the crime there is only suffering. If the offender is put behind the bars they will definitely get some satisfaction out of that but it will not decrease their sufferings. Only if compensation is paid, it can be mitigated. Along with this the offender will be able to lead a life within the society itself.

In some cases it is definitely a necessity to the externment of an offender from a locality. When we look through the statistics of recidivists we can see that the majority of them come from poor socio-economic background. This may be the main reason for their becoming a recidivist. If they come back to the same situation which made them recidivists they will definitely drift back to the criminal way of life. If they live in another place where no one knows that they are ex-prisoners they can lead a normal life, free from temptations and suspicions or ostracisation by the society.

In many foreign penal codes there are provisions for assigning recidivists to a detention centre. In Kerala Habitual Offenders Act also there is a provision for sending a recidivist to a correctional institution for reformation and prevention of crime. Unfortunately this provision is not been made use of. By using pardon, commutation of sentence, remission, reprieve or respite we can reduce the number of prisoners thereby bringing down prison population.

Those convicts who exhibit good behaviour are transferred to the open prison. There they will be treated with respect and entrusted with work responsibilities. It will be a good training for them to live outside when they come out of the prison. Unfortunately these prisons were not used to their capacity. Only about half of their total capacity is being made use of. Women prisoners were not sent to these institutions. These facilities must be utilized for more and more prisoners as it will help them in their reintegration into the society as useful members without becoming recidivists.

These alternatives to imprisonment give an opportunity to those convicted of an offence to serve some or all of a sentence of imprisonment outside the prison. It would facilitate the resettlement of an offender into normal society, removing him or her from the prison environment. But from the empirical study it was found that these alternatives were not used in the case of recidivists and prisoners interviewed even though the first offence committed by the majority was of petty offence whose punishment come below one year. If they are provided with any of these alternatives there is a good chance that they would not have become recidivists.

Prison and its administration is a State subject in India as it is covered by Item 4 under List II in Schedule VII of the Constitution of India. Being a State subject, the prison system in India has not being viewed in a national perspective. The Union Government does not provide for a uniform target and funds for the planned development of prisons. The State Governments merely respond in an adhoc manner and the meagre residuary funds allotted are diverted to high priority areas. In short the present prison system in India is in shambles. To this state of chaos and disorder we have to throw the prisoners and hope to reform them into law abiding citizens.

A major problem that has been faced by the prison authorities is the excess inmate population resulting in the over-crowding of prison. Indian jails hold about one lakh prisoners, more than its available capacity. This in turn results in the inefficiency on the part of the prison staff to impart effective correctional training to the prisoners. The under-trial prisoners far exceed the number of convict prisoners. The huge number of under-trial prisoners, awaiting trial for years, has turned our prison into over-crowded waiting rooms and a breeding ground for criminalisation of young and first offenders. This has placed a huge burden on the hapless correctional justice system. This overload has reduced the ability of the system to act and respond promptly and efficiently. To effect a productive reformation and rehabilitation the prison population should be reduced, thereby reducing the number of recidivists.

For the proper administration of any institution there should be an adequate number of staff. From the study we can clearly see that the jail personnels who come into direct contact with the prisoners are few. The accepted policy was that there should be at least one welfare officer for 200 prisoners. But in the case of Kerala, the study revealed that, for 1293 prisoners there is only one welfare officer. So they are not in a position to take care of the individual needs and to provide personal attention in the reformation of the prisoners.

All types of offenders are confined together in correctional institutions, often, because of lack of staff; offenders are handled indiscriminately without

much contact with correctional personnel. An inmate sub culture tends to be developed within the institution which can be detrimental, especially to the new comer. The aggressive inmates tend to be leaders, and they impose their anti-social ideas and attitudes upon other inmates. Who become part of that sub-culture and are influenced by it regardless of whether or not the correctional staff approves. In even the best supervised correctional institutions, a prison code tends to develop along side the institutional code, and is followed by the majority of inmates for most of their stay there. Attitude towards the authority are generally hostile, and this hostility tends to make inmates less receptive to academic or vocational education as well as to any counselling or therapy programmes that might be offered.

Majority of the persons committed to the custody have some problems of a personal, social or medical nature, which vary according to individuals. Inside the prisons steps should be taken to resolve these problems. Then only, future crimes by current prisoners will be reduced. The treatment of prisoners should emphasize not their exclusion from the community but their continuing to be part of it.

To assure the eventual restoration of the offender as an economically self sustaining member of the community, the correctional programmes must make available to each inmate every opportunity to raise his educational level, improve his vocational competence and skills and add to his information, meaningful knowledge about the world and society in which he lives.

Corrections are, of course, a multi-disciplinary field and require personnel's from many professions. Correctional institutions need technical personnel from varied backgrounds, arising from the needs of custody to those of training and treatment. These specialties include medicine, education-liberal and vocational, recreation, administration, psychology and psychiatry, and social work. Since the purpose of a correctional institution should be the economic, social and moral rehabilitation of the offender, the efforts and energies of all these specialties need to blend themselves towards reclaiming the inmate through appropriate treatment techniques.

The international covenants have put forward certain objectives and standards to be achieved in the correctional institutions. The empirical study revealed that due to overcrowding of prisons and lack of proper trained personnel, inadequate number of prison staff and infrastructure and lack of funds, it is found that instead of changing the habits of prisoners, they become more hardened recidivists.

The life in the prison will not be and should not be the same as that of the outside world. There should be some restrictions as it is a form of punishment for some wrong. Even though there are some constraints on his freedom he does not become a non-person. Prison deprives liberty. Even while doing this the prison system must aim at reformation. This leads to many different approaches that have the potential to transform prisoners.

The prisoners were supposed to be classified on the basis of age, mental health, level of maturity, by giving individualisation of treatment, nature of offence, gender, etc. From the study conducted it was found that scientific principles of classification are not followed in our prisons. All types of prisoners were kept together mainly due to over-crowding, lack of infrastructure and staff. This will definitely adversely affect the reformation of prisoners.

Prison education is regarded as the cure for all evils. Alas to say there is no such thing taking place in our prisons. Since most of the prisoners in our prisons are illiterates or functionally illiterates, it would have benefited them to have academic, vocational, health, cultural, social, religious and moral education. If a criminal has to be reformed then good values and morality have to be inculcated in him. It will help him to resist the lures of the criminal way of life when he is released from the prison. Most of the Jail Reform Committees have stressed on diversified education as the principal channel of correctional treatment. In prison rules also it is stated that education must be given to the prisoners. In Kerala there are only nine posts of teachers to teach about 6500 prisoners. There are posts of teachers only in Central Jails. In all other jails there are no teachers to impart education.

In order to be self reliant when living in the society an offender has to be equipped with vocational training. With the label of ex-offender pasted on him he will not be in a position to get any white collar job and even no one will be willing to employ him. He has to procure his own living for that purpose. Vocational education will aid him. Training of prisoners in various vocational skills in the prison has received a lot of importance. These training programmes provide opportunities for the prison inmates to engage themselves as well as acquire themselves the skill. Further, the gainful work done by the jail population not only provides corrective approach to the mental faculty of the offender but also goes a long way in developing in them a responsive and respectful attitude towards the society. The prisoners develop self confidence and self esteem out of the valuable labour put in by them and these activities lead them towards earning an honourable livelihood after release from the prison. Unfortunately from the study it is clear that no effective vocational education is being imparted to the recidivists. If it is properly conducted the number of recidivists can be reduced. There are only very few teachers to impart this training as well as the equipments needed for that.

Prisoners should be allowed to work in the prison. This will give them an opportunity to get trained in a job which will make them self-supporting when they come out of the prison. It will also enable them to get wages, part of it can be contributed to maintain their family, meet the compensation to victims and the rest can be saved for their future life. It will also enable them to ease their boredom, to help them to be self disciplined, self sufficient, preserve their mental and physical strength and above all vast human resources can be turned productive. But what is going on in our prison will not contribute to achieve the above said objectives. The majority of prisoners idle away their time without doing any prison labour and the few minority who are engaged in some work do menial job which will not be of any benefit to them in any way except degrading their self esteem. Some were engaged in jobs which were of no use to them for lack of scope for those jobs at the place of their residence. Further there was a feeling among the prisoners that only the influential will get good work. If the allotment of work is not made transparent it will create discontentment among them and will have a detrimental effect on their reformation.

Wages are given to the prisoners as an incentive to work, to make prison work meaningful, to develop a sense of self respect, to provide for their family and to save for their post release rehabilitation. But this will not be achieved with the meagre wages paid to them. The Courts stressed on the importance of giving fair wage, but it has not been materialised so far in many States. Kerala is one of the first States to appoint a committee to revise the wages of prisoners on the basis of Supreme Court decision. The Government has accepted the recommendation as such thereby enhancing the wages by 50%. But after that also there is wide disparity between wages paid to prisoners and outside, even, taking into account the maintenance cost.

Prison discipline is good, to make the prisoners realise what is good and bad. But usually it is seen that it exceeds the limit of discipline and borders on brutality and barbarism. Incarceration itself is punishment so in the name of maintenance of discipline their suffering should not be aggravated.

If a person has to come back to the society he should not be totally cut off from the society. The only way in which he can maintain contact is through letters and visit from family and friends. It was found that in most cases both the family and friends reject them or due to financial difficulty they are unable to visit them. In either case they are cut off from the society.

The guarantee of basic living conditions in prisons is a prerequisite to implementing appropriately the necessary treatment for the future re-integration of each prisoner into society. However, these conditions are not satisfied due to lack of infrastructure, staff and budgetary constraints as well as various complications resulting from prison populations exceeding legal capacity. Under such circumstances, the need to offer rehabilitative services to offenders is overshadowed by the need to execute punishment or maintain order in the prison. In addition, despite the existence of prisoner rehabilitation treatment programmes, an inadequate scope and improper methods of implementation make such programmes relatively ineffective.

It is essential to provide adequate supervision, as well as guidance and care, to released prisoners (whether discharged early or upon serving a full sentence) in order to ensure their reintegration into the society. However, in many countries such systems of supervision and aftercare within the community are either non-existent or function poorly. Consequently, discharged prisoners who encounter difficulties or challenges in their daily lives may return to a life of crime.

As evidenced above, the smooth re-integration of discharged offenders into society relies upon the establishment, proper implementation and strengthening of treatment programmes within and without the prison walls. Thus correctional treatment in prisons, release systems, and treatment in the community must be designed to supplement and complement each other in order to secure the reintegration of prisoners into the community, as well as to benefit the community which will receive them after release.

There is a big gap between the free society and the isolated four walls of the prison. There must be a bridge over this otherwise the ex-prisoners who try to overcome this gap would certainly stumble and fall down. This would ultimately take them back to the prison. That should not be the result of punishment. We must give some boosting, some care in order to jump over this gap. This need may vary according to different prisoners. Each prisoner may have his own problems and difficulties when they re-enter the society.

From the empirical study, it has been found that adequate aftercare assistance, guidance and supervision were not provided to the recidivists when they were formerly released from the prison. Majority of them said that they did not get any after care at all. No one was provided with any financial assistance, job placement and place of residence. This really shows lack of initiative on the part of the Government for their re-integration.

From the statistics it was found that in India only very few states have provided financial assistance to ex-prisoners. Taking the whole of India, only

0.68% in 2002 and 0.89% in 2003 were given financial assistance. Kerala did not provide any financial assistance to any ex-prisoners.

Out of 213,718 prisoners released, only 1,426 (0.66%) were provided with any rehabilitation in 2003. Only six States and two Union Territories provided at least token rehabilitation to their ex-prisoners. In 2002 also only 0.80% was provided rehabilitation. From this we can assume that the increase in recidivism is definitely due to lack of after care and rehabilitation provided to the ex-offenders.

What ever rehabilitative measures provided by the Kerala Government to the ex-prisoners were through the Social Welfare Department. But they were mainly for the juveniles and women prisoners. There are juvenile homes, special homes and observation homes. But they have not been properly utilised. Only very few children were sent to these institutions. This does not mean that there are no juveniles who require assistance in rehabilitation. This really shows gross negligence on the part of the authorities. This group is the most potential to become recidivists. They have to be nipped in their budding stage itself otherwise later on they will become the most dangerous and burdensome recidivists.

On the other hand in the case of women, the Mahila Mandiram, After Care Hostel, Rescue Home and correctional institutions for women were overcrowded and no effective rehabilitation was taking place there apart from providing them with a roof over their head and three square meals a day. This in effect makes them lazy and takes away the motivation to be rehabilitated.

The Kerala Government is providing Rs.10,000/= to rehabilitate released prisoners and probationers. But most of the prisoners were unaware of this provision. No recidivists interviewed were provided with this amount.

The attitude of the society is a very important aspect in the rehabilitation of ex-prisoners as they have to live in the society. In most cases the attitude of the people towards ex-convicts is tinged with fear, distrust, suspicions or disdain, which is not conducive to their reintegration. People should be made to play a

significant role in the resocialisation of the prisoners. Unless something is done to tackle the causes of offending behaviour, and the social and economic exclusion from which it commonly springs, and to which it contributes, prison will continue to have revolving doors and in the long run the public will not be protected.

From the above study and the conclusions reached thereon certain suggestions can be made to reduce the phenomenon of recidivism. Like in the western countries an in-depth study should be conducted on the prisoners released during a particular period. They should be contuined at least for a minimum of five years. Then the rate of recidivism as well as the reasons for recidivism can be found out. This can be done only by a governmental agency as the details of prisons will not be given to anybody else.

Proper classification and segregation is to be done in order to find out measures to solve the phenomenon of recidivism. Separate institution should be made available to drug addicts and alcoholics. They have got their different set of problems. Moreover they have to be treated for de-addiction. In most jails these addicts are dying due to withdrawal strokes.

Different institutions should be made available to first time offenders. They should never be allowed to mingle with hard core criminals, which may pave the way for them to become recidivists.

Remand prisoners should be kept separated. Judiciary should keep perspective in remanding prisoners. First time offenders should never be kept in remand. Some other option should be used like, to make them sign before the probationary officers or should be kept in the custody of social agencies, etc.

Habitual offenders should be kept in solitary confinement for some time so that they should become aware that they can live without the pleasures they got with the illicit money from the offence, that there are more than physical pleasures to peace and tranquility. If he can attain that state of mind he will never go back to be a recidivist. If a criminal is to be reformed then good values

and morality have to be inculcated in him. There by to resist the temptation into the criminal way of life, when he is released from the prison.

Religion should be made use of, for reforming the offenders. Apart from religion, family is the best way in which a recidivist can be reformed. Most individuals want to be shown in a better light before their spouses, children, parents, brothers, sisters, etc. If family ties are made stronger there is a chance that they will change into good persons for their family. In order to achieve this end they should be allowed to meet frequently and it also will make them aware that they are still a part of the family and they are with them in their days of hardship and help them in becoming good citizens.

Steps should be taken to allow spouses of the prisoners to visit them and spend a night with them in separate cell with minimum basic amenities as a sexually frustrated and sex hungry individual is more likely to become deformed than reformed.

Parole should be given more frequently and liberally to the deserving prisoners instead of getting caught in the bureaucratic maze. So that he can live with his family and thereby again become part of the society and not to feel that he was cut away from the main stream.

Hope is the best medicine in reforming criminals. Many criminals felt that there was no hope of redemption for them. The thought that someone believes that there is still a chance for them to become good citizens, there are people who care about what happens to them, who wants them to be reformed, that can prove to be a good motivation for them to get reformed.

Good friendships should be encouraged. Letter writing also should be encouraged thereby they are not excluded from the news about their near and dear ones and what is happening in their locality. This will help them when they come back to society.

While giving punishment especially for a habitual offender the sentencing officers should be very cautious. Suppose if a person is punished for thirty years

in six or seven offences he can be kept in the prison for the highest period of imprisonment in any of the offence. If this person gets bail in different offences, all in all he may be getting about 1000 or more days relaxation. Effectively he will be kept in the prison for only about two years instead of thirty years of imprisonment. Then there is parole also. If he is influential, he can get out of the prison more frequently. In order to prevent this, at the time of sentencing itself, he should not be allowed to undergo punishment concurrently. He must be made to suffer for individual offences separately.

The sentencing judges should apply their mind in depth. If they feel and are made aware from the circumstances of the case that this person should not be let loose in the society to terrorise people then they should be taken out of circulation whatever be the cost. Apart from this they also should take a lenient view for persons who have committed crime as a result of unavoidable circumstances; even though both of them have committed the same offence under the Penal Code. For example, murdering after raping a small child, and murdering some one who is trying to rape his child or beloved ones, both have committed murder but the punishment should be different.

The sentencing guidelines should be clear about how previous offending or the lack of it should influence the level of sentence. As far as possible some alternatives to imprisonment should be given to first time offenders and juveniles.

Proper training must be given to the judges to reduce disparity in sentencing. Increase the discretionary powers of the court to individualise sentences allowing courts to impose conditions which are not necessarily in the criminal law but which can have a correctional effect on the offender. Amend legislation that covers conditional sentencing so that there is a common understanding of its purposes and conditions. Shorter sentence should be avoided as far as possible as this only results in the overcrowding of the prisons and producing recidivists. A definite guideline should be formulated in order to pronounce sentence in alternatives to imprisonment.

More prison staff should be provided to make correction effective. The number of welfare officers should be increased or the number of prisoners they have to look after must be reduced, so that effective and proper reformation can be achieved. The lower level staff in the prison should be given proper training as they are the persons who come in close contact with prisoners. They are in a better position to know more about the prisoners and reform them.

The rehabilitation ability of prison staff should be improved. Thus prison staff would not only play the role of security guards but also that of correctional staff that can perform rehabilitation roles like counsellors, social workers or teachers. To this end, prison staff should be trained and equipped with professional knowledge and skills in order to meet properly the requirements of the treatment programmes.

The whole system of educational programme in prison has to be revamped in structure, content, staff pattern and methodology. Class rooms should be built, classes intended for illiterate, semi-illiterate and literate prisoners should not be clubbed together, it should be separated. More number of teachers and better qualified teachers should be appointed.

Vocational education should be imparted effectively by looking through the needs, the availability of equipments when the prisoner comes out of the prison. More special instructors should be appointed.

Prisoners should be trained and employed in jobs which they can continue when they come out of the prison instead of the menial work now given. Prisoners should be paid at the market rate for their labour. Out of these wages, they should pay for their food, accommodation, training, etc.

If a co-operative society is formed by prisoners and exprisoners, it will help them to get loan and start workshop or industry inside the prison and get training in this so that they can continue work in that field when they go out. The impact of permitting prisoners to work according to their aptitude and in conditions which help them to develop a sense of self-respect and responsibility may be tremendous.

The released offenders should be closely watched and provided rehabilitation for at least five years to prevent them from becoming a recidivist. Habitual offenders Act should be applied in more cases, as this is a law which has been made especially to prevent recidivism and for their reformation and rehabilitation. Correctional settlements should be established for their rehabilitation and reformation. Suspended sentence may be introduced into our system.

Aftercare and rehabilitation should be provided to all the offenders released from the jail. Moreover reformation should be effected on the prisoners within the prison itself. The attitude of the society must be changed and more participation of the community should be availed of to bring forth reformation and rehabilitation of the offenders. The people must be made aware of the double standard and the hypocrisy existing in society, and to work against it. This will help to wipe out from the minds of the prisoners the feeling that the society which is hypocritic has no right to accuse them.

No formal system has a complete answer to the problem of recidivism. Integrated efforts are needed to tackle the problem at its very source. The criminal justice system by itself cannot undo such aberration of the wider socio-economic system as are associated with recidivism. However, war against crime has to be waged, if not to win, at least to ensure that it is not being lost. Even the reduction of recidivism as a more realistic goal can be achieved only by extending prevention of recidivism and control measures beyond the criminal justice system and to curb conditions which produce it.

■

Appendices

Appendix -1

Incidence of Recidivism among convicts admitted during 2002 and 2003in various prisons of India

No.	State/U.T.	2002			2003		
		No. of convict admitted during the year 2002	No. of Habitual offenders	% of Habitual Offenders	No. of convict admitted during the year 2003	No. of Habitual offenders	% of Habitual Offenders
1.	Andhra Pradesh	13,322	318	2.4	15,682	536	3.4
2.	Arunachal Pradesh	-	-	-	-	-	-
3.	Assam	2,712	19	0.7	2,297	38	1.7
4.	Bihar	12,078	259	2.1	663	257	38.8
5.	Chattisgarh	5,794	0	0	10.965	153	1.4
6.	Goa	161	2	1.2	100	4	4
7.	Gujarat	5834	4	0.1	8,014	2	0.0
8.	Haryana	3,341	0	0	5,589	73	1.3
9.	Himachal Pradesh	286	8	2.8	134	3	2.2
10.	Jammu & Kashmir	197	2	1.0	212	0	0
11.	Jharkhand	4,419	583	13.2	11,168	271	2.4
12.	Karnataka	6,732	3	0	7,129	3	0
13.	Kerala	2,760	612	22.2	2,853	721	25.3
14.	Madhya Pradesh	16,325	632	3.9	17,804	634	3.6
15.	Maharashtra	37,396	251	0.7	30,384	172	0.6

Table Contd.....

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16.	Manipur	21	0	0	9	0	0
17.	Meghalaya	98	7	7.1	83	63	75.9
18.	Misoram	102	25	24.5	4,003	1,275	31.9
19.	Nagaland	17	0	0	15	0	0
20.	Orissa	3,400	35	1.0	2,811	43	1.5
21.	Punjab	3,203	336	10.5	5,092	195	3.8
22.	Rajasthan	12,405	186	1.5	13,314	176	1.3
23.	Sikkim	240	5	2.1	29	17	58.6
24.	Tamilnadu	9,362	4,371	46.7	10,361	5,371	51.8
25.	Tripura	591	0	0	84	0	0
26.	Uttar Pradesh	44,180	2,648	6	38,215	4,182	10.9
27.	Uttaranchal	913	19	2.1	82	0	0
28.	West Bengal	24,614	1,253	5.1	29,625	1,712	5.8
Total States		**210,503**	**11,578**	**5.5**	**217,517**	**15,901**	**7.3**
29	A&N Islands	19	0	0	397	17	4.3
30.	Chandigarh	204	8	3.9	211	15	7.1
31.	D&N Haveli	0	0	0	0	0	0
32.	Daman & Diu	8	0	0	9	0	0
33.	Delhi	9,607	615	6.4	9,939	807	8.1
34.	Lakshadweep	2	0	0	0	0	0
35.	Pondicherry	585	44	7.5	620	58	9.4
Total U.Ts.		**10,406**	**686**	**6.6**	**11,176**	**897**	**8.0**
Total All India		**220,909**	**12,264**	**5.6**	**228,693**	**16,798**	**7.3**

Period of Imprisonment given to the prisoners admitted to the Central Prison, Thiruvananthapuram.

Year	Below 1 Month		1 month to 3 month		3 month to 6 months		6 months to one year		One year to 2 year		2 year to 5 year		5 year to 10 year		Above 10 year		Life imprisonment		Death sentence		Total
	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	
1996	459	-	189	12	18	98	26	101	17	207	-	117	-	48	-	10	-	85	-	2	1497
1997	504	356	202	128	28	159	112	125	35	138	8	59	-	41	-	26	-	75	-	1	1997
1998	1045	-	141	-	58	14	18	46	7	71	-	60	-	58	-	15	-	19	-	1	1553
1999	454	-	162	-	90	14	73	40	8	82	-	96	-	53	-	19	-	83	-	1	1175
2000	238	-	167	-	143	40	102	60	12	-	-	35	1	100	-	39	-	102	-	2	1042
2001	128	-	145	-	30	17	80	41	3	21	-	70	-	50	-	41	-	-	-	-	626
2002	149	-	68	-	175	19	131	47	37	12	113	45	-	-	-	-	-	-	-	-	796

Appendix -2

Period of Imprisonment given to the Period of Imprisonment given to the prisoners admitted to the Central Prison, admitted to the Central Prison ,
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Year	Below 1 Month		1 month to 3 month		3 month to 6 months		6 months to one year		One year to 2 year		2 year to 5 year		5 year to 10 year		Above 10 year		Life imprisonm		Death sentence		Total
	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	
1996	8	2	37	20	34	40	22	41	8	41	5	59	-	17	-	2	-	12	-	-	348
1997	28	-	79	9	17	23	16	44	11	47	9	41	2	3	-	8	-	21	-	-	368
1998	39	-	68	90	39	25	20	24	28	27	7	25	-	4	-	7	-	19	-	-	422
1999	166	-	110	62	61	76	21	43	8	24	4	15	2	7	-	5	-	18	-	-	622
2000	165	-	126	26	81	76	27	17	23	9	2	22	-	32	-	16	-	23	-	-	647
2001	77	-	97	18	45	52	41	27	93	24	5	27	-	28	-	22	-	24	-	-	580
2002	26	-	70	21	73	48	26	96	6	76	-	57	-	38	-	20	-	17	-	-	574

Period of Imprisonment given to the prisoners admitted to the Central Prison, Kannur

Year	Below 1 Month		1 month to 3 month		3 month to 6 months		6 months to one year		One year to 2 year		2 year to 5 year		5 year to 10 year		Above 10 year		Life imprisonment		Death sentence		Total
	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	S	H	
1996	157	-	32	-	59	8	73	73	10	136	7	91	-	-	-	-	-	71	-	2	719
1997	-	-	45	1	65	10	15	62	61	138	-	81	-	73	-	106	-	60	-	-	718
1998	9	9	35	48	32	49	39	35	38	38	12	169	-	56	-	86	-	44	-	-	699
1999	11	13	32	67	29	80	41	86	43	44	7	164	-	72	-	81	-	41	-	-	811
2000	7	8	84	58	67	69	68	94	4	61	62	80	80	32	-	81	-	26	-	-	881
2001	85	9	103	84	78	97	50	185	6	72	2	84	-	33	-	30	-	-	-	-	841
2002	2	22	21	64	20	131	4	107	-	223	-	66	-	35	-	31	-	64	-	-	797

Period of Imprisonment given to the prisoners admitted in Jails in Kerala

Year	Below 1 Month		1 month to 3 month		3 month to six months		6 months to one year		One year to 2 year		2 year to 5 year		5 year to 10 year		Above 10 year		Life imprisonment		Death sentence		Total		
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	Grand Total
1996	1955	365	2208	229	843	51	492	35	483	10	290	1	66	3	12	-	331	2	4	-	6684	696	7380
1997	1775	235	2308	335	994	116	500	28	461	18	214	13	135	4	140	-	233	6	1	-	6761	755	7516
1998	2067	217	1531	208	801	92	416	44	473	43	375	23	127	-	115	9	177	6	1	-	6083	642	6725
1999	1730	167	1149	135	891	104	874	45	426	23	331	3	139	3	103	2	220	4	1	-	5864	486	6350
2000	1772	248	1145	103	793	57	838	20	247	5	248	5	242	6	131	-	180	14	2	-	5598	458	6056
2001	2182	199	1024	78	667	41	703	10	408	6	307	4	155	5	102	2	104	5	-	-	5652	350	6002
2002	2075	171	831	43	874	11	732	23	534	9	361	9	116	2	60	3	181	8	-	-	5764	279	6043

Period of Imprisonment given to the prisoners admitted in Jails in Kerala

Year	Below 1 year				One year – Two years				Above 2 years				Total			
	M	F	Total No.	%	M	F	Total No.	%	M	F	Total No.	%	M	F	Total No.	%
1996	5498	680	6178	83.7	483	10	493	6.7	703	6	709	9.6	6684	696	7380	100
1997	5577	714	6291	83.7	461	18	479	6.4	723	23	746	9.9	6761	755	7516	100
1998	4815	561	5376	79.9	473	43	516	7.7	795	38	833	12.4	6083	642	6725	100
1999	4644	451	5095	80.2	426	23	449	7.1	794	12	806	12.7	5864	486	6350	100
2000	4548	428	5976	82.2	247	5	252	4.2	803	25	828	13.6	5598	458	6056	100
2001	4576	328	4904	81.7	408	6	414	6.9	668	16	684	11.4	5652	350	6002	100
2002	4512	248	4760	78.8	534	9	543	9.0	718	22	740	12.2	5764	279	6043	100

Appendix -3

Questionnaire for Collection of Data Relating to Prisoners in the State of Kerala

1	Name	:	
2	Address	:	
3	Age	:	
4	Religion and caste	:	
5	Education	:	
6	Particulars about the members of the family	:	
7	Family Income	:	
8	Nature of family	:	Nuclear/Joint
9	Did your parents live together ?	:	Yes/No
			If the answer is no, give reasons
10	Whether they are (Divorced/ Deserted/Judicially separated/ No more)	:	
11	Whether your parents are religious or not ?	:	
12	Whether they are superstitious?	:	
13	Attitude of parents towards the respondents (Discrimination/ affection/caring/as a burden)	:	
14	Locations of Respondents family (Metropolitan/Corporation/ Municipality/Panchayat)	:	
15	Owns your own house	:	Yes/No
			(if yes specify the locality)

16	Any member of the family involved in criminal activity ?		:	
17	SCHOOL LIFE		:	
	a)	Type of School	:	Public/Central/Government/ Private/Aided
	b)	Whether Mixed or not ?	:	
	c)	Performance in the School	:	
	d)	Examination	:	Good/Average/Low/Cannot say
	e)	Sports	:	Good/Average/Low/Cannot say
	f)	Cultural activity	:	Good/Average/Low/Cannot say`
	g)	Whether Hostellite/ Day Schollar/ From own house/ from relative house ?	:	
	h)	Whether receive any pocket money from parents or relatives ?	:	
	i)	If yes specify the quantity and from whom	:	
	j)	Spending habits	:	For buying essential school items/to purchase chocolates, ice creams, etc./ to go for movies, entertainments./to go to Hotels/for Dress and cosmetics/to buy cigarettes, drugs, liquors/for helping others/other items (specify)
16	COLLEGE EDUCATION		:	
	a)	Have you studies in the Colelge ?	:	
	b)	If yes, give details	:	
	c)	Whether completed the courses ?	:	
	d)	If no, give reasons for quitting	:	

e) Whether the college life leads you to criminal activity ? :

f) If yes, specify :

17 EMPLOYMENT :

a) Specify :

Government/Quasi Government/Private/ Agriculturist/Professional/Self Employed/Casual Labourers / House Wife/Maid Servant / Unemployed/Others (specify)

18 Whether employed just before this imprisonement. :

19 MARITAL STATUS : Married/Unmarried/Widow/ Widower/Divorced/Judicially Separated/etc.)

20 If married, details of spouse :

a) Religion and Caste :

b) Whether inter-caste marriage ? :

c) Educational qualification :

d) Occupation :

e) Monthly Income :

21 Your age at the time of marriage ? :

22 Age difference with the spouse ? :

23 If unmarried, give reasons :

24 In the case of widows/widower your age at the time of the death of the spouse :

25 With whom you were staying after spouse's death :

26 Do you intend to get married ? :

27 In the case of divorced respondents, your age at the time of divorce :

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28 Reasons for divorce :

29 With whom you are staying after divorce ? :

30 Do you intend to get remarried ? :

31 In respect of judicially separated respondents, your age at the time of separation :

32 Reasons for separation :

33 Do you intend to re-unite ? :

34 With whom you stay after separation :

35 Behaviour of spouse towards the respondents :

(Extremely Good/Good/Average/ Below Average/Bad)

36 Period of stay with spouse between marriage and conviction :

37 Whether supportive after conviction ? :

38 Degree of conflict between you and spouse :

a) Difference of opinion in spending habits :

b) Poverty :

c) Relationship with in-laws :

d) Nagging :

e) Drinking, Gambling, Abusing, etc. :

f) Sexual relation :

g) Illegitimate sexual relationship :

h) Mal-treatment (Physical/Mental) :

39 Frequency of conflicts between you and spouse :

(Very frequent/frequent/Occasional/Nil)

40 Whether relatives interfere in the conflicts ? :

41 Do you have any children :

Number :

Age :

Education :

42 Who cares the children in your absence ? :

43 Who is maintaining your family ? :

44 Are you religious or not ? :

a) Have you attended worship services ? :

b) Watch religious programmes in TV/Radio ? :

c) Prayed or meditated ? :

d) Do you think yourself to be superstitious :

45 Regular watchers of crime shows : Yes/No

46 Motivated by it or not ? :

47 Idea of crime gotten from books/TV/ Newspaper/Self :

48 Nature of the offence and charge :

49 Circumstances in which you committed the crime :

50 Was there anybody to assist you ? :

51 How far the victim is responsible for making you an offender ? :

52 Do you think that your parents/spouse are responsible for making you an offender ? :

53 If in similar circumstances will you do it again ? :

54 Age at the time of doing the offence :

55 What is the punishment ? :

56 How long have you been here ? :

57 Expiry date of punishment :

58 For what crime you were arrested before :

59 Nature of crime :

60 Quantum of punishment :

61 When were you released from the prison in the last time? :

62 How many times you were arrested and sent to prison as punishment ? :

63 What was the reaction of your family members after your release from the prison ? :

64 Whether your spouse or children keep distance from you with fear ? :

65 Whether you were accepted to the family with affection ? :

66 How did you feel when you were released from the prison ? :

67 Do you feel that you want to go to your house or some other place where no one knows about you ? :

68 What was the attitude of your neighbours ? :

a) Was you branded as an Ex-convict ? :

b) Did anyone tease you calling criminal ? :

c) Whether anyone looks upon you with fear :

d) Whether you were able to do the job you have done as before :

e) Whether the society has accepted you as a reformed person ? :

69 Whether any person or institutions offered any help to reinstall you into the society ? :

70 Whether you were able to procure the income to look after the family ? :

71 Does anybody refuse to give you job as you were an ex-convict ? :

72 Have you started thinking that once a criminal always a criminal ? :

73 Whether you have done the crime by any uncontrollable criminal impulse ? :

74 Whether you have gone back to the illegal activity as soon as you were released from the prison ? :

75 Whether you resorted to illegal activities only after you were unable to get any job or income through legal means as you were an ex-convict ? :

76 Whether anybody of the jail-mate taught you illegal trade while in prison ? :

77 Whether you got your illegal friends through jail-mates ? :

78 Have you been forced to go back to the criminal activity by threat from all criminal associates ? :

79 Whether you were taught any job in the prison ? :

80 Why you were unable to use any of the jobs you were taught in the prison? :

81 Whether released in probation or parole ? :

a) Period :

b) Probation Officer :

c) Nature of help and guidance received :

d) Attitude of the Society :

82 Treatment in prison :

83 What type of food (Good/bad/ sufficient/insufficient) :

84 Any complaint about the food ? :

85 How many pair of clothes you get, is it adequate ? :

86 Do you avail of the facility of hospital treatment while you are sick ? :

87 What type of prison labour ? :

88 Do you find the authorities show partiality in allotting of jobs/ distribution of works/training of trade, etc. :

89 What is the wage given to you ? :

90 Any training given to you ? :

91 Is it sufficient for your livelihood after your release :

92 Treatment by prison officers :

93 Whether there is any job training staff member :

94 Do you find present instructors helpful in teaching the trades ? :

95 Whether allow to mingle with other inmates ? :

96 Educational facility in jail :

97 Library facility :

98 Recreational activity :

(Indoor games/outdoor games/ movie/TV/radio)

99 Is there any leader to express your grievances ? :

100 Any judicial officer visited you in the jail ? :

101 Any help from the social workers :

102 Do you get any help from the officials to guide and correct you :

103 Did any of your family came to see you in the prison ? :

104 Did they write any letters/do you write to them / :

105 Do you repent for the offence, when did you feel repentance, why ? :

106 What is your suggestion in the following: :

a) To prevent recidivism :

b) Methods of reformation :

c) Building a better prison system :

d) A system of better economic guidance :

e) More frequent access to family interaction :

f) Open jail :

107 Do you prefer to continue in jail even after your release, if so, give reasons? :

108 Whether hardened criminal or not ? :

109 Whether you have done the same kind of offence before ? :

110 What was the attitude of Police ? :

111 When you were arrested for the second time :

112 Whether there is any change in the attitude of police towards you ? From the first time to subsequent arrest ? :

113 What was the attitude of the Judge when you were brought to the Court for subsequent crime ? :

114 Whether second punishment is heavier as you are a previous offender ? :

115 Do you feel the judiciary prejudiced :

Appendix -4

Questionnaire for the Prison Officials

1. Name :
2. Designation :
3. Educational Qualification :
4. Have you undergone any training with your appointment :
5. Do you think the training you have undergone is sufficient for the discharge of your duties? If insufficient suggest what all aspects are to be included in the training programme. :
6. Do you try to improve and guide inmates :
7. In your opinion what are the chief objects of punishment :
8. Whether individual offenders are receptive to reformation? :
9. Most criminals who commit violent crimes can be rehabilitated if given early intervention with appropriate programme. Do you agree? :
10. Whether all prisoners are able to read and write before release from the prison? :
11. Do you think that all the prisoners were equipped with any type of skill to enable them to get a lawful job after their release? :
12. Do you engage the prisoners in making products or performing services that the State would have to hire other people to do? :
13. What is your opinion about giving permission to permit spouses to spent weak end, each year in special Guest House on prison grounds? :
14. What are the machineries provided in our prisons for giving aftercare to the released prisoners? :
15. Do you think the correctional treatment provided in our jails is sufficient to reform the prisoners? :
16. Please give your valuable suggestions to reduce the phenomenon of recidivism :

Appendix -5

Questionnaire for Collection of Data from the Judicial Officers/ Lawyers /Academicians

1. Designation

2. What is the duration of your professional experience

3. Do you, at the time of hearing the case as Judge, preparing the case as Prosecutors, Defense Counsel, keeps into consideration, the antecedents and the family background of the accused.

4. To what extent these considerations affect the nature of conviction.

5. Do you feel any sort of sympathy or antipathy towards the accused during his trial, if so why ?

6. Do you as a sentencing judge/lawyer keep into consideration that the accused has got a right to return to the society ? To what extent this consideration effects the term of the sentence ?

7. What is your opinion about individualization of punishment ?

8. Would you like to suggest any change in our present sentencing system for the effective and prompt resocialisation of those prisoners.

9. Do you agree that the resocialisation of the prisoner is frustrated due to

   a) Delay in investigation Yes/No

   b) Delay in disposal of the case Yes/No

   c) Long term imprisonment Yes/No

10. Do you agree that the resocialisation of the prisoners is frustrated, if the attitude of the following agencies is hostile towards them

    a) Police Yes/No

    b) Lawyers Yes/No

    c) Prison Officials Yes/No

    d) Society Yes/No

11. Would you like to suggest any change in our present system of Police and jail in resocialisation of the prisoners

12. Do you agree that the liberalising of parole will help in the resocialisation of the prisoners ?

13. Do you agree that the legal aid clinics will help in the resocialisation of the prisoners ?

14. Do you agree that after care agencies are working properly ? If not what are the reasons.

15. If there is any mechanism to find out that the convicted prisoners are actually reformed.

16. How can the community help ex-prisoners to become a law abiding citizen.

17. What is in your opinion the usual attitude of the following agencies towards the offenders/prisoners/recidivists?

    a) Police officers (Friendly/normal/hostile)

    b) Prosecutors (Friendly/normal/hostile)

    c) Defense lawyers (Friendly/normal/hostile)

    d) Judges (Friendly/normal/hostile)

18. Do you agree that the hostile attitude of the police/prison officers towards the offenders creates a sort of distrust among the prisoners and thereby makes re-socialisation difficult?

19. Do you have any opinion about the causes of the recidivism?

20. Do judges have any role to prevent recidivism?

21. Does the lawyer community have got any role to prevent recidivism?

22. Is there any suggestion for preventing recidivism?

Appendix -6

Interview Schedule for Collecting Data from the Police Officials in the State of Kerala

1. Whether there is any habitual offenders register maintained ?
2. Whether any identification roll is issued to the habitual offender ?
3. Whether movement of the registered offender is recorded in the identification roll?
4. Did the Station House Officer maintain a list of registered offender, whether it is been maintained and made up to date ?
5. Whether change of residence temporary and permanent is to be notified and to whom ?
6. What is your opinion about section13, corrective settlements ?
7. Whether any reasonable opportunities are given to, state reasons why Habitual offender shall not be placed in corrective institutions ?
8. Are penaliteis imposed on the Habitual offender for failure to furnish information or furnish false informations ?
9. Whether information is collected by the local police to add names to the Habitual offender? By collecting this information is it possible to prevent crimes ?
10. Whether personal file is made for every offender?
11. Whether history sheet is maintained at every Police Station?
12. Whether permanent number is given to history sheeter?
13. Whether history sheet of KD is maintained for two years from the date of his release from jail?
14. Whether history sheet of other Habitual offender is maintained for a period of 1 year from date of opening ?

Contd...

15. Do you keep Rowdy sheet in the police station?

16. Do you keep Bad character Roll in the police station?

17. Do you keep Ex-convict and jail release list in the police station?

18. Do you keep Surveillance register in the police station?

19. What are the steps taken to find any person whose name is in any roll, is missing from the place?

20. What formalities do you follow while the Habitual offender moves to another place?

21. Do you have any suggestions to prevent recidivism?

■

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LIST OF ABBREVATIONS

A.I.R.	All India Reporter
All.E.R.	All English Reporter
C.I.	Circle Inspector
Cr.L.J.	Criminal Law Journal
Cr.P.C.	Criminal Procedure Code
Crl.L.R.	Criminal Law Review
C.U.L.R.	Cochin University Law Review
D.C.	Dossier Criminals
D.C.R.B.	District Crime Records Bureau
D.G.P.	Director General of Police
Dy.S.P.	Deputy Superintendent of Police
I.P.C.	Indian Penal Code
I.P.P.C.	International Penal and Penitentiary Commission
J& K	Jammu & Kashmir
JILI	Journal of Indian Law Institute
K.D.	Known Depredator
K.L.T.	Kerala Law Times
L.Q.R.	Law Quaterly Review
M.L.A.	Member of Legislative Assembly
M.P.	Madhya Pradesh
N.C.R.B.	National Crime Records Bureau
N.G.O.	Non Gazetted Organization
N.H.R.C.	National Human Rights Commission
No.	Number
S.C.	Supreme Court
S.C.C.	Supreme Court Cases

S.C.C.(Cri)	Supreme Court Cases (Criminal)
S.C.H.	Station Crime History
S.H.O.	Station Head Officer
U.K.	United Kingdom
U.N.	United Nations
U.P.	Uttar Pradesh
U.S.A.	United States of America
U.T.	Union Territory
UNICEF	United Nations International Children's Education Fund

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