"Hate the Crime and not the Criminal" seems to be the motivating theme behind all that happens in the name of the administration of criminal justice in these days. Taking the clue from this slogan, an attempt is made to reform the criminal. Gone are the days when the criminal used to be punished to quench the thirst of vengeance of the victim in particular and the society in general. To understand this transformation in the attitude of the society towards the criminal — from that of retribution to reformation — one has to study the evolution of the theories of punishment in brief.

In the early days, the concept of Senecan justice prevailed — eye for eye, tooth for tooth and claw for claw was the motto. Whenever there was maladjustment in the society, it used to react by satisfying its thirst for vengeance. Revenge or retribution was the vital and sole motivating factor. "The pleasure of vengeance," wrote Bentham, "calls to my mind sermon's riddle.... It is sweet coming out of terrible, it is the honey dropping from the lion's mouth." With the gradual advancement of civilisation, retribution gave place to deterrence. Criminal was looked as a menace to the society and society used to punish the criminal to prevent him from committing further crimes in future and to deter other members of the society from committing the same by showing them what would be in store for them if they followed his suit. For some time there
was prevalent the expiatory theory by which the individual was required to go through penance for the crime he has committed. Here penance and penitence played the key role in purging the individual of his guilt. In the modern times the concept of a crime and criminal have undergone revolutionary changes. A criminal is supposed to be a victim of circumstances, changes and situations and it is realised that the criminal has as much a right as the others to live in the society. Since a criminal can be reformed while undergoing imprisonment, genuine attempts are being made to reform the criminal to make him a better person and to enable him to lead an honest and respectable life in the society. The accent has shifted from deterrence to reformation. Inspite of the arguments of certain diehards that since it is impossible to reform a criminal, deterrence should be the guiding factor, in the modern times the consensus seems to be on the reformation of the individual. Any attempt at evaluating the rehabilitative process of the criminals in the prisons should bear this in mind. At the same time the fact that deterrence might in certain cases (like that of habitual offenders and dangerous criminals) prove to be inevitable should not be ignored.

Now a brief mention will be made of the modest attempts that are being made to reform the criminal in India. Rightly, reformation has been given the due emphasis in India and various measures like that of parole and probation have been introduced for the benefit of criminals. Where desirable, remission is also granted to the criminals. To deal with the juvenile offenders, juvenile courts have been established and Borstal schools have been started for the intake of young criminals ahead of whom lie much of their lives. Besides a revolutionary departure in India's penal history has been made by opening open prisons.

Conceptually motivational, open prison is correctional in approach. It implies regulated movement of a convict from closed to semi-open prisons; from that stage to an open prison and finally to open colonies which lead to ultimate release before the actual expiry of his sentence. This is however subject to the convict's consisting better conduct and reverence for law.
Each step is a move towards more freedom: the closed prison is the regular jail with outer walls; in semi-open and open prisons, the convicts walk about freely and do the assigned work during the day, and by night they return to locked barracks while open colonies are an initiation to total freedom and responsibility. For this the convicts are formally released on parole for a period of two or three years. They are provided with suitable work for which they are paid not at prison rates but actual market rates. Here they are allowed to stay with their families but it is imperative that maintenance is borne by their own earnings. There is a constant vigil but not confinement. When a convict is in open prison one month of sentence served accounts for one month of remission and one whole year accounts for a bonus of further two months’ remission. That is, 12 months of actual imprisonment will be computed as \((12 + 12 + 2)\) amounting thereby to twenty six months of sentence served when released from the open colonies, the unexpired portion of sentence is totally remitted. This open jail system has been functioning in States like Maharashtra and Andhra Pradesh. It is a sad commentary on the state of affairs that sincere efforts from States have not been so forthcoming in opening open jails. Since there is a very limited curtailment of freedom of the convict in the open jails resulting in the convict feeling more relaxed and more free, open jails should be opened in all parts of the country.

Now a word about the actual implementation of parole and probation in practice. 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 a while will soften the hardened feelings of the prisoner. By providing the compassionate touch, the feelings of the prisoner will be mellowed. As such the officials concerned must view the problem from an humanitarian angle and the grant of parole more liberally instead of getting caught in bureaucratic manze.
A problem that demands the immediate attention of one and all is the forced abstinence or forced celibacy on the part of the prisoners. In fact this is responsible for the alarming increase in the rate of unnatural offences inside the prisons. The prisoners are also human beings. They too have a natural inclination to fulfil their biological urge or carnal desire. By forcibly separating them from their spouses, their natural emotions are suppressed. These pent up emotions let loose at the earliest opportunity seek outlet in unnatural ways. This is the reason for the spurt in the crimes of homosexuality of late in the Indian prisons. Moreover, the emotionally disturbed man would muster courage to do anything to give a vent to his pent up aspirations. Reasonable opportunities must be given to these prisoners to soothe their feelings at periodical intervals. As is done in certain prisons in the United States of America, the right of conjugal visit of the prisoner should be recognized. In U.S.A., the spouses of the prisoners are allowed to visit their partner and stay with them and spend a night with them in a separate cell with minimum basic amenities. Their right of privacy in that cell is absolute. After this experiment has been started, the rate of sex crimes inside the prisons has come down considerably. Some prisoners admitted that they would now hopefully and anxiously await their reunion with their spouses periodically. This bold experiment with its consummate humane touch needs to be emulated. It is time that the Indian prison administrators should take a leaf out of this experiment and adopt it to our conditions. This should be immediately done keeping in mind the truth that sexually frustrated and sex hungry individual is more likely to become deformed than reformed.

Another important problem is that of prison labour. At present prison labour is common phenomenon. The prisoners are employed in prisons to do some work or the other. The prison labour is welcome phenomenon as it keeps the prisoner engaged through out the day. It also allows him to earn something. Yet one usually finds that prisoners are treated just like slaves and they are employed in some labour because they ought to be employed. Moreover, they are employed only in cottage sectors within the jail eg. gardening, weaving spinning etc. Even for this they are paid meagre rates and disparity
between market rates and the rates of payment in jails is too wide to be compared. The prisoners should be paid at market rates for their labour. Besides, among prisoners there will be many skilled and unskilled craftsmen, technicians, artisans and artists. Their talent should be rightly spotted and their services should be harnessed properly. The skilled prisoner, the artist in the prisoner or the craftsman in the prisoner has as much a right to show his skill as a normal human being. Skilled Craftsman can be appointed in large scale industries instead of being confined to the four walls of jails. This would serve a double purpose; the prisoner can contribute his mite and he can also send some of his earnings to his family if market rates are paid to him. In fact market rates are very urgently needed as with their meagre earnings as at present the poor prisoners are not in a position to feed their families which results in the family coming to the streets which in turn makes the prisoners more desolate and hardened. This is more so in case of those prisoners who are the sole bread winners of their families. To break this vicious circle, the prisoners require to be paid at market rates for their labour.

Another important instrument in the rehabilitatung and correctional process of which practically insignificant use has been made over the years by the prison administration is prison education or educational therapy in prisons. It is education which channalises good thoughts, which initiates new habits and which reforms the character. Unfortunately in the Indian prisons a very outdated adult education system is prevalent. Instruction is given compulsorily to those under thirty years of age and optionally to others up to 45 years. This instruction is imparted by poorly qualified second grade instructors. The conventional teaching has not been able to mould the character, much less it has failed even to make an elementary advancement towards an education for life. The purpose of education is to develop the mental and moral faculties. But the present mode of imparting instruction to the prisoners and educating them has done neither. The whole system of educational programmes in prison has to be revamped in structure, content, staff pattern and methodology. As regards the structure in the present pattern, classes are conducted in a building even without partitions. All
the three classes intended for illiterate semi literate and literate prisoners are clubbed together. A demarcation has to be made among these three classes. Naturally this would imply that there should be provision for bigger school buildings with more class rooms and better qualified teaching staff. The teacher pupil ratio should be fixed at 1 : 20 and special instructors should be appointed for agriculture, industrial and social educational programmes. This would enable for a more constructive participation in community life. Besides advantage should be taken of the government technical examinations conducted from time to time. For preparing the inmates for the technical examinations, contact classes with outside instructors experienced in the line may be arranged. As regards the contents of educational programme a major portion has to be devoted to the earlier levels as most of the inmates are illiterates without the three R’s - reading, writing and arithmetic. Modern approach to this process of imparting the three R’s should be integrated with the working environment and social setting and background of the student groups. After the minimum standard is reached importance should be given to inculcation of higher values and better skills for more meaningful contribution to the community’s life and economy. Most important of all, it is imperative that the consciousness of ethical values, patriotic ideals, social obligations and the spirit of service should also be explained. A selected teacher may be put in charge of imparting the training in scouts. First Aid lessons also may be taught which would be of immense use to the prisoners. Prisoners might also be taught about the adverse effects of malnutrition and of such dangerous habits as intoxication. If such type of instruction is imparted then the prisoner will prove to be a useful member of the community after his release. Even if it involves high financial commitments the Government should not hesitate to implement the programme as it would be of immense value in the long run.

In these times where the incidence has shifted to reformation, note may be taken of the interests of the victim along with that of the offender. Since the purpose of punishment has been to reform the criminal, restitution as a type of punishment can reform the offender and can as well redeem the victim. By directing the offender to pay regularly a part of his earnings to
the victim or the victim's 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 the victim's family can be compensated for the suffering they have undergone. As such restitution as punishment can be tried.

Some countries like Belgium have been experimenting quite successfully with the novel concept of part-time imprisonment. Here the offender attends to his work regularly during the working days and spends his holidays and week ends inside the prison. He has to spend as many week ends and holidays as needed to complete the term of his sentence. This revolutionary concept of part-time imprisonment would enable the individual to contribute his mite to the society and the society in turn can extract the optimum if not the maximum from the individual. In case of full-time imprisonment by confining the individual to the four walls of the prison, society would be frittering away the energies of the individual. This experiment needs to be emulated by all the well meaning reformists.

All the attempts at reforming the criminal or the prisoner inside the prison will be negated if importance is not attached to the very important institution of 'after care.' Unfortunately, the after care programme is not given the attention that it deserves in our country. The prisoners genuinely feel that in a society which is callous and where they are not cared for, they are driven to the wall and they are forded to commit crimes to eke out a living for them. These unfortunate people feel that they would be forced to resort to their old habits only because they would not be accepted by the society. Where they are not allowed to join the mainstream of the society, they can not help committing crimes. This speaks volumes about the lack of 'after care' of the prisoner after his release. The absence of after care is more pronounced in case of juvenile delinquents. As regards a juvenile, once he leaves the reformative institutions like the Borstal school, nobody takes proper care of him and the impact of the reformative measures adopted in the Borstal school on him is not studied. In fact the entire reformative process would be qualified if after care is not taken. It is true that
aftercare is not an easy task as it involves huge financial commitment and recruitment of a number of trained personnel. Since the future of the precious lives of the adults in general and juveniles in particular cannot be equated in monetary terms, there is a great responsibility on the part of the State to take care of these unfortunate people.

With the proper co-ordination among the police, court (juvenile) and reformative institutions like Borstal School, an independent bureau can be set up to take care of these prisoners inmates after they leave the prisoners reformative institutions. Here an important role has to be played by the society. The volatile youngster or the unfortunate adult should not be rejected by the society nor should he be looked with suspicion. To the extent possible society should try to accept him.

Any attempt at reforming the criminals would be laughed at if torture is practised by the officials within the prisons. Recent happenings in India have shown that torture is widely prevalent in prisons. Prisoners are sadistically tortured if they fail to meet the greedy needs of the prison staff. Alarmed by the rising rate of torture the Supreme Court of India has rightly held that the Habeas Corpus writ which hitherto questioned only the legality of a person’s detention can now also question the manner and methods of his detention. The practice of torture should be stopped and minimum standard rules should be scrupulously observed. In order to stop torture, the whole machinery has to be overhauled. The existing personnel are to be given regular training on the minimum and basic human rights of the individual. They must be given to understand that certain human rights are sacrosanct and they ought not to be violated at any time. Proper personnel are to be appointed and they must be trained to deal with the prisoners from humanitarian angle. The recalcitrant officers must be dealt with sternly and instead of being suspended for a while till the heat generated is cooled off and then doubly rewarded by being promoted, the guilty officers should be removed from service and be prosecuted for their offences. To protect the convict’s minimum rights, a Sessions Judge should be made responsible through his personal visits to the Jail. Also a Clerk of his court should carry around
every week a locked complaint box to be opened only by Judge himself, so that prisoners can speak without fear. Finally associating educated and articulate prisoners like Sunil Batra with Prison Reforms Committees would help carry through worthwhile reforms.

CONCLUSION

In conclusion, it may be said that by putting the convict in a Jail the society is taking away the most fundamental of the fundamental rights of a human being - freedom of movement. In this age of sociological jurisprudence where the accent is more on reformation, the following suggestions are made to rehabilitate the prisoner:

1. Open jails should be opened on a wider scale.

2. Provisions for granting parole should be liberally interpreted so as to uphold the spirit.

3. The prisoners' rights of conjugal visit should be recognised.

4. As regards the prison labour, market rate should be paid and prison labour can be taken resort to even by large scale and other industries.

5. As regards prison education, the structure and content of the education may be modified as to make the prisoners better and useful citizens of the community.

6. Restitution as type of punishment can be introduced as it would benefit both the offender and the victim.

7. The concept of part-time imprisonment can be experimented as it would enable the offender to contribute his mite to the community.

8. An independent bureau with proper co-ordination among the Police, Court (Juvenile) and reformative institutions (Borstal School) can be set up to take care of the after care of the prisoners inmates.
9. The practice of torture should be stopped by appointing trained personnel and by punishing the guilty members of the staff. A Sessions Judge should be made responsible through his personal visits to the jail. A complaint box to be carried by the Clerk of the Judge’s Court and to be opened only by the Judge should be sent once in a week in order to give an opportunity to prisoners to voice their grievances. Enlightened prisoners can be appointed as members of the Prison Reforms Committee.