UNIT 16  CORRECTIONAL PROCESS

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16.1 INTRODUCTION

After determination of guilt the vital function performs by the courts is sentencing the criminal. The sentencing power and the varied quantities of punishment are an integral aspect of the substantive law norms. By the middle mid twentieth century reformative sentencing justifications have dominated the srive sentencing scene. There are various other forms and methods of punishment, but it is now a accepted principle, that cruel and degrading punishment does not help in curbing the increasing crime rate. It is also believed that outrageous cries for law and order, and hysterical demands for harsh punishment will never stop crime, because roots of crime lie deep in our social structure. The swing of the pendulum is now from punishment to correction. Imprisonment as a form of punishment is now increasingly being used for correction and treatment of the offenders.

Imprisonment as a punishment is off-shoot of the modern penology, as it was unknown in the primitive society. Imprisonment got a slow start in the 16th century and become major part of the punishment in the 20th Century. The prison population increased and the over-crowding within the four walls gave birth to a number of vices and thus gained the attention of the Criminologists and Penologists. Research studies in criminology and penology have revealed that the punishment based on retribution and deterrence does not yield the desired results and therefore, the main focus shifted towards the correction of the offenders and the reformation and rehabilitation process gained the momentum. A number of correctional measures were initiated to redeem the offender back to the society. There is a strong belief that the proper punishment can realise the basic objective of the penology, where as harsh punishment is bound to rebound with negative results.

The punishment under the correctional philosophy, aims at the rehabilitation of the offender and therefore, insists for the treatment of the prisoners as per individual sociological and psychological needs. This approach asserts that the deterrent value does not lie in the severity of the punishment, but in the educative and moralising function of the law. History of punishment has shown that severity
of the punishment does not yield desired results. In this unit an attempt has been done to discuss the concept of the correctional set-up under the modern correctional philosophy.

16.2 OBJECTIVES

After reading this unit, you should be able to:

- explain the concept and meaning of the correctional process;
- know about the history and different forms of the punishment;
- explain the modern judicial trend in respect of the correctional philosophy;
- know about the response of the higher judiciary in respect of the correction of the offenders; and
- describe the measures taken from time to time for correction of the offenders.

16.3 THE CONCEPT OF THE CORRECTIONAL PROCESS

Correction of the offenders is defined as ‘the effort to restore a man to the society as a better and good citizen. Correction is aimed at moral improvement of the individual, sharpening of his intellect and developing a sense of honesty. The correctional philosophy aims at reformation of the offenders, and under this philosophy, a wrong doer is not only a criminal to be punished, but a patient to be treated with care. It is with this concept that the correctional/reformative theory has been adopted by the philosophers from Plato to the present age. A known philosopher Victor Hague once remarked that ‘to open a school is to close a prison’. It means that if a person of doubtful character is imparted education and given a proper training so as to make him competent to earn his livelihood honestly, he would be reluctant to commit a crime. In other words, if a criminal is normally regenerated, his criminal tendencies may extinct or become considerably dormant.

The Correctional Philosophy believes that curative forms of punishment have to be devised to change the character of the wrong-doer in a positive direction and develop his better quantities, so that he desires to do what is right, instead of fearing to do what is wrong. A well known Jurist Wortley (1967) in this regard expressed his opinion as under:

“…. No system of punishment is likely to be socially useful that regards a criminal as being of different species from his fellowmen, and which does not treat him and his personality, with dignity and consideration that his nature demands…”

Justice Krishna Iyer (1980) in respect of the punishment and correctional substitutes observed:

“…. My thesis is that punishment which inflicts injury cannot improve, that prisoners are persons and must be posited with human rights, that social defense which legitimates the penal law, is promoted by therapeutic attention to inner man, not by sadistic drills based on body conscious fear. The progressive manifestation of the divinity in the man is the recognition of the dignity and worth of the human person and this creative proves is the healing hope of
decriminalisation… not stone walls, not iron bars nor other subtle barbarities. This known how of humanisation alone can dissolve the dilemma.”

Justice Krishna Iyer further maintained that criminals are not born but are made. Indeed, every saint has a past and every criminal has a future. When a crime is committed, a variety of factors are responsible for making the offender to commit the crime. 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 manifestation of temptations in milieu of affluence contrasted with indigence or other privations. Sentencing a man to prison term may often embitter him and when he comes out of the prison bars, he becomes an enemy of the society. It is the need of the time to rekindle his innate goodness, convince him of his moral values and help him with social surroundings where the finer flame of his being will burn in his bosom. The human potential in every one is good and so, never write off any criminal beyond redemption. The correctional process is an integral part of the entire Criminal Justice System.

Self Assessment Question

1) Explain the correctional philosophy.

16.4 FORMS OF THE PUNISHMENT

The process of the criminal justice reaches to the logical conclusion, when the guilt of the accused is established beyond reasonable doubt. The trial at this stage enters, now in a different sphere and is called as sentencing. The court at this stage has to award the sentence within the available forms of the punishment. The sentencing is a very difficult task for the court.

The forms and methods of punishment are directly related with the correction and reformation of the offenders. Capital punishment leaves no scope for any kind of reformation but imprisonment no doubt is accompanied by many vices, but there is always a scope for improvement, provided proper treatment methods are devised in a proper perspective. There are different forms of punishment for different kinds of crimes are contained in more than two hundred Indian statues, the bulk of crimes and punishments, however, are described under the Indian Penal Code. Section 53 of the Code provides the following types of the punishment.

a) Death;
b) Imprisonment for life;
c) Imprisonment which is of two describes,
   i) Rigorous (Imprisonment with labour),
   ii) Simple;
d) Forfeiture of the property;
e) Fine

The death penalty in a number of countries has been abolished and replaced by other forms of punishments. In the countries, where death sentence has not yet abolished, it is awarded in exceptional cases. However, there is a national debate going on the abolition or retention of this penalty and meanwhile the legislature and judiciary has shown aversion towards its execution. Now, as per the provisions of the New Criminal Procedure Code, the Court while awarding the death sentence has to give reasons for awarding such sentence, as the legislature emphasis has shifted from death sentence to that of the life death sentence to that of the life imprisonment. The Judiciary in a number of cases has laid down that the death sentence is to be awarded in rarest of rare cases. Moreover, even if death sentence has been awarded by the court, the court has to record reasons for awarding such sentence. Further, every death sentence by the Trial Court needs to be confirmed by the High Court. Further, an appeal may lie before the Supreme Court on conviction and sentence issues. Finally each case exercise of death sentence entitles awardee to file a mercy petition before the Chief Executive for pardon or commutation.

**Self Assessment Question**

2) What are the different forms of punishment under Indian Penal Code ?

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**16.5 THE JUDICIAL TREND**

The judiciary through out the world has given due recognition to the principles underlying the modern correctional philosophy and stressed the need for treatment of the offenders. The courts in England and the United States have taken a lead in this regard and have demonstrated pro-active approach to realise the basic objectives of punishment through the correctional approach. The Indian judiciary especially at higher level has also given due emphasis for the treatment and re-socialisation of the offenders. The Supreme Court in a number of cases has demonstrated pro-active approach in this regard and has thereby proved to be like a beacon light for rest of the judiciary in the country. The apex court through Public Interest Litigations (PIL) has delivered a number of judgments which have not only identified the legal and constitutional rights of the prisoners, but have also issued directions for their implementation and thereby improved the lot of the prisoners within the stone walls. The judicial activism has played a very dynamic role in expounding the law to tilt it for the benefit of the mankind and humanity.
In order to award a proper sentence in the given circumstances i.e. the sentence which is just and fair to suit both the accused and the State, the higher courts have evolved the supplementary provisions. Justice Iyer, while delivering the judgment in Rajender Prasad’s Case (1976) observed:

“When the legislative text is too bald to self-acting or suffers zigzag distortion in action, the primary obligation is on the parliament to enact necessary clauses by appropriate amendments to the provisions in question. But, if the legislative undertaking is not in light, 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.”

The Positive judicial trend has made it clear that the sentencing judge can not close it eyes after the sentence is pronounced, but has to watch and monitor the efficacy and impact of the punishment awarded by him. They must be aware about the possible results of the sentence and for this purpose, the sentencing judge is required to exercise his jurisdiction to ensure that the prison system responds to the modern correctional philosophy.

The Supreme Court of India in Mootiram case (1972) case laid down that in view of the broad objectives of the punishment of criminals by the 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 consciousness that the offence committed by him, was against his own interest, as also against the interest of his own society, of which he happens to be a member. The apex court yet in another case of Praveen Kumar Gupta’s case (1974) stressed that the purpose of punishment is protection of the society, by deterring the potential offenders from committing further offences, and by reforming and turning them into law abiding citizens.

The judiciary in a series of cases has maintained that while imposing the sentence, the court should set forth the end to be achieved and make it clear what is intended in the award of the sentences. In Sant Singh’s Case (1976) the Supreme Court through justice Fazal Ali highlighted the important of the judiciary in the changing trend towards the correctional philosophy end emphasized the need to keep the judicial officers abreast with the changing scenario.

The apex court in respect sentencing and training of the judges observed:

“…..It is the prime need of the hour to set up training Institutes to impart the new judicial recruits or even to serving judges with the changing trend of the judicial thoughts and the new ideas which the new judicial approach has imbibed over the years as a result of the influence of new circumstances that have come into existence.”

A number Institutes called judicial Academies have been established in a number of States, where training is imparted to the judicial officers on a regular and continuous basis.

However, courts in India face a number difficulties in delivering the speedy justice. The basic reason for the delayed justice is that the courts throughout the country are over burdened with the back-log of the cases and it takes decades together to
Correctional Process

decide a case and the arrears pile up every day. It is reported as many as 30 million cases are pending for disposal in the lower courts and 37.1 lakh cases were pending in the India’s 21 High Courts.

There is no doubt about the fact that judiciary is the only Institution that still commands the people’s respect. But the judges are over-worked throughout the country, new positions of judges are not created, the vacant positions are not filled up, the infrastructure is not satisfactory and the judicial system is cracking at several levels, especially in the subordinate courts. The delay rather in-ordinate delay breeds corruption and frustrated the correctional treatment strategy itself.

Self Assessment Question

3) Explain role of the judiciary in the modern correctional philosophy.

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16.6 CORRECTIONAL MEASURES

The present trend throughout the world is that all the civilized societies have taken various measures to instill a sort of confidence among the people towards judiciary and rehabilitation of the offenders. Further, a number of steps have been taken to minimise the trial period and various treatment methods have been devised within the four walls as well as outside the four walls. The treatment methods devised are aimed at reformation and rehabilitation of the offenders.

The sentencing under the modern correctional philosophy is directly related with the correctional process. In order to realise the basic objectives of the punishment under the modern penology, the sentence must be appropriate not only to the crime, but also to the criminal, so that he can return to society as a law abiding citizen. The main focus under the modern correctional process is upon the criminal. In earlier times, specific punishments for specific crimes were laid down by the law, and once a verdict of guilt was returned, the judge merely ordered the appropriate sentence to be carried out. The sentencing judges hardly showed their concern regarding the places where the offenders were lodged nor were they concerned about the future of the offender.

The sentencing Judge was not bound to choose penalties designed for reformation and rehabilitation of the offenders or adapt the punishment to their needs and potentialities. There was no provision to hear the counsel on the nature and quantum of the sentence. The situation has now changed, and as a result of new strides in the criminology, there is a rethinking about crime and punishment.

The sentencing under the correctional process requires considerations beyond the nature of the crime and circumstances surrounding. It sentencing at present
Criminal Justice Administration of India

is crucial strategy of criminal law, in achieving social defense and rehabilitation of the offenders. Sentencing is a facet of the social justice and the court has a very important role at this juncture.

In the Penal Institutions a number of measures have been taken which are aimed at the treatment and rehabilitation of the prisoner, so that on his return to the society, he can live a law abiding life. The main steps among other measures include vocation, trainings, wages, health service, proper visiting hours by the family or friends, proper communication facilities, reading of news papers, reading of books, participation in sports and recreational activities, extension lectures by the social and religious preachers and last but not the least respect for human dignity and human rights.

Chief Justice of the Supreme Court Justice K.G. Balakrishan (2007) observed that the Criminal Justice System in the country is to protect the citizens of this country from onslaught of the criminal activities if a section of the society which indulges in such acts. The out-come of the criminal justice system must be to inspire confidence and create an attitude of respect for the rule of law. It is in the interest of all the concerned that guilt or innocence of the accused must be established as quickly as possible. He further maintained that unfortunately, that there are large number of undertrial prisoners in this country. It is a matter of fact that prisons through out the country are over crowded with the prisoners and the majority of the prisoners are undertrial prisoners, which in most of the cases is a major impediment in the correctional process.

Self Assessment Question

4) Do you think that the offenders can be returned to the society as law abiding citizen. If so how?

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16.7 SUMMARY

- Imprisonment at present is the main form of punishment and the prison system under the modern correctional philosophy has a very vital role in the criminal justice process. Prison system can’t operate in isolation, but has to perform its functions in the total system.

- The Criminal Justice System is an important component of the entire human civilization. Right from the very beginning human beings have devised, time and again, certain measures to protect the society from the potential and prospective criminals.

- The increasing crime rate has always been a serious concern of the human civilization and the issues pertaining to the Criminal Justice System have
been debated and are being debated at the National, Regional and International level.

- The Judiciary is equally an important partner in the Criminal Justice Process, but Indian judiciary is crumbled with the huge load of cases and adjournments are order of the day. Judiciary has a very vital role in the entire Criminal Justice System.

- Speedy trial is an essential component of the correctional process. It is therefore, necessary that the speedy trial of criminal cases should be recognised as urgent need of the present judicial system.

- The judiciary has changed and every attempt is made to tailor the sentence in accordance with the individual needs. The courts now do not close their eyes after the sentence is passed, but they continue to monitor the impact of the sentence and functioning of the prisons.

- The rough attitudes of the police, non-professional approach of the investigating agencies, cunning approach of the prosecutor, materialistic approach of the defense lawyer, long delay in the disposal of the cases and overcrowding in the prisons all coupled together, frustrate the basis purpose of the Criminal Justice System. Moreover the strong nexus between police and criminals on one hand and politicians and criminal syndicates on the other hand also frustrate the rehabilitation process.

### 16.8 TERMINAL QUESTIONS

1. Describe the historical perspective of the correctional process?
2. Explain the concept of treatment of the offenders?
3. Give a brief historical background of the imprisonment as a punishment?
4. Describe role of the judiciary in the modern correctional philosophy?
5. What are the main impediments in the rehabilitation of the offenders?

### 16.9 ANSWERS AND HINTS

1. Refer to Section 16.3
2. Refer to Section 16.4
3. Refer to Section 16.5
4. Refer to Section 16.6

### 16.10 REFERENCE AND SUGGESTED READINGS

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