NEW DIMENSIONS OF THE RIGHTS OF THE PRISONERS – A CRITICAL STUDY

"The degree of civilization in a society can be judged by entering its prison"

-Fyodor Dostoyevsky

CHAPTER - I

INTRODUCTION

Crime is a social and economic phenomenon and is as old as human society. It is eternal. It always exists in the society. With change of time, the concept of crime has also undergone changes. In the early history of human civilization, crime was regarded as a wrong against the individual. But after sometime, crime was regarded as a wrong against the State.

Criminal Justice System is an organized reaction of the society against the crime and the criminal. Crime and punishment are interrelated to each other. Various theories of punishment were exercised at various times. The principal object of punishment is to protect the society from the potential wrong doer primarily through the process of removing the causes of crime.

In early history, punishment was never awarded with the object of correction and the criminals were treated as persons who cannot be corrected. But now the punishment in terms of imprisonment is regarded as a means of correction. The old theories of punishment have since been discarded and given way to the theory of reformation. The prisons are not functioning as penal institutions but as reformatories. The basic object of the correctional administration is to reform, rehabilitate, re-socialize and reintegrate the offender in the society. It is an accepted principle that the process of reformation and rehabilitation of offender commences from the date on which he enters the prison and it cannot be postponed till the date of release.

The topic for research is “New Dimensions of the Rights of the Prisoners - A Critical Study”. Before directly entering into the subject, the researcher would like
to enlighten in brief about the related components of the rights of the prisoners such as the Prisons, Prison Reforms, Prison Administration, Prisoners, Treatment of Prisoners and the Rights Guaranteed to an Ordinary Citizen under the Constitution for better understanding of the subject.

1.1 PRISONS

The original term of prison is 'Jail' or 'gaol' or 'penitentiary.' Prison has been defined as "a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment".¹

A “Prison”² or “Jail”³ is a facility in which individuals are forcibly confined and denied a variety of freedoms under the authority of the State as a form of punishment. The most common use of prisons as part of the criminal justice system, is in which individuals are officially charged with or convicted of crimes are confined to a Jail or Prison until they are either brought to trial to determine their guilt or complete the period of incarceration they were sentenced to, after being found guilty at their trial. Hence, in its origin the Prison was considered as a place of detention of offenders until trial and Judgment and the execution of the latter.

Section 3 of the Prisons Act, 1894 (Act IX of 1894) defines prisons as: "Prison" means any jail or place used permanently or temporarily under general or special orders of the State Government for the detention of Prisoners and include all lands and buildings appurtenant thereto, but does not include - any place for the confinement of prisoners who are exclusively in the custody of the police; ;any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882 or; any place which has been declared by the State Government, by general or special order to be a subsidiary jail.

¹ The Oxford English Dictionary Vol.VIII P. 1385.
In ancient times, different places were used as Prisons. The Prison in ancient Athens was known as Desmoterion (place of chain). In Rome, metal cages, basement of public building and quarry were used as prisons. In India, the old forts and castles were used as Prisons. The modern Prison in India originated as soon as Lord Macaulay came to India in 1835.

1.1.1 Views of Gandhiji on Prisons

It was Gandhiji who said that Prison should function as hospital as offenders are very much like sick people and need to be treated. Quoting Lord Lytton on the subject of Prisons, Mahatma Gandhi wrote in the “Young India” 18.2.1926 at page 67

“Lord Lytton in recently speaking about Jails to the Rotarians of Calcutta said that just as we send our sick in body to hospitals and not to Jails, so we must ‘provide moral doctors and moral hospital’ for sick in mind, i.e. criminals”. His Excellency introduced his subject:

“The ideal I wish to set before me, stated in the briefest and simplest form, is just this,- the substitution of reformation for retribution as the basis of our Penal Code. Punishment can instill fear and enforce habits – it cannot inspire goodness. As a means of moral regeneration, therefore, it is worse than useless and should be abandoned. A morality which is only enforced by pains and penalties is a false morality, and those who would secure the acceptance of moral standards should employ other methods”.

Of the uses and limitation of punishment Lord Lytton said: “Punishment, if resorted to at all, must always be aimed at teaching habits necessary for the well-being of the individual or discipline necessary to the well-being of a community, I do not say that punishment will always succeed; the form of punishment selected in any particular case may be well or badly suited for the attainment of its object. Again, I do not say that punishment is the only way of achieving this object, what I say is that those are the only objects which can be obtained by punishment. This one

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thing which can never be acquired by coercion is goodness or moral conduct. All punishment therefore which aims at correcting wickedness or teaching goodness is definitely mischievous. Goodness is a condition of mind as health is a condition of body. Moral defects or character are no more to be cured by punishment than defects of the body. It may be necessary in the interest of health of a community forcibly to segregate a person with an infectious disease; it may be necessary on the same ground to segregate persons whose moral defects are a danger to the society".⁵

1.1.2 Types of Prisons

As per the NCRB Reports in 2013 there are about 1391 different types of Jails in India viz., Central Jail (130), District Jail (346), Sub-Jail (780), Women Jail (19), Borstal School (21), Open Jail (53), Special Jail (38) and others (4), with a capacity to accommodate 3,47,859, Prisoners out of which 3,23,573 are Male Prisoners and 24286 are Female Prisoners.

In Tamil Nadu, there are about 135 different types of Jails viz., Central Jail (9), District Jail (9), Sub-Jail (95), Women Jail (3), Borstal School (12), Open Jail (2), and Special Jail (5). With a capacity to accommodate 21,951 out of which Male Prisoners are 19510 and Female Prisoners are 2441.

1.2 PRISON REFORMS

The Prison Reforms originated in Indian Prisons as soon as Lord Macaulay came to India in 1835. The first Committee in India viz. “The Prison Discipline Committee” on the subject of Prison Reform was appointed in the year 1836 with Lord Macaulay as its Member. The Committee gave its report in 1838 and advocated, among other things, for construction of proper building, maintenance of health care and intra-moral employment which laid the foundation for future Prison Progress. The next committee to deal with the subject of Jail Management and Discipline was appointed in 1864. This Committee while reiterating the recommendations of Lord Macaulay Committee 1836, it made specific recommendations regarding the accommodation of Prisoners, improvement in diet,

⁵ Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1 Preface, p.xix para 43.
clothing, bedding, medical care etc. In 1877, there was a conference of experts to enquire into Prison Administration in which it was proposed to enact a Prison Law and a draft bill was prepared. The passing of The Prisons Act, 1894, and the Prisoners Act, 1900 and several other statutes dealing with prisons were the outcome of the recommendation of the Fourth Jail Committee 1888. The subsequent Committees to follow suit are:


At this juncture, it will not be out of place to quote the observation about prison reforms of Mahatma Gandhiji in his book “Young India” and Pandit Jawaharlal Nehru in his book “Prison Land” Appendix I as follows:

1.2.1 Mahatma Gandhiji’s view on Prison Reforms

“Let it be remembered that we are not seeking to destroy jails as such. I fear that we shall have to maintain jails even under Swaraj. It will go hard with us, if we let the real criminals understand that they will be set free or be very much better treated when Swaraj is established. Even in reformatories by which I would like to replace every jail under Swaraj, discipline will be exacted”.  

1.2.2 Pandit Jawaharlal Nehru’s view on Prison Reforms

Any reform must be based on the idea that a prisoner is not punished but reformed and made into a good citizen. If this objective is once accepted, it would

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result in a complete overhauling of the prison system. At present few prison officials have even heard of such a notion.

Another error which people indulge in is the fear that ‘if gaol conditions are improved people will flock in! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be. To be deprived of liberty, family life, friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible.

There should be hard work, but not the barbarous and wasteful labour of the oil pump or water pumps or mill. The Prisons should produce goods either in large scale modern factories where prisoners work or in cottage industries. All work should be useful from the point of view of the prison as well as the future of the prisoner, and the work should be paid at the market rate, minus the cost of maintenance of the prisoner. After a hard eight-hour day’s work, the prisoners should be encouraged to co-operate together in various activities – games, sports, reading, recitals, and lectures. They should above all be encouraged to laugh and develop human contacts with the prison staff and other prisoners. Every prisoner’s education must be attended to, not only in just the three R’s(Reformation, Resocialisation, Re-integration), but something more, wherever possible.

The mind of the prisoner should be cultivated through the prison library, to which there must be free access, should have plenty of good books. Reading and writing should be encouraged in every way and that means that every prisoner should be allowed to have writing material and books. Nothing is more harmful to the prisoner than to spend twelve to fourteen hours at a stretch every evening locked up in the cell or barrack with absolutely nothing to do. A Sunday or a holiday means, for him a much longer period of locking up.

“Selected newspapers are essential to keep the prisoner in touch with the world, interviews and letters should be made as frequent and informal as possible.
Personally, I think that weekly interviews and letters should be permitted. The prisoner should be made to feel as far as possible that he or she is a human being and brutal and degrading punishments must be avoided".  

1.3 PRISON ADMINISTRATION

Prison administration is one among the four wings of the Criminal Justice System viz. Legislature, Judiciary, Executive and the Correctional Administration. The Prisons are placed as State subject under article 246 of the Constitution of India, including it in the Seventh Schedule, List II (i.e) State List, and Entry IV which read as follows: Prisons, Reformatories, Borstal Institution and other institution of the like nature, and person detained therein; arrangements with other States for the use of Prisons and Institutions.

For the purpose of carrying out the management of Prisons in India, the Government of India enacted The Prisons Act, 1894 and Prisoners Act, 1900 for guidance of all the State Governments. As per the power vested under section 59 of the Prisons Act, 1894, each State Government passed their own Rules for the management of their Prisons.

If any State does not have its own Prison Manual, the existing Central Act, i.e. The Prisons Act, 1894 is being followed. Model Prison Manual, 1960 is being taken as guidance in the Prison Administration.

Further, the Bureau of Police Research and Development has prepared the Draft National Prison Manual, 2003 to bring uniformity in Prison Administration throughout India. The view of the various State Governments on this Draft National Prison Manual was resorted and it is yet to be implemented. The main object of the new Manual is to remove certain disparities among certain States and transform prisons into correctional institutions.

To put it in a nutshell, the objectives of the prison administration must be: To make prison a safe place by maintaining security and discipline in objective terms;

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To provide basic minimum facilities to prisoners, to maintain human dignity; To make the best use of prison stay for reformation and rehabilitation, re-socialization and reintegration of prisoners.

1.3.1 Existing statutes regarding regulation and management of prisons in India


1.3.2 Prison Manual in Tamil Nadu

i. Tamil Nadu Prison Manual, Volume II, 1985 (Corrected up to 31st December 1982)- containing the statutory Rules made by the Government of Tamil Nadu for the inspection, superintendence of prisons in the State.


iii. Tamil Nadu Prison Manual, Volume IV, containing the executive and administrative order and instruction issued by the Government and the Inspector General of Prisons from time to time for the inspection, superintendence of prisons in the State.
1.4 PRISONERS

In an ordinary sense “Prisoner” means a person confined or kept in custody. As per the definition of the Oxford Dictionary Prisoner means “a person who is being kept in prison”.

1.4.1 Kinds of Prisoners

As per Section 3 of the Prisons Act, 1894, Prisoners are classified into three groups. They are Criminal Prisoner, Convicted Criminal Prisoner and Civil Prisoner. “Criminal Prisoner” means any Prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction or by order of a Court - Martial. “Convicted Criminal Prisoner” means any Criminal Prisoner under sentence of a Court or Court - Martial and includes a person detained in prison under the provisions of Chapter VIII of the Criminal Procedure, 1882 (X of 1882) or under the Prisoner’s Act, 1871 (V of 1871). “Civil Prisoner” means any prisoner who is not a Criminal Prisoner. Prisoners may also be broadly classified according to the term of imprisonment, ailment, age, sex, political cause, cases of civil nature and cases of preventive arrest viz. Remand prisoner, Under - trial prisoner, Convicted prisoner, Short term prisoner, (Rigorous Imprisonment), Long term prisoner (Rigorous Imprisonment), Prisoner sentenced to Simple Imprisonment, Prisoner sentenced to life, Prisoner sentenced to death, Leper prisoner, Mentally ill prisoner, Juvenile in conflict with law, Adolescent offender, Adult prisoner, Male prisoner, Female prisoner, Political prisoner, Civil prisoner, Detenue.

1.5 TREATMENT OF PRISONERS

Crime is an outcome of the diseased minds and jail must have an environment of hospital for treatment and care. One should bear in mind that “prisoner is a ward and not the slave of the State”. The Prisoners are sent to prison “not for punishment but as punishment.” But unfortunately prisoners are treated as if

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8 The Oxford English – English – Tamil dictionary, page 1109, Oxford University press 2009
they have been sent to prison not only “as punishment” but even “for punishment.”

The process of treatment should begin right from the time of admission of the inmate in prison. A newly admitted inmate faces a number of problems of adjustment with new environment. Study of the individual inmate, initial classification of prisoners, their care and welfare, firm and positive discipline in prison constitute essential pre-requisite for planning balanced treatment programme.

The regimented routine of institutional life, the pattern and time of prison food and anxieties about health, family and domestic problems such as land, litigation etc., keep bothering him. He attempts to seek adjustment with inmate group and prison personnel and with the work allotted to him. If these urgent needs and problems are explored, identified and attended to by prison personnel sympathetically and with understanding, the inmate will have a lot of relief. This will also enable prison personnel to establish a rapport with the inmate and secure his co-operation in the effective implementation of treatment programme.

Therefore treatment of offender in prison should be looked at from three angles; 1. the essential pre-requisite for carrying out appropriate treatment programme conducive to rehabilitate the offender 2. variety and contents of treatment programmes and 3. evolution of the effectiveness of treatment programme.

Looked from these angles, the elements and components of treatment programme in prisons can be identified as follows:- A relaxed positive and constructive atmosphere in the institution, Good personnel – inmate relationship based on mutual trust and confidence, Study of the individual inmate; Initial classification, Care and welfare of inmate, Firm and positive discipline, Attending to the immediate and urgent needs and problems of inmates, Attending to the long term needs, Planning a balanced and diversified training and treatment programme consisting of diversified education, work, vocational training, recreational and cultural activities, etc., Helping the inmate to maintain continuity of his conduct with his family, community and outside world. A good system of incentives for self-discipline such as remission, leave, transfers to semi-open and open institutions and pre-mature release, individual guidance, counseling and case work, group activities, group guidance and group work, social implantation of proper habits, attitudes and
approaches, preparation for social living, Psychotherapy, Supportive therapy, personal positive influence of institutional personnel, periodical review of progress, reclassification, review of sentence and pre-mature release, planning for release, pre-release preparation, after care and follow-up and community participation.\textsuperscript{10}

\section*{1.6 HUMAN RIGHTS}

Every human being needs certain necessities like food, water, clothes, shelter, health which are basic for sustaining life, without which one cannot live. Likewise, every human being is entitled to certain basic rights and fundamental freedom and in the absence of which one cannot live as human being.

All societies and culture have developed some conception of rights and principles that should be protected and respected as such rights evolved on some basic principles, which have been universally accepted, and contributed to the development of human rights.

The Rights of man – natural rights, civil rights, political rights, economic rights, social rights and cultural rights which evolved with different degrees of emphasis reflects one common feature – 'Human Dignity' which is considered indispensable for the attainment of individual’s wholesome personality. Thus, these rights come with birth and are applicable to all people throughout the world irrespective of the race, colour, sex, language or political or other opinion.

\section*{1.7 FUNDAMENTAL RIGHTS}

The term fundamental right is a technical one. When certain human rights are written down in a Constitution and are protected by Constitutional guarantee, they are called fundamental rights in the sense that they are placed in the supreme or fundamental law of the land which has a supreme sanctity over all other laws of the land. Thus, when human rights are guaranteed by the written constitution they are called as fundamental rights. Unlike an ordinary right, a fundamental right is an interest, which is protected and guaranteed by the written Constitution. Such rights

\textsuperscript{10} Report of the All India Committee on Jail Reforms (Mulla) 1980-83 Vol.1, Chapter X, Treatment Programme p.124
are called 'fundamental' because while an ordinary right may be changed by legislature in its process of legislation but the fundamental rights, being guaranteed by the constitution cannot be altered by any process short of amending the Constitution itself. The following are the fundamental rights guaranteed to an ordinary citizen.

   I. Right to Equality – Article 14,15,16,17, & 18
   II. Right to Freedom - Article 19, 20, 21, & 22
   III. Right against Exploitation – Article 23 & 24.
   IV. Right to Freedom of Religion. - Article 25, 26, 27 & 28
   V. Cultural and Educational Right – Articles 29 & 30
   VI. Right to Constitutional Remedies – Article 32.

1.8 RIGHTS OF PRISONERS

Prisoners are basically human beings. They being, human beings are to be entitled to human rights and constitutional rights except those that are to be necessarily denied because of their condition of imprisonment. The State is under a Constitutional obligation to honour and to protect their rights, particularly their right to live with human dignity.

The accused, under-trials, suspects and convicts do not cease to be human beings just because they are so named. Hence their rights as human beings are to be protected and respected. The fundamental rights, which are available to the prisoners, are not defined in the Indian Constitution in particular. The Judiciary, however, through the process of Judicial Activism has expanded the scope of various freedoms guaranteed to individuals in relation to prisoners by expanding the horizons of article 21 of the Indian Constitution and also taking into consideration the relevant provisions of International Covenants formulated for monitoring and supervising the prisoners.
1.8.1  **A.K.Gopalan vs. State of Madras (1950)**

In the beginning, the Supreme Court was not responsive to the protection of the rights of the prisoner. It examined the issue immediately after the commencement of the Constitution. It expressed the view that the prisoners are non-persons and fundamental rights under the Constitution are not available to them by their being incarcerated. The Court declared that a person loses his right to personal liberty by way of detention under valid law enacted by a competent legislature and so long as he remains under such detention, he ceases to be entitled to enjoy his other fundamental rights.¹¹

1.8.2  **State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (1966)**

The respondent was detained under the Defense of India Rules (1962). While under detention in jail, he wrote a book of scientific interest in Marathi called 'Anucha Antarangaat' (Inside the Atom), but was not allowed to publish it by the prison authorities.

The Bombay High Court issued a writ allowing Pandurang to publish the book. The State Government in an appeal to Supreme Court argued that freedom to publish was only a component part of speech and expression and the detenue ceased to be free in view of his detention, and hence he could not exercise his freedom to publish his book in view of an observation made in A.K.Gopalan case. Without going into the question regarding the relative positions of Articles 19 and 21, the Court observed that the view held in Gopalan case was not the last word on the subject.

The Court held the view that the right to 'Personal Liberty' under Article 21 included the right to write book and get it published and the refusal by the State Government to send the petitioner’s manuscript for publication, infringes his personal liberty manifested under Article 21. The Court found that there was nothing in the Bombay Detention Order 1951, prohibiting a detenue from writing or publishing a book and when a detenue exercises his right, its denial without

authority of law, would violate Article 21. Dismissing the appeal of the State, the court further held that the book being the one on the subject of scientific interest which would not otherwise be detrimental to public interest or safety as envisaged under the Defense of India Rules (1962).\textsuperscript{12}

1.8.3 Charles Chopra vs. The State of Bihar (1978)

In Charles Chopra’s case the Supreme Court pointed out “prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.\textsuperscript{13}

1.8.4 Sunil Batra vs. Delhi Administration (1978)

Sunil Batra (ii) vs. Delhi Administration (1980)

In Sunil Batra cases, while interpreting Articles 14, 19 & 21, the Supreme Court has assured many substantive rights to the prisoner. The extended dimension given to article 21 has proved to be multi-dimensional. The right to life enshrined in Article 21 has been liberally interpreted as to mean something more than survival and mere animal existence. It, therefore, includes all those aspects of which that go to make a man’s life meaningful, complete and worth living. This aspect of judicial pronouncement leads to emergence of prisoner’s right.

The significant areas of extension were the rights not to be handcuffed, put on bars and solitary confinement unless absolutely necessary. The right against custodial torture, right to speedy trial, right to counsel, proper condition of detenue, right to meet relatives, friends and lawyer, right to wages and even the right to compensation for violation of rights. Beginning with Sunil Batra case, the Court has armed itself and embraced the jurisdiction to attend the complaint of the prisoners where their rights either under the constitution or under the law are violated\textsuperscript{14}.

\textsuperscript{12} State of Maharashtra vs. Prabhakar Pandurang Sanggiri AIR 1966 SC 424=1966 CrLJ 311.
\textsuperscript{13} W.P No. 4305 of 1978 delivered on 31st August 1978 – PRC Report Vol.II Chapter XXXVIII Rights of Prisoner p.73 para 38.2.
1.8.5  Nilabati Behera vs. State of Orissa (1993)

In Nilabati Behera vs. State of Orissa, the Supreme Court observed that “it is axiomatic that convict prisoners or under-trials are not denuded of fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody.

This precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convict, under-trials or other prisoners in custody, except according to the procedure established by law.\(^{15}\)


In the case of State of Andhra Pradesh vs. Challa Rama Krishna Reddy, the Supreme Court asserted that even a prisoner has fundamental rights including other human rights. In that case, the claimant and his father were lodged in jail. They requested the police to provide security to them apprehending danger to their life from their opponents. There was failure of police to provide adequate security in spite of being asked. When they were attacked by bomb in their jail cell, the father died and the claimant sustained serious injuries. The suit for compensation was dismissed by lower Court but the High Court awarded Rs.1,44,000 as compensation. In the instant case, while dismissing the appeal filed by the State Government, the Court reiterated;

"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner be a convict or under-trial or detenue, does not cease to be a human being.

Even when lodged in the jail, he continues to enjoy all fundamental rights including the right to life guaranteed to him under the Constitution. On being

convicted of a crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.\textsuperscript{16}

1.8.7 Further developments in Prisoner’s Rights

As an offshoot of the observations, comments, directions and pronouncements regarding the upholding of the rights of prisoners in relation to the rights guaranteed to an ordinary citizen under the Constitution in various landmark judgments by the Supreme Court on this subject, so many Commissions constituted succeeding the Supreme Court Judgments, adopted the rights of prisoners in their report for strict implementation in prisons. Efforts are also being made to amend the existing statutes connected with prison administration so as to incorporate the rights of prisoners and implement them mandatorily.

The National Human Rights Commission, State Human Rights Commission and Human Rights Court established under the Protection of Human Rights Act, 1993 also contributed much to the protection of Prisoners rights.

The Government of India granted financial assistance to all States under Five Year Plans and Matching Grant (at the rate of 50:50 ratio) under modernization of Prison Administration to improve the prison atmosphere and living condition in Prisons like additional accommodation, diet, clothing and bedding, hygiene and sanitation, health care, water supply, electrification, recreation facilities etc., The State Government by utilizing these funds took all possible efforts to improve Prison condition and extend all facilities to Prisoners to maintain human dignity.

1.8.8 Prisoner’s Rights and International Covenants

The right of prisoners in International Law is found in a number of International Treaties and that too following the two World Wars. Due to the widespread denial of civil rights and liberties on the basis of racial, religious and political discrimination had a profound effect on the international law of prisoner’s right. The systematic use of violence including wanton murder and ultimately

genocide and use of slave labour, abuse and murder of prisoners of war, widespread deportation and confiscation of property forced a large scale changes that began to occur in all areas of international law including prisoners rights. At present, there are numerous international instruments which lay down codes by which prisoners should be dealt with. The following are the foremost among them.


1.9 NEED OF THE PRESENT STUDY

The theory of treatment of offenders has changed from penal to reformative in the modern era. Due to this, the prisons of the old era have undergone tremendous change today which has led to transparency in the prison administration. The prison reforms in Indian prisons had its seed sown as soon as Lord Macaulay came to India in 1835. Following the study of the Prison Administration in India by the Dr. W.C. Wreckless Committee in the post independence period (1951-52), lot of improvements were made in Indian Prisons. The raising awareness among the common public and the nation on the need to protect the human rights of the prisoners led to the passing of several United Nations Instruments including the Universal Declaration of Human rights, 1948, United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, International Covenants on Civil and
Political Rights 1966, Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishments, 1984 and Basic Principle for the Treatment of Prisoners, 1990. All such Instruments and Constitution of many of the Democratic Countries including the Constitution of India have recognized the human rights of the prisoners in principle. However, this does not mean that there is no violence at all. Cases of excesses by law enforcement agencies resulting in human rights violation come to light here and there now and then. The only relief is the higher judiciary, whenever such violations are brought to its notice, has intervened to set right such violations and ordered remedial measures. The Supreme Court of India, which is not only the supreme authority in the Judicial hierarchy, but also the guardian of the Constitution and the protector of the fundamental rights guaranteed under our Constitution, in exercise of its wide and varied Constitutional powers has time and again issued writs or orders to concerned authorities and those in-charge of and responsible for administration of criminal justice, giving direction and guidelines with a view of preventing the infringement of any fundamental right, to which every citizen of the country including the accused/prisoner are equally entitled to. The Judicial Activism of the Apex Court has a great impact on the criminal administration and upholding the rights of prisoners in all respects. As an offshoot of the directions from the Apex Court so many Prison Reforms Commissions were formed both at the Central and State level which recommended so many suggestions to improve the prison condition and extend better treatment to prisoners. Under this circumstance, the researcher felt it necessary to study the rights of the prisoners in India.

1.10 REVIEW OF LITERATURE

Dr. Vidya Bhushan, 1970 Prison Administration in India - with special reference to Uttar Pradesh - The author in this book has made an exhaustive survey of Prison Administration in India with special reference to Uttar Pradesh which he claims as a pioneer State in progressive prison reforms in the country. His contribution in chapter I under heading “Historical Resume” is excellent. His discussion about the origin of prison & prison reforms before and after 1951 shows the unsparing effort. In the other chapters, he has vividly discussed about the organization and control of prisons; Classification and separation of prisoners;
Classification of prisons; Prison Management and discipline; Prison hygiene and medical care; Prison education; Prison labour and discharged prisoners. He has touched on all aspects of prison administration in India and pointed out the areas where further reformatory measures can be introduced.

J.P.S. Sirohi, 1995 Criminology and Criminal Administration - This book is a brain child of J.P.S. Sirohi, an Advocate of Supreme Court, Delhi. He has discussed in detail about crime, causes of crime, multiple causative theory of crime, crime control, theory of punishment, prison system in Foreign and India, probation and parole, juvenile delinquency and Juvenile Justice etc. This book maintains the basic features about the theoretical aspects of Criminology and Penology. It contains important decisions of the High Courts and Supreme Court connected with the subject matter wherever necessary. This book really benefits the students, faculty members, Researchers, members of the bench, bar and the other Officers in the field of Sociology, Criminology, Anthropology, Psychology, Police Prisons and Public Administration.

Dr. HyderVali, 2003 Rights of accused in Criminal Trial - This book is substantially based on the Doctoral thesis of the author approved by the Shri Krishna Devaraya University; Ananthapur for Ph.D., in the year 1995 on the topic entitled "Self -incrimination and Supreme Court of India". The author in his book has vividly discussed the right against self - incrimination, interrogation, identification of suspects and seizure. On major points, adequate references have been made to foreign Constitution particularly to those of the United Kingdom and United States of America so as to give a comparative perspective of the Indian Constitution. Relevant facts of important cases and a summary of the law laid down therein have been given in the body of the text so as to enable the readers and researchers like me to better understand the subject without having to resort constantly to the reports. The right against self-incrimination of an accused is a Constitutional fundamental right. On this point, the author has tried his level best to bring in the Judicial interpretation.

Shivanna 2003, Rights and Privileges of Accused - The author being a prominent member of the Bangalore Bar and also having abiding interest in academia has brought out this useful book on all relevant aspect of the "Rights and
Privileges of Accused”. The author for convenience and ready reference in his work, has consolidated all rights, privileges and guarantees of accused under different heads like Constitutional rights of the accused, Procedural rights of the accused under Criminal Procedure Code and rights of accused under Penal Code, rights of accused under Law of Evidence, Rights of accused to bail, right to acquittal etc. The author has also taken much pain and eruditely discussed the pivotal issue of the subject matter with the assistance of judicial precedence more particularly those of the Apex Court which comprises of several landmark cases. He has brought to fore the subtle nuances of the subject and several negative and Constitutional rights of accused succinctly and in an enumerative manner.

M. Abdul Hannan, 2003 Human Rights of the Accused in the Criminal Process - The book is actually the revised version of the author’s Ph.D., thesis entitled “Human Rights of the Accused under International Law and Municipal Law” through a case study in Bangladesh (1990 – 2000) completed in 2005 in the Department of Law and Justice under the faculty of Law of Rajshahi University, Bangladesh. The author has discussed in lengths and breadths about the human rights and Constitutional guarantees of the accused, rights of the arrested and detained person, right to reasonable investigation, questioning, search and seizure, right to a fair trial and the right of prisoners in Bangladesh with a comparison made basically with the provision in the Universal Declaration of Human Rights (UDHR) and International Covenants on Civil and Political Rights.

Dr. Ashuthosh , 2009 Rights of the Accused - The author is an Advocate in Delhi High Court. He has highlighted the rights of accused in all respects particularly with reference to Criminal Procedure Code, Constitution of India and rights of accused in jail. He has narrated in detail the rights of the accused as envisaged in the Code of Criminal Procedure, 1973 like arbitrary or illegal arrest, extorting confession, search, production before a Magistrate, bail and anticipatory bail, consult a Counsel and free legal aid, open trial, right to examine and cross examine both prosecution and defense witnesses, double jeopardy, appeal etc. Even though his book is titled as 'Rights of accused' he has not forgotten to discuss the 'rights of prisoners in jail'.
The study is basically a doctrinal research with a view to find out whether the rights of the prisoners are well protected or not. In this regard, various aspects
like the comments, observations, and pronouncements of the judiciary in upholding the rights of the prisoners in relation to the rights guaranteed to the ordinary citizen under the Constitution, action taken at Central and State level in response to Judicial Activism so as to incorporate such rights in the Statutes and Prison Manuals, the contributions made by The National and State Human Rights Commission and Human Rights Courts constituted under The Protection of Human Rights Act, 1993 have been taken into account for the analysis. The present topic for the research study is “New Dimensions of the Rights of the Prisoners’- A Critical Study”. Even though different kinds of Prisoners are confined in Prisons, the occupancy rate of Remand / Under-trials and Convicted.

Prisoners is the highest. Under this circumstance, it is considered that it will be more appropriate to analyze their rights alone in the proposed study. Hence, the researcher has concentrated in analyzing the rights of prisoners in prisons Remand / Under-trials and Convicted Prisoners. The researcher being a native of the State of Tamil Nadu has evinced keen interest in finding out the actual implementation of the rights of prisoners in the prisons of Tamil Nadu.

1.12 OBJECTIVES OF THE STUDY

1. To analyze whether the Constitutional rights of an ordinary citizen which are extended to the prisoners are full- fledged in all aspects, except those that are to be necessarily denied because of the condition of imprisonment.

2. To analyze the necessity of incorporating the rights guaranteed to ordinary citizens under the Constitution which are extended to the prisoners, in the existing relevant statutes, laws, rules, and regulations regarding the management of prisons and treatment and supervision of prisoners.

3. To analyze whether there is any gap between the theory and practice in implementing the Rights of Prisoners in the day-to-day administration of Prisons.

4. To analyze whether it is considered as a mercy or reluctance or denial on the part of the prison authorities in extending the rights to the prisoners.
5. To analyze whether there is sufficient funds in establishing the rights of prisoners in prisons in such matters where the financial commitment arises.

6. To suggest measures and recommendation for the better implementation of the rights of prisoner.

1.13 HYPOTHESIS

Taking into account, the above said objectives, the following hypothesis is formulated:

The emergence of Prisoners Rights in India is an offshoot of the Judicial Activism / pronouncement / Judgement by extending the Constitutional Rights multi-dimensionally. So, many Prison Reforms Commissions and Human Rights Commissions reiterated the Judiciary’s pronouncements on the Prisoners‘Rights. Even then, it is considered that there is lacuna in its actual implementation.

In order to test the above said hypotheses, the following points are raised and analyzed in detail in the proposed study.

a. The spirit of the Judiciary in establishing the Rights of the Prisoners is taken up in the right sense and full vigour and followed in Prison management and treatment of Prisoners.

b. The attempts are made to seek amendment in the existing statutes, Manuals and other Laws connected with Prison Administration in order to shower the rights mandatorily.

c. The steps have been taken by the Prison Authorities to make the Prisoners aware of their rights and duties.

d. The attitude of the Prison Authorities towards the implementation of the rights of Prisoners in Prisons is conducive and humane.

e. The assistance extended by the Centre to the State Governments to improve the Prison atmosphere and living condition of prisoners in Prisons with an ultimate aim of protecting the dignity of prisoners as
human beings is sufficient and properly utilized and that whether improvement is achieved as desired.

1.14 RESEARCH METHODOLOGY

The study is a doctrinal research based on Primary and Secondary sources employing the Historical Method, Comparative Method, Statistical and Analytical Method.

1.15 SOURCES USED

The Primary Sources are:

The Statutes, Laws and Rules relating to the Prison Administration and treatment of Prisoners like:

- Constitution of India
- Indian Penal Code
- Criminal Procedure Code
- Evidence Act
- Prisons Act
- Prisoners Act
- Immoral Traffic (Prevention) Act
- Borstal Schools Act
- Juvenile Justice Act
- Probation of Offenders Act
- Model Prison Manual (Central)
- Tamil Nadu Prison Manual and the like
- Draft Model Prison Manual 2003 (yet to be implemented).
Secondary Sources are

- A.N.Mulla Committee Report (All India Committee on Jail Reforms), 1980-83
- Kapoor Committee Report, 1986
- Justice Krishna Iyer Committee Report, 1987
- Justice Verma Committee, 2013
- Commentaries, Journals
- Statistics of the National Crime Records Bureau
- Statistics of the Bureau of Police Research and Development, New Delhi
- Statistics of the Prison Authorities of Tamil Nadu
- Materials those are available in the websites.

1.16 PLAN OF STUDY

The study comprises of the following seven chapters:

I. Introduction.

II. Tracing the History of Prisons, Evolution and Management of Prisons and Treatment of Prisoners.

III. Human rights with reference to Constitution of India, Human Rights Commissions and International Covenants.

IV. Emergence of Prisoners Rights - Judicial Activism.

V. Subsequent Developments and present position of the Rights of Prisoners in India.

VI. Critical study of the new dimensions of the Rights of Prisoners.

VII. Conclusion and Suggestion.
I. Introduction

The first chapter deals with the design of the study. It comprises of an introduction about crime and punishment, a brief note on the Prison and Prison Reforms, Prison Administration, Definition, Types and Treatment of Prisoners, Rights guaranteed to an ordinary citizen under Constitution and Rights of Prisoners.

II. Tracing the History of Prisons, Evolution and Management of Prisons and Treatment of Prisoners

The second chapter exhaustively deals with the introduction, study of criminology, crime, concept of crime, causes of crime, general causes of crime, punishment, theories of punishment, prison system, historical background of Prisons in the world scenario and in India, types of Prisons, Prison Reforms - Pre and Post Independence Period, Types of Prisoners, Institutions of Incarceration, Prison Administration in India and Treatment of prisoners.

III. Human Rights with reference to Constitution of India, Human Right Commissions and International Covenants


IV. Emergence of Prisoners Rights – Judicial Activism

The fourth chapter deals with the Role of Judiciary in extending the rights of an ordinary citizen to the Prisoners by discussing in detail all the Rights of Prisoners by quoting the landmark judgments in the matter.
V. Subsequent Developments and present position of the Rights of Prisoners in India


VI. Critical Study of the new dimensions of the Rights of prisoners

In the sixth chapter, the researcher focuses her attention as to how far the rights showered to the Prisoners have been implemented in the Prisons in India. The inadequacy and deficiency and gap between the theory and practice wherever it occurs regarding the implementation of the Rights of the prisoners are highlighted.

VII. Conclusion and Suggestion

The Seventh and the final chapter deals with the summary, conclusion and suggestions. It can’t be denied that considerable and notable improvements are witnessed compared to the Pre-independence period in the Management of Prisons and Treatment of Prisoners following the implementation of the recommendations of various Prison Reforms Commissions / Committee constituted both at Central and State level with the financial assistance given by the Government of India and with State funds. Even then, there are shortcomings, commissions and omissions in the implementation of the Rights of the Prisoner as discussed in the preceding chapter. Taking all these into consideration, the researcher in this chapter makes certain suggestions and recommendations for the better implementation of the Rights of the Prisoners.