CHAPTER - 1

INTRODUCTION
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Man is not an individual. He is a social organism. God loves him only who serves other beings—man, cattle and other creatures. His glory lies in being a member of a big family. On the one hand, man is bound by blood kinship—his parents, his wife, his children and on the other, he is linked with every individual of society whether near or far from his, it is given to man to link himself with those who constitute his ancestry and also think of those who would be his posterity. Man possessed of certain inalienable rights. Thus lives, works and dies for society. Man is expected to develop his craft, science and technology and lead society from poverty to prosperity with a happy today and a happier tomorrow.¹

Crime is inevitable in human society. No doubt, we have progressed a lot in every sphere of life and struggle to achieve immortality is going on, but yet in this journey from animal way of life to the human way of life, still we are haunted by the thought of animal instincts. Every where some human beings have fallen outside the pattern of permitted conduct. It is best to fact that crime cannot be abolished except in a non-existence utopia. Commenting on this aspect Durkheim in his treatise a crime as a normal phenomenon says, “a society composed of persons with angelic qualities would not be free from violation of the norms of that society”. In fact, crime is a constant phenomenon changing with the social change.

¹ From the Atharva Veda, Quoted in Human Rights Today, A Historical Prospective (IWOCHR)
At the same time all civilized societies want a peaceful life away from all clutches and wrathful response of non-socialized aggressive lot and it is the paramount duty of the state to provide a sigh of relief to the society. Punishing the offender is a primary function of all civil states, for reducing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them in to law abiding citizens.

With new criminological development particularly in the field of penology, it was generally realized that punishment must be in proportion to the gravity of the offence. It was further suggested that reformation of criminal rather than his expulsion from society was more purposeful for his rehabilitation. Today old barbarous methods of punishment are completely abandoned. The modern notions of crime causation, that crime is a result of pathological aberrations and other social factors, are reflected in the criminal justice administration of which sentencing plays a major role. The attitudes towards criminals at a given time in a society represent the basic values of the society today.

Imprisonment presents a most simple penal and common form of sentencing for incapacitating the criminal. It proved to be efficient method of temporary elimination of criminals apart from being a general deterrent and an individual deterrent. The origin of prison is inter-linked with the system of imprisonment, which originated in the first quarter of nineteenth century. Initially, prisons were used as detention houses for under trials. Person who were guilty of some political offence or war crime or who failed to pay their debts were lodged in prison cells with a view to extracting confession from them or securing the payment of debts. Subsequently, with
the march of time and advancement of knowledge and civilization, the conditions of prisons also improved considerably. Since the present day penology centers round imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life.

Thus, the institution of prison serves a dual purpose of eliminating criminals from society and reformation and rehabilitation the offenders under institutional treatment by blanketing out conditions, which in the first place turned them in to law-violators. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime. Conditions of imprisonment in civilized countries have under gone radical changes in recent decade.

In recent times, prisoners have attracted the attention of jurists, Sociologists and Protagonists of human rights all over the world. The truth is that the philosophy of prisoner’s rights appears to have stemmed directly from consideration of human dignity and citizenship. The basic rights can’t be abrogated by the mere fact of imprisonment. There was a time when prisoners were considered to be persons devoid of any rights and even their basic rights were deemed to be confiscated, the moment they were arrested and imprisoned. However, prisoner’s rights gained importance with the passage of time.

It is also pertinent to note that now a day, human rights have become the yardstick for determining the status of a country's civilization. It is not uncommon that every problem of the day has been infested with some human rights dimensions in one way or others, and prison administrations
are no exception to this general rule. Human Rights Jurisprudence demands that while administration of justice balancing society interest with that of the individual's interest, individual human rights should not be affected. Ignoring accused or prisoners and not making any attempt to provide them solace or restitution would be a challenge to protection of his human rights.

Every human being is entitled to his human rights i.e. those minimal rights which every individual must have against the State by virtue of human being, a member of a human family, irrespective of any other consideration. Human right means individual rights of freedom of thought to be fundamental for a civilized society. They include freedom of expression, movement and association, implementation of due process of law, equality before the law and the right not to be subjected to cruel or degrade the punishment. According to justice Krishna Iyer, the central concern of law and justice must be humanity. Humanity will be meaning full if it is supported by humanism dignity of a human, as an individual can be respected and maintained by others if they follow human values.

It goes without controversy that every innocent, truthful, law abiding and non corrupt person is entitled to fundamental rights. But there is no agreement about the fundamental rights of criminal or prisoner. However, now the Supreme Court has made it clear that with a degree of difference in application, even criminals are entitled to fundamental or human rights. Therefore, all police and jail authorities should now treat the accused and prisoners with human grace and dignity.

It would not be out of place to quote here a historical story which will make the concern of dignity clear in every body's mind when Sikandar
conquered and captivated the King Puru, he asked him as to how he should behave with him? Puru replied that he must behave with him like a king. This story makes it clear that a king is always a king. It does not make any difference whether he is ruling, defeated or flayed. Similarly, a human being whether criminal/prisoner or law-abiding is entitled to dignity i.e. fundamental rights. Prisoners also are entitled to be treated honorably by police and Jail authorities.

Article 10 of the International Covenant on Civil and Political Rights, 1966 enthusiastically proclaims that the persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of human person. The prisoner is not supposed to have left an army of right at the prison gate; the human commodity is precious of all. Frankly speaking one can hardly afford to reduce prisoners to vegetable by denying fundamental rights to them. Undoubtedly there has been a shift in emphasis from retribution to reformation. The reformatory strategies and rehabilitative techniques are main stay in modern prison justice system. The European Convention on human Rights is one of the major documents which added fire to the human right movement. It provides and prescribes some important safeguards against the arbitrary and fanciful acts of State.

Prisoners and the all rights of the prisoners in India were kept in abeyance till the realization of the new dimension of personal liberty (from Gopalan to Maneka Gandhi case) that covers even prisoners and their rights under our Constitution. These aspects were realised very late in our country as compared to the western countries.
In the pre-independent India when citizens did not have any fundamental freedoms, it was not possible to think of prisoners' rights. But after independent India when the Constitution was adopted and people got their fundamental rights guaranteed, prisoners' rights also began to draw the attention of the legislators and the judiciary. The Constitution of India not enumerates any short of fundamental rights to the prisoners specifically, but at the same time it also can't be said that it is not available to the prisoners expect expressly excluded.

It is truism that the solemn declaration contained in the preamble assure the dignity of the individual. Article 14 mandates the State shall not deny to any person equality before the law or equal protection of the laws. This includes prisons inmates also. The Constitutional rights in the contest of criminal jurisprudence are contained in Articles 20, 21 and 22 of the Constitution. These fundamental rights also available to the prisoners, Justice Krishna Iyer said\(^2\) that “Basic Constitutional Rights can’t be halted at the prison gates and can be enforced within the prison campus.”

Chief Justice Chandrachud also expressed same above view and opined\(^3\) that convicts are not by mere reason of the conviction denuded of all of the fundamental rights which they otherwise possess. They further stated that no person, not even prisoners can deprive of his life and liberty expect according to the procedure established by law.

\(^2\) A National prisoners policy- Constitutional perspective and pragmatic parameter
\(^3\) D.B.M.Patnaik v. State of A.P.AIR 1977 SC 1926
In a case Justice Saghir Ahmed also supported the above view and pointed to Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the const. and even the State has not the authority to violate that right. A prisoner, be he a convict or under-trial or a detenue, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

Thus, the fundamental rights, which also include basic human rights, continue to be available to a prisoner. The judiciary through the process of judicial activism has expanded the scope of the various freedoms enshrined in part III of the Indian Constitution. The Court have recognized the right to speedy trial, right to physical protection, right to expression, right to meet family etc. The Court has remarkably evolved a workable and balanced compromise between varying social and individual interest in consonance with the spirit of the times as well as theme and thrust of the Constitution.

The Jail Reforms Committee 1980-83 has also made recommendations regarding prisoners’ rights and the committee appears to have been inspired and influenced by judicial pronouncements on various issues. The committee has recommended the incorporation of the following rights in the proposed scheme of ‘National Prison Legislation’:

1. Right to be lodged appropriately based on Proper Classification.

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2. Special Right of young prisoners to be segregated from adult prisoners.
3. Rights of women prisoners.
4. Right to healthy environment.
5. Right to bail.
6. Right to speedy trial.
7. Right to free legal services.
8. Right to basic needs such as food, water and shelter.
9. Right to have interviews with one's Lawyer.
10. Right against being detained for more than the period of sentence imposed by the court.
11. Right to protection against being forced into sexual activities.
12. Right against arbitrary use of handcuffs and fetters.
13. Right against torture, cruel and degrading punishment.
14. Right not to be punished with solitary confinement for a prison offence.
15. Right against arbitrary prison punishment.
16. Right to air grievances and to effective remedy.
17. Right to evoke the writ of habeas corpus against prison authorities for excesses.
18. Right to be compensated for violation of human rights.
19. Right to visits and access by family members of prisoners.
20. Right to write letters to family and friends and to receive letters, magazines, etc.
21. Right to rehabilitation and reformative programmes.
22. Right in the context of employment of prisoners and to prison wages.

23. Right to information about prison rules.

24. Right to emergency and reasonable health care.

Though, all the above rights are more or less recognized by prison administration but the real challenge is regarding their poor implementation. In India, various reformative measures by the government has been taken to improve the general condition of prisoners but still the condition of prisoners is far from satisfactory. The fact that these rights are not sometimes made available to prisoners is well documented. There are innumerable judgments of Supreme Court and High Courts, showing how prisoners' rights are violated. The judgment highlighted the highly unsatisfactory conditions prevailing inside the prisons and the failure of the prison authorities to provide an environment which is conducive to the maintenance of prisoners' rights, partly rooted in the belief that the prisoners do not deserve all the rights and the protections that the constitution provides to all citizens. Besides being morally wrong and legally invalid, this belief does not show adequate recognition of some basic facts about the prison population.

On account of severe criticism of the prison administration functioning by the media, various civil rights organizations, the judiciary, the NHRC as well as increase in number of cases concerning violation of the rights of prisoners, the research opted for the problem, "A Study on the Protection of Prisoners' Human Rights in India" as the topic of present research. The research is being carried out with the following objectives:

1. determining the role of prison as a mode of penal sanction in contemporary society;
2. analysing the need for prison reforms especially prisoners’ rights;
3. determining the *modus-operandi* of the prison administration in sentencing;
4. analysing the extent and clauses of misuse of power by the police and jail authority;
5. understanding the role of regulatory mechanism on prison administration i.e., judicial and quasi-judicial;
6. evaluating the concept of human rights jurisprudence especially in relation to prisoners;
7. understanding the plight of the prisoners;
8. determining mechanisms to monitor prison conditions effectively and ensure accountability in respect of violation of human rights;
9. determining the redressal mechanism for the injuries suffered by the prisoners;
10. determining the modes of resolution of conflicting interests.

It is believed that the study of aforesaid objectives will unfold the mystics of prison administration mal-functioning and will pin point the grey areas warranting immediate attention so as to establish the just social order in the society. Principally four questions arise for determination in this research. The *first* question is whether a prisoner is entitled to claim rights during his incarceration. If so, what should be the rights available to him. The *second* question relates to the reasonableness of the provisions debarring prisoner from claiming the rights during incarceration. The *third* one is regarding object and attitude to punishment, which should be consistent with civilized notions of human rights. The *fourth* relates to the
rehabilitative approach with the intention to bring the prisoner back to the main stream of society should not be foreign to the prison policy.

The present study is conducted on the basis of following research questions and it is believed that the answer to them would present an effective solution to the problems:

1. The institution of sentencing mostly focused on the principle of deterrence and which in its entirety has not been able to accomplish its targets of preventing and controlling the criminal act in the society.

2. The main or dominant purpose of the punishment, if not the sole purpose, is reforming the criminal and redirecting him into society as an honest citizen.

3. The object of the sentences against law breaker cannot be to render them non person. They must continue to retain their dignity and self respect as individual.

4. A barbarous approach towards convicts unsuited to the civilized notion of human dignity may not generally receive public approval today.

5. Even in prison there is rule of law and the conduct and life of those in detention is governed by the rules, both the prisoner as well as the jail authorities are equally bound by these rules.

6. The law effectively takes care of the rights of the prisoners.

7. There have been increases in the number of cases of violation of prisoners' human rights.

8. Effective redressal mechanism exists in India for the victims of human rights violation.

9. The Courts play an important role in controlling violation of human rights by state instrumentalities.
To accomplish the research, doctrinal method has been used. In this connection constitutional provisions, statutory laws, related judicial pronouncements, books, journals, reports, treatises and data prepared by various agencies working for the protection of prisoners' interests have been consulted, analyzed and examined as an instrument to protect the human dignity and rights of prisoners.

Finally, coming to the framework of the present study it has been divided into seven chapters. Chapter I introduces the topic of research. The succeeding Chapter entitled, 'Concept and Theories of Criminal justice Administration' discusses about the meaning and developments of the criminal justice administration, different doctrines and process of sentencing as well as protective measures available to accused of the crime. Chapter III entitled 'Prison and Prison Reform' gives a special attention to prison as a mode of sentencing, foreign and Indian perspectives and its' various justifications in changing times. An effort has been made to analyses the various legal safeguards provided to prisoners in the succeeding Chapter entitled, 'Protection of Prisoners' Rights: The Legislative Framework'. The constitutional and statutory safeguards have been discussed under the umbrella of judicial pronouncements in this chapter. Chapter V under the title 'Human Rights and Prison' analyses the efforts made international and national level for the promotion and protection of human rights in general and for the evolution of prisoners' rights in particular through human rights mechanism and the role played by the National Human Rights Commission (NHRC) in this regard has been discussed. The efforts made by the judiciary in India for the evolution and development of prisoners' human rights has been discussed at length in Chapter VI under the title, 'Protection of Prisoners' Fundamental Rights:
The Judicial Response'. Under this chapter the role played by the judiciary regarding the protection of the fundamental rights of the prisoner as well as issued the various directions /orders to the State and its instrumentalities in its zeal to re design the prison jurisprudence in India has been highlighted. Chapter VII deals with the "Conclusion and Suggestions." It contains the appraisal of the study. Further, various suggestions have also been made in order to make the working of constitutional and statutory safeguards a success, and take care of the inadequacies in the institution of sentencing.