CHAPTER - I

INTRODUCTION
1.1 Introduction:

Prison Institution is one of the three main constituents of the Criminal Justice System. Prisons are no longer regarded only as places for punishment, but, organizations with the changing perception towards recidivist prisoners. They are now being considered as reformatories and greater attention is being paid to ameliorate the conditions in jails. So, it has a healthy impact on prisoners in developing a positive attitude towards their life and society.

Before century ago, the prisoners across the world were treated as property, sold like animals and forcefully employed for the hardest physical work. They were treated as worst than animals. Presently, it is submitted by most of the criminologists that germs of the crime are within the society and not only within the wrongdoer. To remove those germs, we shall treat the wrongdoers by correctional therapy, not by punishing theory. It is necessary to remove such inmates from the society and send them to the correctional institutions, where they should be treated as patients and after diagnosis of their behaviour, they must be treated accordingly. The aim of the correctional institution is to correct the offenders, not to punish them. A person can not be corrected by hate but love and affection. The process of criminal correction can be divided into four segments. First is correction
through sentence procedure, which includes an alternative punishment to imprisonment. Second is correction programmes within the walls of prison, which is called institutional correction. Third is governmental correction, where the Government is empowered to grant many graces to the prisoners. The last but not the least is correction through advances towards rehabilitation, which is more important to reduce recidivisms.

The reformation of an offender depends on the behaviour of the staff of correctional institutions and training programmes adopted by the institution for reformation and reintegration of prisoners languishing in a particular place. It is not possible to make criminal free society, but good management of institution and treatment of offender during incarceration can be measured by the rate of recidivism. Prison does not need only a boundary of wall but also need boundary of law. Discipline does not require torture but it requires strictness. Food should not be monotonous or distasteful. Freedom of expressions need not be curtailed but controlled and restricted in such a manner that it does not disrupt the function of prison. Health care standards need to be high and compensation for loss of liberty incidental to the sentence ought to be awarded by judiciary. Element of reformation and rehabilitation of offenders must be incorporated in law and there should be great efforts to ensure that family ties are maintained, for which civil society must play a vital role.

1.2 Problems in the correctional institutions:

Before independence, the problems in the correctional institutions were observed in general, but after establishing democratic country, where promise is made to every citizen for equal and social justice, some incidents
states witnessed unexpected darkness in the correctional institutions. In Assam Shri Machang Lalung, aged 77, was released from incarceration in July 2005, spending more than half a century awaiting trial. He had been arrested in 1951, under section 326 of IPC for “causing grievous hurt”. He is not the only victim of such atrocities. The NHRC has taken up the cases of four other such persons awaiting trials in Assam. Khalilur Rehman has been in custody for 35 years, Anil Kumar Burman for 33 years, and Sonamani Deb for 32 years, while Parbati Mallik has been detained in a psychiatric unit for 32 years. The Deputy Superintendent and other prison officials in Amritsar’s Central Jail have branded an inmate on his back when he demanded water and better treatment. Doctors found fresh scars on his back that had been inflicted with hot iron rods. Any person, who dares to complain about poor conditions and bad treatment, faces the wrath of the law enforcement agency. Abhijnan Basu, who was in the Presidency Jail, West Bengal, was murdered by officials of prison because he dared to complain about the inhuman conditions and the poor quality of food. Three prison wardens set him ablaze on November 12, 2004.

Earlier, in 1983 the Hon’ble Supreme Court itself has observed that in the State of Bihar Rudul Shah was force to spend 14 years of his precious life behind the bars, even after being acquitted by the court. In instance case, the negligence of prison official has clearly destroyed the life of a person and forced him to be behind the bars. In another incident, known as Bhagalpure blinding case, some of the inmates were made blind by pouring acid into their eyes. The Supreme Court directed the authorities to stop the atrocities on the prisoners as they are also human beings and entitled to all human rights available to them as human beings.
Being a prisoner does not mean that a person ceased to be a human being. He remains entitled to all the rights available to non-offenders, except some rights with restrictions. Correctional institutions have to treat the inmates as patients and they should not be punished. Security of the prisoners is another important threat for the administration of correctional institution; recently, some of the prisoners are reportedly killed by co-prisoners, even such prisons are known as highly security grade prisons in the country, namely, Tihar Prisons Complex Delhi, and Sabarmati Central Jail Ahmedabad. Three inmates had allegedly died of consuming illicit and spurious brew in Pondicherry in 2005. The incident was a slur on the whole jail administration. One of the reasons of such murders in Tihar jail was held due to overcrowding. In fact, some of the jails in Gujarat are more overcrowded than the Tihar Prison.

The day has gone, when we were punishing the offender, now it is time to correct him by using the therapeutical approach. But, looking to above mentioned incidents i.e. Machang Lalung, Khalilur Rehman, Anil Kumar Burman, Sonamani Deb, Parbati Mallik. Abhijnan Basu, etc., are more heinous than in Rudul Shah’s case, decided and took place after twenty years of judgement of the Supreme Court in particular and implementation of Constitution and UDHR approximately 55 years in general.

Now we should remember and implement the ideology of Mahatma Gandhi as - “....We don’t need the jailer but a doctor and jail should be converted into hospital. The jailer should be the best friend of the offender not a terror person....” The laws applicable to correctional institutions are spread here and there, which makes it very difficult to know and satisfy
them. But, in fact authorities have full control and supervision over the prisoners and they are by all these laws.

1.3 Need for the Research:

Research on correctional institution is of paramount importance to correctional reform and the assessment of implementation of international standards for the treatment of offenders established by United Nations. The problems relating to correction of prisoner, in general attract the attention of prison administration, research scholar, judiciary, legislature, NGOs and they are engaged in the prisoner reformation and rehabilitation. All above said agencies contribute in their own ways, to make offenders into law abiding citizens and trace the causes of crime within the society. In this regard Gandhiji has said, “hate the crime, not the criminal.” It is needed to protect the society from the crimes and it does not remove the criminal from the society forever. The effective and result oriented research on the correctional intuitions is rare. No particular research has been conducted for the correctional institutions in the State of Gujarat. To know the status of the correctional institutions and institutional programmes adapted by the State, to reform inmates into law abiding citizens in Gujarat and the law relating to remissions, parole, and furlough explained by various authors, to expound clearly it is necessary to conduct a research on this subject.

1.4 Aims of correctional institutions:

India shares universally held view that the sentence of imprisonment would be justifiable only if it ultimately leads to protection of the society against crime. Such a goal could be achieved only if incarceration motivates
and prepares the offender for a law-abiding and self-supporting life after his release. The prisons in India are not considered a house for incarceration to deter criminal behaviour. While speaking on the subject of crime, Mahatma Gandhi said, "Crime is outcome of a diseased mind and jail must have an environment of a hospital for treatment". India firmly believes in this principle, following which specially after independence, we have tried to convert our prisons into the correctional institutions. Presently, the main goal of prison administration is to develop a sense of discipline and security among prisoners, and to reform and rehabilitate them in a given social milieu through appropriate correctional interventions. Correctional institution also had the aim to equip the prisoners with such skills and abilities as will help them to lead a normal life as a law abiding citizens, once they are let out of prisons. Further, we accept that, as imprisonment deprives the offender of his liberty and self-determination, the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration. Thus, while certain category of offenders, who endanger public safety, have to be segregated from the social mainstream by way of imprisonment; all possible efforts have to be made to ensure that they come out of prisons as better individuals than what they were at the time of their admission thereto.

1.5 Objectives of the research:

The objectives of the research are as follows –

(1) To study, the philosophy of punishment and Conventional provisions relating to treatment of offenders;

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(2) To examine, the theories of punishment and analysis with Indian theory of punishment.

(3) To study, development and reformation in penal administration in India;

(4) To find out, the laws applicable to correctional institutions and judicial precedents relating to correctional administration in India and their implementations;

(5) To summarise, the rights of the prisoners recognised by the judiciary and duties of the prison staff imposed by the law.

(6) To compare, positions of correctional institutions in Gujarat with correctional institutions in India.

(7) To examine, the present correctional programmes in Gujarat and suggest programmes and amendments for their betterment.

1.6 **Hypothesis**:

The present research has determined the following hypothesis to achieve the aims and objectives motioned in para 1.4 and 1.5.

(1) Are prisoners entitled to all fundamental and human rights? Whether there is any restriction in their applicability?

(2) Judiciary has recognised many of rights of prisoners; are they implemented in correctional institutions.

(3) Whether judiciary is really following provisions of probations?
(4) Whether institutional programmes are reformative and rehabilitative in their true sense?

(5) Whether the capacity in prisons, rate of overcrowding, classification of prisons are problems in the State?

(6) Whether prisoner workers are paid with rational wages for their work?

(7) What is the recidivism rate in the State?

(8) Whether provisions for furlough, parole, and remissions in the State are in accordance with humanitarian principles of justice as mentioned by various authors?

(9) Whether present enactments are sufficient for present scenario?

(10) Is there any need for the constitution of Prison Commission?

1.7 Scope and limitations of present research:

This research is limited to the correctional institutions treating the adult persons. This research does not extend to the correctional institutions constituted for the ‘juvenile in conflict with law’ or any institution constituted for the benefit of children, widow women, or old age persons. The researcher is concerned with the persons undergoing sentence, awarded by the competent authority established by law to award such sentence. Besides them, all persons alleged for commission of any offence under any of the law for the time being in force and are under the custody of prison authorities, i.e. so called undertrial prisoners. Under this research
‘Correctional Institutions’ means all institutions, jails, and prisons, where the inmates including prisoners are awarded with sentence of imprisonment and undertrial inmates kept in the custody of correctional staff. These institutions do not include observation homes, special homes, children homes, women institutions working as guardians, and any homes used for the safety of ‘people of unsound mind’. The scope of this research is limited to the correction of offender and convert him into a law abiding citizen. The present research undertakes correctional jurisprudence in India and analytical study of the Correctional Institutions in the State of Gujarat, with above mentioned limitations.

1.8 Research Methodology applied:

Methodology applied to conduct this research is contents analysis and descriptive method. This research at the first instance has examined all the human rights instruments and other instruments adopted by United Nations for the treatment of offenders. Thereafter, the research has examined all the rights guaranteed by the Constitution of India and other laws applicable to prisons in the country with their interpretations by judiciary. To examine the judicial interpretation authentic journals, periodic reports, international and national publications of eminent jurimetrixs, and research articles published in referred journals on the subjects, also have been referred. For the collections of information and data, researcher used various authenticated websites of NHRC, BPRD, Tihar Jail, and various State Jails Departments. The Rules and Notifications issued by the Gujarat Government applicable for the time being in force are studied from the documents available in the office of the Inspector General of Prisons, Gujarat State.
The data for national level has been taken from the secondary sources, issued by reliable agencies such as NHRC and BPRD. The data specially concerned with the prisons in Gujarat is taken from the office of Inspector General of Prisons, Gujarat State, Jail Bhabhan, Ahmedabad. Some of the data is also taken directly from the periodical publications of Jail Department. The compliance of laws in the correctional institutions has been studied by visiting some of the prisons in the State, namely, Central Jail Ahmedabad, District jails Surat and Bhavnagr which are the most overcrowded Prisons in the State. Apart from these jails one Sub-Jail Mahesana was also visited after obtaining the permission from the appropriate authority. For security reasons it is not possible to visit all the correctional institutions so selecting purposive sampling from jails in the State is done.

1.9 Significance of Research:

The research at international level will provide greater understanding about developing status of prisoners to be accepted in the International Statutes and will also save the millions of criminals from repeating the crimes. Adopting open-peno-correctional institution will reform them and rehabilitate in society.

At national level the research will induce Government of India to substitute more than century old statutes relating to prisons and prisoners by adopting correctional theory. Correctional Institutions shall be converted into Concurrent List from the State List and change the name of Jails/Prisons into the correctional institution.
At local level the research will provide knowledge to the people about the correctional institutions located in the State of Gujarat, their functions, implementation of correctional programmes, need to implement new programmes for that end, and above all the research will guide the Government of Gujarat to frame their new policies and programmes to make them more effective.

1.10 Contribution of research:

(1) This research may contribute important details to the researcher, who is researching on the correctional institutions at national level.

(2) This research may contribute to advocates those are interested to know the rights of prisoners and provisions relating to pre-mature and temporary release of prisoners.

(3) This research may be beneficial to the penologists, jurisprudent, judiciary and academicians, and jail administration staff or persons dealing with prisoners or associates with NGOs dealing with prisoners.

1.11 Chapter scheme:

The research is divided into seven chapters; the chapter scheme of the research is as follows –

I. Introduction, proposed research, research problem, scope and methodology
II. Philosophy of punishment and conventional provisions relating to treatment of offenders

III. Correctional jurisprudence in India

IV. Rights of the prisoners and duties of prison officials

V. Segments of correction and their social impacts

VI. Correctional institutions in the State of Gujarat

VII. Findings and Suggestions

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