CHAPTER I

When law ends, Tyranny begins; Legislation begins where Evil begins. The function of the Judiciary begins when the function of the Legislature ends, because the law is, what the Judiciary says it is since the power to interpret the law vests in the Judges. 1

1.1 INTRODUCTION

It is a myth to think of a crimeless society anywhere in the world. In fact, there can be no society without the problem of crime and criminals since the time immemorial but its definition and recognition as offence or crime was not there in the ancient days of civilization. But after many years and in the early stages of medieval history of India, the than rulers recognized the concept of crime as essentially concerned with the social order and to maintain it they have begun to think that peoples interests are to be protected as a member of the society. The protection of one’s own interest is recognised and to maintain it the state has imposed certain liabilities upon the members of the society to respect the others rights and to protect ones own interests. This principle of mutual respect and trust for the rights of others among is only regulate the conduct of the members of society and to maintain the public tranquility and

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fraternity among the citizens of their society. This obviously imposes an obligation on the state to maintain normalcy in the society. To meet this task a law or rule of conduct becomes inevitable to protect the law abiding citizens from law breaking citizens. To encounter these problems for the first time criminal law came into existence to regulate the citizens conduct and the procedure is named as the administration of criminal justice system. The wrong doer or the person who violated the command of the sovereign is punished for his guilt under the existing law of the land of that time.

Prisonisation symbolises a system of punishment and also a sort of institutional placement of the convicted and undertrial prisoners during or after the trail. There cannot be a society without crime and criminals, the institution of prison and prison administration is indispensable for every country, Salmond had defined the law as rule of action regulating the conduct of individuals in the society.

The concept of prison, prisoners and prison administration can be traced even from the ancient days of civilization throughout the world. Though the offence was not defined in the ancient days, there were certain acts which were prohibited by the then prevailing religious customs and usages on public morality by the Philosophers, Priests or
the then rulers like kings or religious heads. Though the criminal law administration was not as now, it was in existence and practice in those days in its primitive stages. A well defined and well established penal system was in existence in ancient Roman kingdom. In India, also the text of Dharmashastra by MANU and Ardhashastra by KAUTILYA are the sources of code of conduct in those days and also has laid the procedure for punishing the wrongdoers and for the administration of criminal Justice System. The then kings conducts open trial in his Darbar and decides the Karma or Sin done by the accused (now it was termed as an offence under section 40 of Indian Penal Code) and imposes punishments up on the sinner or wrongdoer which is called as Raja Dandana. The entire trial process is termed as Rajadharma, as it is his duty to maintain the peace and to protect the Dharma in his country or Kingdom or Dynasty as that of the present state of administration of the criminal justice system. In the ancient days more or less the same or synonymous type of criminal justice administration was found in practice throughout the world, but the manner and mode of administration may be by the king or the church. But the punishments imposed by the ruler or the church are the same, more or less the same may be found throughout the world, it may be
by flagging or banishment or cleansing, rarely death sentence was also in practice for grievous offences. It depends up on the gravity of the sin or wrong done by the offender. If the sinner or offender is a woman, her head will be shaved and paraded in the streets. In the Ancient Indian Society there were some recognized or accepted exceptions to the purohits or Brahmins. If any one of them commits any wrong or sin he will be paraded in the public by making them sit on the Ass with shaved head bearing with calcium carbonate dots. Death sentence to the Brahmins was not in practice. Punishments like removing body organs, flagging, stoning in the public were quite common. The punishment and mode of their execution is only to deter the public not to commit an offence and to make the offender incapable to commit again an offence. It may be presumed that in the ancient criminal justice administration system the theory what they have followed is a combination of deterrent as well as reformative theory. The concept of prison, prison administration and Imprisonment was not found anywhere in the world, the criminal law jurisprudence has not attained a shape, hence the concept of prison, prisoner and prison administration was an unknown subject to the entire world.
As the age advanced i.e. in the early ages of medieval history, throughout the world especially in India, the concept of Prison, Prisoner and Prison administration has gradually attained a considerable shape due to the development of criminal justice administrative system. Even in India also the concept of prison and prison administration was prevalent during the reign of Cholas dynasty in the south India and Mughals dynasty in the north India. It was in barbaric in nature, the theory that they have followed was deterrent theory and reformative theory was unknown in those days. The procedure for the criminal justice administration system had undergone drastic changes to cater to the needs of the society and developed the new concept of prison and prison administration and subsequently it had undergone drastic changes to cater to the needs of the country. For an effective criminal justice administration, not only the present state of administrators but also the ancient criminal justice administrators thought that the punishment was regarded as a measure of social defense and a means to an end.

The researcher is enthusiastically inclined to do this research work on the rights of prisoners and prison conditions in the state of Andhra Pradesh with a special reference to Charlapalli central prison.
By the advantage of his profession the researcher is in constant touch with the laws that are enacted by the legislatures from time to time and keenly observing the laws enacted. But the researcher found that the purpose and intention of the legislation is defeated while implementing and not attaining the public interest as the legislatures intended. Any law Act or enactment is good for the society in its abstract, but its implementation by the Executive authority is always subject to extraneous influences. In India it is more oftenly found in the implementation of the criminal justice. The state police authorities are empowered to implement the criminal law to maintain the public tranquility in the state by taking necessary authorized precautionary steps and to give protection to the public, of their life and property. For this purpose the Code of Criminal Procedure 1973 (Act 2 of 1974) was enacted by the Parliament which is the Magna Carta of the police officers, it is the source of power to them as they maintain the law and order in the society. A wide range of powers have been conferred on the police officers for an effective law and order maintenance in the society. At the same they are under the constitutional mandate that all the powers devolved to the police officers by the Code of criminal procedure code 1973 is to maintain the law and order in the society
and they are not absolute but subjected to fundamental rights of citizens enshrined in the third part of the Indian constitution and also to the Human Rights. The police officers while executing their duties should bear in mind that the fundamental rights and human rights of the people should not be infringed. But it was not in practice as intended by the legislature. There are so many instances that are regularly forming part of the news as to the violation of prisoner’s fundamental rights and Human rights by the police officers during arrest or in the police custody. As it was came out to the light through press, media and also by the democratic and social activists. But if it is done in the restricted or confined places like prisons it never come to the knowledge of the society or common man as it was also under the control and administration of the executive.

In the backdrop of the above stated facts the researcher intends to do his research work on “The rights of prisoners and prison conditions in the State of Andhra Pradesh, a special case with reference to Charlapalli central prison”, as it is the place where the people who are in conflict with law and sanctioned by the judicial authority were kept in the prison under the care and custody of prison authority, for a limited or unlimited period of sentence which they
have to undergo. Prisoners are also Human beings even though they are convicted by the state for their wrongs. They too can enjoy their fundamental and Human rights subjected to some reasonable restrictions as enshrined in the Indian Constitution and also in the prison manuals. Like other people the prisoners have no opportunity to express their grievance to their well-wishers and to the open society as they were detained there due to their illegal acts. Though their rights are subject to certain reasonable restrictions, the fundamental rights guaranteed under Articles 14, 19 and 21 cannot be curtailed as a whole. Hence the researcher is interested to observe how the prisoner's rights are implemented in the prisons and what are the conditions imposed on them in the prisons and further whether they are subjected to barbarous, inhuman treatment.

In the reign of Cholas administration in south India in the period of 16th century itself they have taken all the enquiries and precautions about the persons who are going to be appointed as an employee in their dynasty. Before to the Cholas in the north India the Nanda Kingdom also established very good system of administration both in criminal law administration as well as general administration. Before that Nanda dynasty of north India and the Cholas dynasty of south
India Mourya dynasty was in existence under the reign of the great Ashoka. The mode and nature of administration and ruling by the Ashoka has given highest importance in appointing public servants in his dynasty. They have taken all the precautions to maintain the discipline and dignity among the employees and to words the general public. In those days there is well established vigilance system about the conduct of the employees. If there is any misbehavior by the employee towards the general public and the king, the king himself conducts the trail in his open durbar about the misbehaviour. The system of trail procedure what they have followed in Mourya dynasty and later Nanda dynasty and also the later Cholas dynasty are almost similar of that of our present system of criminal justice administration. But the one and only difference is in the present system of criminal justice administration, prison administration has got its separate entity but the present system of prison administration in India is undeveloped and it is in its childhood stage when compared to the prison administration in European countries and United States of America. In the ancient days of Indian dynasties though the administration of criminal justice system is old and followed by the Manu Dharma Sasthra is very good well established system of
criminal justice administration when it compared to the than criminal justice administrations all over the world. Even though European countries and United States of America they have well established criminal justice administration system and prison administration system at present, it was very poor when compared to the ancient days of the criminal justice administration in India. In those days criminal justice administration followed in Indian dynasties, though not in uniform it is well established when compared to all over the world even when compared with the European countries and United States of America. In the ancient days of administration the Indian kings of their dynasty, the kings themselves went into their kingdom during the night time in different getups without disclosing their identity like beggars or in any other convenient getups, it is termed as vegulu. It is synonymous to the present day system of intelligence department. This kind of system was no where occurred in the ancient days all over the world except in India. It is only to find out the misconduct of their employees in their dynasty and also to know the status and feedback of their administration. At the time of appointment of public servants in their dynasty the Mouryas dynasty, the Nandas dynasty and also the Cholas dynasty has given much more importance to the
previous conduct of the employees and their families. When compared to the Mouryas and Nandas dynasties of principles and mode of selection, the Cholas dynasty mode of appointing is highly matured and highly cautious. The Cholas has given much more importance to the selected employee’s conduct and also their family background. In Cholas dynasty the persons who are going to be selected as an employee for the services of the public and the king should have good respect to words his parents as well as neighbors, his family should have enough economic potentiality also, his family should have minimum two acres of land and should have minimum qualification of reading, writing and calculation abilities. It is only to avoid misbehavior like corruption among employees of their dynasty in the course of employment to words the king and the general public. This kind of selection of their employees in the ancient days was nowhere found all over the world including the European countries and United States of America. In the history of pre-independence days of India, the trial of criminal justice system is mainly based on morals and ethics, even though there was a well established system of criminal justice administration, the crime rate is very less with compared to the present day crime rate. It clearly shows that, what extent and what
importance they have given to the ethics and morality in those days, there were no offences against the women in those days, it is only because of the greatness of people of those days, and it clearly shows that the importance given by the people to the morals and ethics. In the ancient days of Indian civilization, though women were confined to their household work they have given very good respect in the society. The offences against the human body also very less and less but the offences against property were found very rarely here and there it is only due to struggle for existence during the natural calamity. After the first war of independence and During period of lord cornwallis the enactment of Prison Act, 1894 and Prisoners Act, 1900 the than British government has taken some positive steps for the welfare and treatment of prisoners, with the help of those positive attitudes towards the prisoners they have implemented some beneficiary programmes for the treatment of prisoners and also to enhance the prison conditions, during the post independence, the Indian Constitution was enacted and it came in to force in the year 1950, the framers of the constitution has given more importance to the rights of the citizens to that effect they have incorporated fundamental rights of citizens in the third part of the Indian constitution with some
reasonable restrictions, it contains Articles 12 to 35, all these articles present in the third part of the Indian constitution are fundamental in its nature, state can not enact any Act in derogation with the fundamental rights of citizens with the same or some more reasonable restrictions all the fundamental rights are also available to the persons those who are sentenced to imprisonment and kept in prison custody. All the prisoners present in the prisons contain some beneficiary articles like article 14, 19, 20, and 21, housed in the third part of the Indian constitution, all these are in consistence with the law of human rights both the fundamental rights and human rights are complimentary with each other. Since the last two decades due to the effect of globalization, liberalization and privatisation the prison administration has undergone tremendous changes and initiated reformative programs in the prisons to make the prisoners helpful to their family and also to the society after their release from the prison.

1.2 Need of the Study:

The laws are made to regulate the human conduct in the society, as it is the primary duty of the state to maintain the public peace and tranquility in the society, the state legislatures has made deferent enactments to regulate the human conduct in the society, for the
implementation of the laws a kind of machinery is required for the
state, for that the government appoints some qualified persons for the
implementation of laws in the society for the advancement of the law
and order in the society. For the implementation of the criminal justice
administration a systematized well established organizations like
police department to bring the accused before the court of law and to
investigate the offence and finally to file a final report in the court.
Once the investigation is completed and final report of investigation is
filed in the court the duty of the police comes to an end, than the duty
of the judiciary begins, once the court takes cognizance of the offence
than the duty of the investigating police officers turns into witness, if
the case is proved beyond all the reasonable doubt, than the trial court
convicts the accused and passes a sentence of imprisonment, it may be
a day or days, a month or months, a year or years or it may be life or
death, it depends upon the nature and gravity of the offence
committed by the accused.

Once the sentence is passed and confirmed by the appellate court,
the role of the judiciary in criminal justice administration system also
comes to an end, than the role of prison and correctional services
department comes into play.
After the sentence is inflicted by the court, the police officers take the custody of the accused and simultaneously handover the accused to the prison department. Now the duty of the prison department begins, after the admission of the accused in to the prison, the first and foremost duty of the prison authority is to take the identification marks of the accused and sends him to the government civil surgeon for his health report including his weight, after completion of taking all the necessary identification marks and health report, upon entering them in the prison admission register, the prison authority admits the convicted person in to the prison and gives him a number, from this the care and custody of the convicted person is in the hands of the prison authority, the prison authority should serve the prisoner as per the prison Acts and state prison manual the prisoner also should obey the prison rules.

1.3. Scope of the Study:

The study is mainly aimed at understanding the legal and constitutional rights of the prisoners in various statutes— and the implementation of those rights by the State Government and prison authorities in prisons. The study includes both undertrial and convicted prisoners present in the Charlapalli Central Prison,
Hyderabad and all the sub-jails present in the Guntur district including district Jail Guntur.

Since the study is related to prisoner’s rights and their implementation in prisons, the study is restricted to both convicted and undertrial prisoners in Charlapalli Central prison located in Hyderabad and also for the purpose of comparison, the researcher has extended his study to all the sub-jails present in Guntur district along with District jail Guntur.

The study also covers different stages of the principle operation of the criminal justice administration system from the arrest of accused person, conviction and sentence of imprisonment after full-fledged trial and release of convicted person from prison after the period of sentence is over or it may be premature release, by the remission of period of sentence due to good conduct of the prisoner or his health conditions so necessitated or by the appropriate government as envisaged in the prison manual.

1.4. Objectives of the study:

The main objectives of the research study is as mentioned here under
1) To make a critical appraisal on the existing prison laws which are enacted for the treatment and reformation of the prisoners in prisons, in the State of Andhra Pradesh, through various enactments, orders and rules, etc.

2) To analyse the various kinds practices and procedures following, in implementation of prison laws in prisons.

3) To analyze whether the existing real conditions present in the prisons are backed by the law or not.

4) Whether the legal and constitutional rights of prisoners, in prisons are implementing properly or not.

5) To analyse whether the present existing treatment of prisoners are, without any prison violence or not, in the Charlapalli Central Prison, at Hyderabad in the State of Andhra Pradesh and in all sub-jails present in Guntur district including district jail Guntur.

6) To examine whether the reformative and rehabilitative measures taken by the prison authority in Charlapalli central prison are adequate or not for the reformation of prisoners in prisons and to make them law obedient citizens in the society.
7) To study and suggest the measures which are necessary for improving the administrative and organizational efficiency among the prison authority, in implementation of fair and humane procedure for effective handling of prisoners in prison administration.

8) To analyse whether various recognized, innovative methods as an alternative punishment, to the existing penal provisions in the treatment of prisoners in prisons.

9) Whether the prison authorities implementing the remission procedure to all the eligible prisoners by their good conduct without any discrimination.

10) Whether the prison authorities are providing sufficient quantity of hygienic food with a seasonal fruit to the prisoners as per the prison manuals.

11) Whether the cloths or uniform supplied by the prison authorities to the prisoners is satisfactory or not.

12) Whether the medical facilities provided by the prison authority to the prisoners is satisfactory or not.

1.5 Methodology of the Study:
The study is being carried out through, both the doctrinal and non-doctrinal methods; more emphasis was laid on non-doctrinal method to arrive the real problems which are being faced by the prisoners in prisons during their term of imprisonment. The researcher has adopted the empirical study through the questionnaire prepared by him and accepted by the DGP A.P, through direct interview and observation methods simultaneously, it is to find out the problems which are being faced by the prisoners, it is whether due to the dereliction of duties by the prison authorities in prison administration or due to the non-importance given by the state and central governments to make effective legislation for the welfare and reformation of the prisoners.

1.6 Hypothesis of the Study:

By taking into consideration of the objectives of the study as stated above, the researcher has formulated the below mentioned hypothesis for his effective research work.

1. Prison laws and prison manuals intended to protect the fundamental rights and human rights of the prisoners are not being adhered to in letter and spirit and there are no proper mechanisms to monitor the implementation of the laws and manuals.
2. The reformative and rehabilitative programmes for the reformation of the prisoners are not sufficient to achieve the objectives.

3. The directions of the Supreme Court through its various decisions with regard to the treatment of prisoners in prisons are not followed meticulously.