CHAPTER - IX

CONCLUSION

This chapter presents first a summary of the research work, then findings of the researcher and finally his recommendations on the status of the system of punishment and the need for penal reform:-

I. Summary of the Thesis

Punishment generally is a kind of power by the officers and institutions of state, and in certain cases by private agencies, by which certain harmful and undesirable consequences may be imposed on a person for any objectionable conduct. In the specific area of criminal justice punishment refers to the work of the criminal courts whereby certain kinds of punishments as specified in the law of crimes are imposed on persons for contravening the penal laws.

Relating the system of punishments to the concept of justice it may be pointed out that there are two types of justice, civil and criminal, which means there are two types of wrongs, civil wrongs and criminal wrongs. Criminal wrongs are public wrongs while civil wrongs are private wrongs.

The punishments which the courts of criminal jurisdiction may award are of two kinds, one which is provided for in the Indian penal code 1860 and the other punishments which are provided for in the Special laws of crime.

As far as punishments provided by the Indian penal code 1860 are concerned, they are the punishments of Death, Imprisonment for life, Imprisonment which may be simple or rigorous, Solitary Confinement, Forfeiture of Property and Fine.

The constitution of India, which was enacted after the independence of the country, contains the fundamental principles applicable to the powers of the state and the rights of the individuals. These principles are basic to the governance of the country; hence their imperative character cannot be undermined by any branch of law. The penal law of our country in the form of the general law like the Indian penal code, 1860 and the special laws which are several in numbers have to be in conformity with the fundamental principles of the constitution. The need for reform of penal law arises when they appear to clash with the fundamental principles enshrined in the constitution.
Apart from the principles enshrined in the constitution to which the penal law has to show reverence there are principles of the human rights law which by now have grown larger in number and are applicable to all aspects of the system of punishment.

The human rights law has been responsible for ushering in a body of principles which the Member states of the United Nations have to adopt and enforce in their respective countries. There are a number of provisions in the human right instruments whose message is to ensure the adoption of new rights for the good of the individuals.

According to the Cambridge dictionary, meaning of the word penal reform is “the attempt to improve the system of legal punishments”.

The two specific areas envisaged in this research work encompass firstly the provisions of law followed by the courts in imposing punishments and secondly the factors which justify the need for reform in the system of punishments. The first one having been explained above the second one may be explained now in the following paragraph.

One of the problems which justify the need for reform is the rising trend in the incidence of crime because of which it is stated that the system of punishments has not been of much help to the state in controlling the problem of crime.

Punishment generally is a kind of power exercised by private or public agencies in relation to those who violate the norms, rules and regulations of the society and disturb the peace and order of the society. Depending upon the context in which the power has been exercised and the person in relation to whom it is exercised the term ‘punishment’ gets its meaning and definition.

**III Findings of the Researcher:**

The system of punishments in India stands in need of change owing to the socio economic conditions of our society and the advent of human rights law which has the philosophy of treating an individual as worthy of deserving protection on grounds of being a member of human society.

The system of punishment in India was based on the age old theories of deterrence; it was not relevant to many of the new theories of punishment which had come up, such as, the reformatory theory; the preventive theory, expiatory theory etc. In several countries of the world the theory of reformation was adopted so seriously that as a result of this new approach the concept of punishment had received a new twist and a number of correctional institutions had come up. The new institutions have helped the state administration in solving the problem of
overcrowding of prisons and congestion of penal institutions. But the authorities of our state have not paid much attention to this aspect because of which the system of punishment remains the same, the old institutions of jail and other penal institutions still continue to be in place, causing overcrowding and over-congestion of the prison population.

The need for penallaw of our country arises from the increase in the incidence of crime; the inadequacy of punishment and the imperative nature of the fundamental principles enshrined in the constitution and the human rights law.

The research confirms the first hypothesis that the present day system of punishments is in need of reform; that this is more so in view of changes in the socio-economic conditions of the people.

The other hypothesis also which stands affirmed is that the basic law of our country as also the special laws on the system of punishments are in need of change; and that the change is warranted in view of the fact that the basic law which was enacted more than a century ago does not conform to the present day principles by which our society is governed and the principles enshrined in the constitution;

The researcher has pointed out in the relevant chapters of the thesis how the provisions of the basic law and the special laws lag behind in several respects. And that the special law also is lagging behind the present day conditions of society.

As far as punishments provided by the special laws are concerned they are of a wide variety; some of them may be described as Disqualification from holding an office, Disqualification from contesting an election, externment, etc.

I. Recommendations of the Researcher

There should be bail granting committee of jurors appointed by the law and Judiciary Department from amongst the learned and respectable local citizens. The jurors on the bail granting committee must include people from minority community and also from dalit and tribal class. The alone bail will be rightly granted and bias or prejudice will not work. Refusal of the court to grant bail causes insurmountable sorrow and difficulty where the accused arrested person is the only bread winner in the family. Wife children and old parents of the accused person have to sleep hungry every evening if the bail is not granted. Pre-trial incarceration can have detrimental effect on the entire family of the arrestee. Many young men in their early twenties living in metro cities like Mumbai ,
Bangalore, Kochi, Kolkata, Delhi have chances of not only losing the job in private companies and also eviction from company quarters or hire purchase apartments. Wife children all become orphans. The punishment by refusal of bail is most inhuman as it affects others along with the accused.

A welfare state must have compatible judicial policy aiming at the welfare not at retribution by state. In so far as the possibility of accused affecting threatening witnesses and changing evidence etc is a false reason. A poor man cannot do all that is said in favour of incarceration before trial. In Europe USA and Canada pre-trial detention is called “dead time” The under-trial population in developed countries is incarcerated in separate lodging where food is bad and facilities absent. Such lodging is always over-crowded.

1 probation of offenders Act even now mostly remains in the statute books and never used by the prosecutor suo motu for the benefit of the first time offender. The Probation Officer of the Social Welfare Department must be a necessary party in all first time arrestees on charges of assault battery and larceny. The less serious similar offences could be considered for letting off youths on probation.

2 Rehabilitation after probation is another neglected area. The youths who are unemployed and get involved in street fight or riot or any other petty crime must be not only let off on probation but they should be helped out in setting up a shop or find a job. Some source of legal income by work should be there for the unemployed who get in to fights just because they have poor self image due to lack of a steady job.

3 The rehabilitation oriented trades being taught in prisons to the convicts have become outdated. Carpentry, tailoring, printing, book binding, bakery are the present trades. The ex prisoners who try to settle in life find it difficult to put into use whatever they have learnt in the prison from craft teachers who themselves badly need training. Modern trades like acting, photography, interior decoration, plumbing of high rise buildings, refrigeration, air-conditioning, dog breeding, catering, flower arrangement are the trades which are relatively modern and can fetch job or a source of living for the prisoner after release from jail completing the prison term.

4 Grand Jury trial at sessions court be resumed to avoid personal bias and prejudice of the trial judge. Grand jury trial is a method of adjudication in which the eminent and learned citizens form the body of jurors. The role of the judge is is to say what law is but the decision would lie in the hands of the jurors. The last case in India where jury gave the judgment was state versus Kawasji Maneckshaw Nanavati 1962 AIR 605 1962 SCR Supl. (1) 567.
The jury let off Commander K.M. Nanvati at Sessions trial but the Bombay highcourt in the appeal by the state government sentenced Commander Nanavati to serve the term in prison. K.M. Nanvati was a high Profile Naval Officer of high Rank and he killed the lover of his wife, a rich man called Prem Ahuja, who clandestinely seduced Commander’s wife Sylvia when commander was away on his naval cruise. Later Governor of Maharashtra gave remission in his powers under article 161 of the constitution of India. Jury system is need today since the police judge nexus is sentencing many innocent youths especially belonging to minority religions and the dalit neo budhists.

5 Separate Lodging of under-trial population is necessary. Anand Narayan Mulla committee on prison reforms has said that first time offender coming in contact as under-trial with hardened is very dangerous thing Thus prisons will become criminal producing factories instead of becoming reform centers. In India ‘jail’ and ‘prison’ are used interchangeably to mean one and the same thing. In Europe America and Canada “jail” is a place where under-trial population and misdemeanor convicts who have less than twelve months imprisonment awarded to them. All convicts of felony charges larger than one year punishment live in prisons. The chances of hardened criminals meeting in prison with under-trial persons is far too less. law commission on its 113th report has dealt with this issue.

6 Crime Victim Compensation is another neglected area which is very important from the point of view of human rights. The Department of Prison thinks about rehabilitation of the convict but no body thinks about the victim of crime and the loss and agony felt by him/her. Rehabilitation and adequate compensation are two different things which should be taken up on priority basis in respect of the victim. One judicial Officer (G.B. Deshmukh) of Maharashtra judicial service in his study (2013) “Linking Tokenist Monetary Fines to the Current Price Level while granting compensation to the victims of crime: A study with Reference to state’s Accountability” has suggested that nearly two centuries old monetary fines prescribed in the indian penal code appear absurdly low need to be recast and linked to current price level. He also suggested that there should be separate and independent ‘crime Victim Compensation Boards’ Such boards should sanction substantial and adequate compensation to the families of crime victims irrespective of the adjudication’s result. The researcher and author of this thesis concurs and agrees with the study of the judicial officers mentioned supra.

7 The government pleaders are paid very poorly in India therefore they are always on the lookout for some bribe. Many have been caught red handed in trap laid by Anti corruption Bureau. The government pleaders in India weaken the prosecutors case and thus victim is frustrated. Most hardened criminals are acquitted multiple times and harass the victims
repeatedly. Many criminals have become bigger than courts. The salaries of government pleader must be raised to a decent level.

8 The judges are also poorly paid in India. Justice Shetty commission did not give much to judges. Law college Assistant professors draw more than judicial magistrates. It is rightly said “if you have peanuts for salaries then you get only monkey as workers” Capable intelligent judges with good command over law and language cannot be attracted in the present salaries.

9 NMDJLR National Mission for Delivery of Justice and Legal Reforms is the body which was formed under joint auspices of the department of law. The action plan was to upgrade court room technology. But misfortune of the country is that court room technology even in high courts has not been upgraded. Filing is done by crude method and the records are kept like the bundles of waste papers in the junk yard. Justice Madan B. Lokur of the supreme court of India is now in charge judge of the Information Technology. His lordship lamented that even now the court notices are sent by Registered post for which plaintiff or petitioners has to pay when in fact e-mail addresses of the parties are on record.

10 Lack of transparency is the major defect of Indian judiciary. In any court room the judge, the clerk of the court, the advocate of the plaintiff or the defendant, thus only five to six persons are present. In China the court rooms have big visitor gallery and at least one hundred visitors are sitting and hearing the work of the court. When there are more visitors in the gallery then a pressure is create on the judge to do only right things and avoid taking sides. Justice Yeshwant Rao Chandrachud once wrote in Loksatta (14-4-1989) that in China there is full transparency in courts. Every move of the judge is watched by public, sitting in visitors gallery.

The status of the law on punishments for crimes in our country is in need of reform because it is not responsive to the present day conditions of society. The penal law is based on the age-old principles embodied in the penal code of 1860; it is far from being responsive to the principles embodied in the human rights law.

The courts have in a number of cases pointed out the deficiency of the law and suggested a change in order to bring the law in conformity with the present day norms of the constitution and the human rights law.

The idea of reform finds support from the reports submitted by national and state bodies of the law commission and several official agencies which were entrusted with the responsibility to examine the status of the law and give their reports. These bodies have given voluminous reports and relied upon the systems which have undergone a change in foreign jurisdictions.
Unfortunately, these reports have not been followed up; they are carrying dust ever since they were submitted to the government.

It is necessary to give a serious consideration to this matter and the authorities should find a way of formulating new principles and enacting new laws for new offences and new procedures to strengthen the system of punishments.

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