CHAPTER-I

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Right to personal liberty is a most valued and cherished right under the Indian Constitution. No person shall be deprived of his life and personal liberty except in accordance with the procedure established law. However, a person can be deprived of his personal liberty as a penalty for offending against the most important tenets of the criminal law. Under the Indian Constitution deprivation of personal liberty as penal policy has been considered as purposive and the Penal Code itself is valid because the imprisonment of a criminal is reasonable, not arbitrary, and is sanctioned as a measure of social defence and individual rehabilitation. The State is empowered to deprive individuals of their liberty for prolonged periods of times by imprisonment. The purpose and justification of sentence of imprisonment deprivative of liberty is ultimately to protect society against crime.

Since imprisonment primarily involves confinement and consequent segregation from normal society, by its very nature it is afflictive. The incarceration generally causes a great hardship to a prisoner as he is cut off from family, relatives and friends, and he loses variety in food, clothing, privacy, space etc. Imprisonment pushes him into the company of many hard-core criminals. Most importantly it takes away from him the right of self-determination and he is at the mercy of prison officials, who regulate the minutest details of his life.
State is under a constitutional obligation to organise prison system in such a manner that the imprisonment does not result in further degeneration of a prisoner. It is clearly established that a court sentence does not deprive the prisoner of his fundamental rights. He retains all his rights except those which are inconsistent with his incarceration. A prison can function as a correctional institution, bringing about the reformation and rehabilitation of the offender by honouring his basic human dignity. Thus, the prison system should aim at ensuring the return of an offender to society as not only willing but also able to lead a well-adjusted and self-supporting life. In this regard, the humanisation of prisons assumes a greater significance.

Humanisation of prisons is a system, which seeks to protect the basic human dignity of every prisoner. Further it aims to create humane conditions in a prison and secures social re-education of the prisoner for the purpose of realigning and re-organising his life for smooth resettlement in society. Humanisation emphasises that the prison should be a centre of correctional treatment, where major emphasis shall be given on the re-education and reformation of offender. The impact of institutional environment and treatment shall aim at producing constructive changes in the offender, as would be having profound and lasting effect on his habits, attitudes, approaches and on his total value schemes of life.

Unfortunately, realities in Indian prisons, as reported by the All India Committee on Jail Reforms (1980-83) present a totally unsatisfactory
picture. According to the Committee most of the prisons are overcrowded and majority of persons lodged in prisons consisted of people belonging to the underprivileged sections of the society. A large number of persons coming to prisons consist of first offenders involved in technical or minor violations of law. More than half of the total prison population in the country consists of inmates waiting or standing trials or who have failed to furnish necessary security to secure bail, due to their poverty. The Committee was shocked to find all categories of inmates being huddled together in most of the prisons. Young offenders were confined in prisons with adults and were exposed to the degenerative impact of prison atmospheres.

Inadequate medical services and the absence of psychiatric services in prisons added to the difficulties of prison administration. In some jails there were mentally ill persons who had not committed any crime. The prison buildings are not functionally suitable. The prisons are characterised by unhygienic conditions, substandard food, insufficient water supply, use of drugs on inmates, atrocities on women and children maltreatment of prisoners and corruption. The institution of prison visitors has become almost defunct in most of the states and union territories. Recently, the National Human Rights Commission has come out with similar observations. The Commission has noted the increase in the number of custodial deaths. The absence of human rights orientation in prison officials. Thus, it could be summed up in the words of the
Committee of 1980-83 that 'the existing prison organisation in the country is in disarray' and 'does not conform to the required standards of a correctional department'.

The need of the hour is to lay the foundation of a progressive prison system, which can protect and preserve basic human rights of prisoners and achieve the protection of society and reformation and rehabilitation of prisoners. One of the essential prerequisites for evolving such a humanistic prison system is the existence of a legal system, which is fair, just and reasonable, and also potent. Because, as Lord Diplock said, "the fundamental human right is not to a legal system that is infallible but to one that is fair".

The three links that form the chain of prison system are the prison laws, the judiciary and the prison administration. The Indian prison laws are archaic and there is no uniformity in them in various states. The judiciary at times finds itself helpless in the absence of 'executive sword, and the prison personnel lack human rights orientation. For achieving an effective humanisation of prisons each link in the chain needs to remoulded, reoriented on the basis of humanistic values. As a prelude to this there is a need to survey the existing prison laws, to make an objective assessment of the role played by the judiciary and an analysis of the organisational structure of the prison administration. The present study aims to make a thorough and comprehensive study of the three links
of the prison justice system to identify the hurdles on the way to humanisation of prisons.

1.1 THE PROBLEM

The Indian Prison System is in crisis. The media reports about appalling conditions in various prisons have caused great heartburn and concern among the citizens of the Country. Even the Chairmen and the members of the National Human Rights Commission, who visited prisons, have reported the subhuman conditions and large scale violations of human rights in prisons. The Apex Court has repeatedly ruled that it has a continuing responsibility to ensure humane prison conditions and issued directions against the prison authorities, still, nothing seems to have changed. In this context it is hypothesized that the existing three links of prison justice system-prison laws, judiciary and the prison administration suffer from certain basic infirmities. As a result they have become ineffective in ensuring the humanisation of prisons. The solution to the problem lies in restructuring and revitalizing these organs in the tradition of human rights standards.

1.2 OBJECTIVES OF THE STUDY

1. Primary Objective was to investigate the prison justice system in India with a view to find out the reason for failure in achieving humanisation of prisons.

2. To determine the aims and objectives of imprisonment by making an analysis of various theories of punishment.
3. To trace the steps by which prisons have moved from "crime centred" approaches of retribution and deterrence to "criminal centred" reformation and rehabilitation by analysing historical development of prisons.

4. To make an analysis of international human rights standards governing prison organisation.

5. To analyse legal measures and to establish the extent to which they are conducive to the humanisation of prisons.

6. To investigate the role played by judiciary in humanising prison.

7. To determine the suitability of the prison organisation to achieve the goal of humanisation of prisons.

1.3 METHODOLOGY

The methodology adopted for the study is doctrinal, involving content analysis. The documents analysed include, treatises, statutes, judicial decisions, International Human Rights Documents, reports of prisons reform committees, commissions, working groups, etc. The empirical data provided by various committees, National Human Rights Commission and newspaper reports have been used as evidence for certain propositions, arguments and conclusions. Discussion with various prison officials are also used in the study.

1.4 IMPORTANCE OF THE STUDY

The importance of the study lies primarily, in the fact that it reveals the lacunae existing presently in the Indian prison system; which are actually obstructing the process of Humanisation of Prisons. An objective
analysis of the various laws, judicial decisions and prison organisation is made for this purpose. The study contributes to the ongoing efforts to evolve a National Policy on prisons and the enactment of a progressive legislation.

1.5 SCHEME OF THE STUDY AND ITS PRESENTATION

The investigation into the Problem of humanization of Prisons is planned in eight chapters. In this chapter an attempt has already been made to elucidate the genesis of the problem, its scope, objectives of the study and its importance. The following pages are devoted in this chapter to introduce the themes underlying the forthcoming chapters.

1.5.1 Aims and Objectives of Imprisonment

This chapter seeks an answer to the question: why punish criminals? For this purpose different theories of punishment, retributive theory, deterrent theory and reformative theory- are analysed. Further, the characteristics of an ordinary prison are discussed. Lastly, the chapter deals with certain prerequisites necessary to make prisons as true correctional institutions.

1.5.2 Historical Evolution of Humanisation of Prisons

Imprisonment as an important form of punishment has been adopted during the last two centuries. Earlier, various types of corporal punishments, which were mostly brutal and barbaric were employed to deal with criminals. Prisons were existing in those periods also, but
they were used only to keep the offenders in custody till they received corporal punishments. As places of punishment they are comparatively modern. The conditions in these prisons were sub human and shocking to human conscience. Those were the days when retribution, deterrence and incapacitation of criminals were the accepted penal policies.\textsuperscript{14}

In western countries and in U.S.A. gradually the trend shifted towards humanising punishment and the reduction of brutalities. The idea that the punishment is basically for reformation and rehabilitation of the offender was slowly accepted and adopted in those countries as well as in India.\textsuperscript{15}

The analysis in this chapter has traced the evolution of prison reform movement in Europe, in U.S.A. and India over the different periods of history. The analysis has extensively dealt with the innovations introduced in various countries, the reports and recommendations of various prison reform committees and commissions.

1.5.3 International Approach to Protection of Prisoners’ Rights

The concern for the protection of human rights has led the international community to formulate appropriate principles, norms, and standards in keeping with certain commonly acceptable human values. The holocaust caused by World War II led the U.N.O. to adopt various instruments for protecting human rights of the mankind.\textsuperscript{16}

The adoption of a number of international instruments like U.N. Charter, U.N. Declaration of Human Rights, Two covenants, covenant on
Civil and Political Rights and Economic and Social Rights, acted as catalysts for the Protection of human rights. The adoption of U.N. Standard Minimum Rules for the Treatment of prisoners in 1955, the Code of Conduct for Law Enforcement Officials, the Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, facilitated reformative process. Convention Against Torture helped to a great extent in humanising the criminal justice systems of member countries. They have imposed an obligation on member countries to review and restructure their system of administration of criminal justice in conformity with international human rights standards.

In this chapter, an analysis of various international human rights instruments is made to ascertain the human rights standards, the adoption of which is required for humanising the prison system and also to determine adequacy and suitability of enforcement machinery created under the various instruments.

1.5.4 Legislative Measures for the Humanisation of Prisons

Law is an instrument which regulates human affairs. For the civilized existence of any society the existence of a normative structure of law is necessary. The protection of basic human rights can be provided or ensured only by having suitable law. Adoption of a normative constitution is an important mechanism to protect human rights. Thus, the Constitution of India has guaranteed various Fundamental Rights to its
citizens, and all laws and executive actions are required to be consistent with the provisions guaranteeing Fundamental Rights. The prisoners are also entitled to various Fundamental Rights, excepting those which they cannot enjoy because of their incarceration. Articles 14, 21 and 22 have been expansively interpreted to cover a wide range of rights of prisoners.

The Prisons Act, 1894 is an important Central Statute, which governs the prison administration. Since, under the Constitution 'Prisons' is a State subject, several states have amended the Act of 1894 in its application to them. Many states have enacted their own prison laws e.g. Karnataka Prisons Act, 1963. As a result, there is no uniformity in laws in different states governing prisons. In addition to these, there are other statutes like The Prisoners Act, 1900, The Transfer of Prisoners Act, 1950, The Prisoners (Attendance in Courts) Act, 1955, The Probations of Offenders Act, 1958, and The Mental Health Act, 1987. In addition, there are state prison Laws and Manual, which govern the day-to-day administration of prisons. In this Chapter, the provisions of the above statutes and manuals are analysed, to find out the extent to which they are in consonance with the human rights mooring of the Constitution and contribute to the humanisation of prisons.

1.5.5 Role of Judiciary in the Humanisation of Prisons

Under any normative Constitution the judiciary plays a very vital role in protecting the rule of law which is a basic postulate of democracy. Under the Indian Constitution, the Supreme Court is vested with the power
to review laws and executive actions on the touchstone of the Constitution. During the initial years of its functioning, the Supreme Court adopted an elitist attitude. Fortunately, in the Post-Emergency era, the Apex Court shedding its elitist attitude has emerged as the last resort for the oppressed and the bewildered, by liberalizing the rule of _locus standi_ and encouraging public interest litigation.

As part of its expanded activist role, the Supreme Court has shown a greater interest in reforming prisons. In the beginning it adopted the “hands off” doctrine refusing to examine complaints of prison atrocities. But, in its newly assumed activist role after the Emergency of 1975-77, the Court has shown greater concern about the protection of the rights of prisoners and recognised various rights as belonging to them in the prison, on the basis of an expansionist interpretation of Articles 14, 21, 22 of the Indian Constitution. Though the Court has been successful in articulating the various rights of prisoners, it is necessary to ascertain to what extent it has been successful in securing compliance from the prison authorities with its verdicts. Various directions issued to the prison authorities have been disregarded with impunity. Time and again the Court has cautioned the authorities that it will take serious note of any non-compliance with its directions. But, so far no action had been initiated against a single prison official for any lapse.

In this chapter, the Constitutional basis of judicial power, the nature of judicial power, the role played by the U.S. Supreme Court and the
Indian Supreme Court in humanising prisons have been analysed. The study has extensively explored the role played by courts in the articulation of prisoner's rights and the measures initiated for the implementation of their directions. The study has tried to reveal the need to adopt certain innovative administrative techniques to ensure compliance by prison authorities with judicial verdicts and also to deal with prisoners' grievances.

1.5.6 Organisation of Prisons and Humanisation

Merely having rules and regulations governing prison administration is not enough. An administrative machinery which has to interpret and apply them in the day today administration of prison, must share the value system inherent in those rules and regulations. If the administrative authorities were insensitive to the conditions of inmates, it would be practically impossible to organise any programme for the reformation and rehabilitation of offenders. For organising prisons as correctional institutions, it is absolutely essential to recruit persons who share the objective of reformation of prisoners, who have received adequate training. The prison personnel must be given in-service training to sensitize them about the new demands of prison administration, which is humanitarian. And adequate control must exist to prevent misuse of administrative discretionary powers.

In this Chapter, the administrative setup of prisons at different levels, the prison personnel and their powers, functions, and duties have
been analysed. The study has also dealt with the need for and control over the discretionary powers vested in the prison authorities.

The study has attempted to establish that the aim of imprisonment is reformation and rehabilitation of prisoners. Further, the study has attempted to reveal the lacunae existing in the prison justice system, which prevent the effective humanisation process in prisons.
NOTES AND REFERENCES


9. *Id.* at 24.


17. See Article 13, Constitution of India, See Appendix.


