

## CHAPTER - I

### I N T R O D U C T I O N

Man is born as an individual, and though initially he is not fully aware of his total dependence for life and growth upon his progenitors, it does not take long for him to learn his separate physical identity and distance from the mother. Some thinkers, like Otto Rank who gave the concept of 'Birth Trauma', hold that the experience of 'me' and 'not me' begins to guide the child's behaviour from the very start. Age, merely multiplies and adds variety to such experiences, which the psychologists term as the basis of personality development and character formation. The sociologists call it the 'process of socialization'. In either case, what the newcomer learns through these experiences, at the personal and the social levels, is to differentiate between the behaviour that gives him pleasure and the behaviour that results in pain. Whether this experience is termed the 'pleasure and pain principle', or given some other dichotomous dimension such as 'satisfaction - dissatisfaction', 'right - wrong', or 'correct - incorrect', is a question of language, sophistication or the frame of reference in which it is considered. What the child learns is the CORRECT behaviour that leads to desirable results and the INCORRECT behaviour that leads to some undesirable effects. 'Instinct', 'Intuition', and or experience, impels him to give up behaviour that results in painful or undesirable ends - and this is the basic process of CORRECTION - correction, which implies avoiding or modifying undesirable, painful, unpleasant, forbidden, wrong

or harmful behaviour, both at the personal and inter-personal levels.

Nature works on the basic principle 'Life from life' and creates living organisms in, what the botanists call, cluster. To man, who is born as an individual, in a parallel fashion, the sociologists give the dictum 'Man is gregarious in nature'. Flocking, herding or crowding together, or fondness for company, provides opportunities for cooperation, competition and rivalry. Such inter-actional behaviour calls for agreed patterns of individual and inter-personal relationship, conduct and values. Once these norms are drawn, a boundary line stretches out, generally with no well defined shape to start with, yet a persistent base line of reference at the concepts, attitudes and belief level, that influences very activity and decision of the individual, and his group; their value-system.

Perception of the permissible limits of behaviour, is the function of the individual's state of consciousness. The state of consciousness seldom stays the same for long. Varying perception of norms, by the same individual, or different individuals, results in transgression of the prescribed limits, which in some cases may be quite bonafide, but in several other cases, may be malafide. Preservation and growth of civilization is fundamentally linked to prevention and control of such transgressing deviant tendencies of behaviour. An organised pattern of social intercourse and dealings, for smooth social functioning, was an early felt need. In all civilizations, and in all periods of history,

correctional administration (which today stands for the prevention of crime and treatment of offenders), under some name or the other, has been a basic segment of the then prevailing system of law, order and justice, in that society. "Correction" is the vital essence of society without which it cannot exist, much less, function.

Correctional thinking, philosophy and practice, touch an individual at every step of his dealings and activities, in the home and the community. In the complex social conglomeration, there is seldom a straight path leading to the desired goal. Folkways, mores, customs and conventions, together with the everchanging environmental press, limit the availability of the shortest path to the target. One has to think, calculate and manipulate, to fish out the best possible way, to reach the goal, without offending or conflicting with the hurdles. At times, one has to wait and make efforts to alter, modify or reinterpret the obstructing situations to make them more acceptable to him and the society, so as to become frictionless and goal-achieving. The deviants, who transgress these prescribed limits, fall into the clutches of criminal justice to suffer for their transgressions, which is a process of correctional administration. Every act imbued in correctional administration, is preceded by correctional thinking and philosophy.

Correctional thinking, that precedes the codification of law, and the crystallization of state correctional policy and the laying down of specific administrative directions, has equally always been in a state of dynamic flux, because of the everflowing stream of political, social and economic calls, constantly creating new situations, needs and relationships. To

fully appreciate the forces that have generated and directed correctional thinking, at any time, it is necessary to examine the social, political, economic and legal thinking, organization and activities operating during the period of study, together with the cultural upthrust and conditioning, on the canvas of the preceding phases of historical scenes.

This lands us in the vast panorama of Indian history - the history of a large sub-continent which has continually flown high the flag of one of the oldest, if not the oldest civilization, in the living history of the world today. History testifies to the fact that Bhartya civilization has withstood, the now rising and then falling, tumultuous train of political upheavals generated by a number of invaders, looters, settlers, and kings. It has seen the country traverse through periods of sunshine, glory, prosperity and fame alternating with barbarous plunder, en-masse murders, calamitous lawlessness with cruel destruction of its prized art, literature, handicraft, shrines, temples and world famous possessions. And, yet, the basic core of Indian civilization has sustained itself, and kept pulsating the heart of every Indian, nurtured in this land of spirituality and saints.

Is this sojourn in the history of India relevant for studying the development of correctional administration in modern India - let us better see. To start with we would like to refer to the remarks of a British historian who commented that the history of British encounter in India would have been very different had they come to a country which did not have a living civilization like that of India. Britishers faced a

rich and well developed civilization which they failed to replace. Michael Edwardes (1) holds, "The history of India might be a record of invasions, of the rise and fall of dynasties, of the instability of the state, but social conditions remained unaffected by changes of ruler because their divine origin placed them, generally speaking, outside political control. Indeed, the stability of the Hindu social order was reinforced by the instability of the political system. The divide between politics and the mechanics of living was precise. A man's loyalty was to the group, family, village and caste rather than to the community as a whole; and to the state, not at all. His relationship with the state was always subordinate to that with the group. Even military service was the group concern of a professional caste. The majority of the people - the cultivators of the land - took no part in the wars or political upheavals. Their real interest was not in who governed, but in how they governed; in, essentially, the incidence of taxation, and the absence of interference in religion and customs."

The interest of the historians is primarily focussed on the unique aspects of the concerned personages and events, with a view to analyse the past for a better understanding and assessment of the present. The sociologists and in particular the criminologists, have been traditionally more interested in the horizontal dimensions of social interaction, deviance and its handling. The contention here is that for a proper study of the criminological process, the historical approach is necessary to provide the frame of time. "The longitudinal view offered by the observation and documentation of phenomena through time can provide for

a more complete analysis and understanding of the emergence, scope, and persistence or change of given social organization and behaviour, and as such, history becomes the very framework of detached enquiry." It may be a useful corrective for the various misconceptions about crime, prisons, prisoners and their handling that get entrenched in our consciousness through the march of time.

The narration here is not intended to be a text on the history of British entry, trade, occupation, rule and consolidation in India. The attempt is to present a minimum of the historical perspective in which the crucial economic, legal and socio-political events occurred; with some peep into the personality, background, and character of the various actors, together with the values held and aspirations cherished by them. The purpose is to understand how did they perceive the situations then developing in India, and how did their needs and ideas grow which ultimately crystallized as the administrative, penal and correctional policy and programmes of the English rulers. We agree with David Fogel, (2) who discussing 'Prison Heritage' comments, "We will try to account for the emergence of prisons in America. In order to do so we must hazard an historical journey replete with its problems of selectivity and incompleteness. Institutions never arrive full blown; they are historical products of layer upon layer of custom emerging from the distant past into hesitant shapes. The modern prison is a product of such a process. In order to best understand our own prison development we must appreciate what was on the minds of the contemporaries who built them. But we need also to examine the influences pressing upon early Americans -

namely, their English heritage." He further emphasises, "There is no linear legacy to trace. We know only the problem our ancestors faced - how to control deviance in a strange wilderness." adding that, "In trying to trace our own penal institutions we must have a picture of the frame of mind of our ancestors." (3)

The purpose here is to picturise the evolution of peno-correctional philosophy and methods under the British rule in India. The importance of keeping a constant eye on the historical developments of the times was emphasised by George Bernard Shaw and Lord Palmerston, two eminent English philosopher and politician respectively, who throw light on English character. Shaw (4) discussing 'The Crime of Imprisonment' observed, "We are brought up to believe that we may inflict injuries on any one against whom we can make out a case of moral inferiority." In 1858, Lord Palmerston, Prime Minister of England, introducing in the House of Commons the Bill which abolished the East India Company, stated "The original settlers began with a factory, the factory grew into a fort, the fort expanded to a district and the district to a province, and then came collisions and conflicts and the East India Company found itself invested with most important political functions." In 1859, Lord Palmerston enunciated, "There is a passion in the human heart stronger than the desire to be free from injustice and wrong, and that is the desire to inflict and wrong upon others, and men resent more keenly an attempt to prevent them from oppressing other people than they do oppression from which they themselves suffer." It is the task of historians to dig out and present factual events and records that make it possible to understand

the necessary attitude, motive, values and ideals of the actors concerned; which provide the fundamental basis and the directing force for administration and public dealings.

In this context, it is also necessary to refer to the law-of-the-land in vogue because that presents a precise picture of the social-political scene, then operating in society. Law, is both the open book and the machinery through which the ruling authority makes it known to those who fall under its purview, what freedom can they enjoy in their behaviour, business transactions and societal deals; and what of their actions are threatened with penalty. All 'Law-givers', be they kings, rulers, dictators, or democrats, prescribe and enforce law in the name of justice - justice that has ever eluded an-all-agreed definition. It is so often classified as natural justice, poetic justice, social justice, legal justice and administrative justice etc., which at its best, is merely an attempt to justify that is sought to be justified as justice. What the law making authority claims to represent justice is hotly debated by its opponents, and not so without justification. In any democratic setup, it is the majority vote that decides the issue and that becomes the law, with all the implications of justice, morality, duty and obligations. Those who come under its purview, have to obey those dictates, whether they like it or not. It sets in a new value-system, which the authority in power enforces under the threat of penalty for any disobedience. Schaffer (5) comments, "This law making, social-political power - whether a one person dictator, a parliament, or a congress - shapes and molds the

concepts of morality and justice in any given society according to the values in which the ruling power believes. In fact, this value system is the dominant force that formulates the permissions and prohibitions or, in other words, defines what is conformity and what is crime." adding, "The law makes objective rather than absolute judgments, it is right or wrong, moral or evil, only in the way it interprets actions. The social-political power of the society - the power more powerful than ourselves - defines the morality or values to be learned by the members of the society; it defines the rightness or wrongness of some modes of human conduct. Whatever is defined by this power as right or wrong must be learned and accepted by those who are required to obey as long as the ruling power is the power. Those who accept its definitions are conformists, and those who refuse them may be criminals; and this is told by law.... The ruling social-political power wants to see its value-system implemented by all members of the society, and its moral prescriptions demand that all members of the society should perform in their social roles accordingly."

The power that be, makes all out efforts, to have its values and dictates carried out. The methods adopted for the purpose - autocratic, aggressive, brutal, barbarous, democratic or humanitarian - speak out the real intentions and motives of the rulers, better than their proclaimed intentions and assertions. Thus, it would be meaningful to have a macroscopic view of the social-political panorama, with some emphasis on the development of law and the administration of justice. In the interest of economy of time, our attention would be confined to these developments in the modern India. Modern India, for the purposes of this study is under-

stood to begin from the time of influx of the British in India; which started when the Mughal rule in India was at its zenith.

The British historians and statesmen have given wide currency to the view that the establishment of the British empire in India was the effect of a number of unforeseen factors, and not the result of any pre-planned policy of aggressive imperialism deliberately adopted by the authorities to annex the country and rule. That controversy is not the subject matter of this study. In common with the social-psychologists, we hold that all action is purposive and goal directed. Annexation of territory and consolidation of rule, come under the category of planned and motivated action. Annexation usually implies direct action and confrontation between two opponents, and if that is not the case, the methods employed are clandestine, which are equally classified as planned and motivated action. Mughal administration, at that time was strong and awake. The English could secure only a permission to trade. It is therefore relevant to look into the socio-political life and train of events that ultimately culminated in the establishment of British rule. To unravel the genesis of correctional policy and administration, it would be examined what were the needs and requirements, then pressing upon the emerging rulers to meet which the correctional administration was one of the measures employed. Such an examination becomes all the more important because the English were not the inheritors, successors or legal claimants of the empire from the Mughals, and it were they who became the paramount rulers of the land, with the fall of Mughal rule in India.

## R E F E R E N C E S

## Chapter - 1

## INTRODUCTION

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