

Evolution of Penal Reforms: From Deterrent to Reformative Theory of Punishment

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Abstract:

Punishment for a crime constitutes one of the components of criminal justice system of every country. The concept of punishment has been changing from time to time. In ancient days, the purpose of punishment was to deter a person as well as other potential offenders preventing them from committing a crime. Some countries followed retributive theory of punishment wherein the purpose of punishment was to take revenge from an offender, inflicting same injury on offender which he inflicted on the victim. But as societal conditions are dynamic, the concept and purpose of inflicting punishment also changed. After passage of time, some scholars put forth the theory of Reformation of punishment wherein the main object of punishment was not to take revenge from an offender but was to bring reforms in an offender and making him a law abiding citizen so that after returning in society, he would be able to live a normal life. Thus the purposes for inflicting pain on offender changed and now reformative theory of punishment is accepted by most of the countries incorporating basic human rights approach in criminal justice system and thus led to penal reforms.

Keywords: *Crime, Punishment, Reformative theory of punishment, Deterrent theory of punishment, penal reforms*

I. Introduction:

Crime is an act which is forbidden and punishable by law. Such acts are harmful to both individual and the community. The Criminal Justice System (CJS) protects the rights and personal liberty of individuals and the society against its invasion by others. The Criminal Justice System includes the institutions and processes established by a government to control crime in the country. This includes components like police and courts. CJS comprises of Law Enforcement, Courts and Corrections. Every country has its own set of criminal law.

Punishment plays an important role in control of crime. It is imposed upon the offender to ascertain deterrence, incapacitation, rehabilitation, retribution and restitution.² It is an infliction of pain on wrongdoer by Judiciary, one of the organs of the State. Westermarck has stated, punishment is a suffering which is inflicted upon

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² Available at <https://open.lib.umn.edu/criminallaw/chapter/1-5-the-purposes-of-punishment/#:~:text=1.5%20The%20Purposes%20of%20Punishment%201%20Specific%20and,behavior.%20...%204%20Retribution.%20...%205%20Restitution.%20>

the offender in a way which is definite by or in the name of society of which he is a member, either permanent or temporary.³ It is a correctional method forming a part of every State's criminal justice system. Initially it was based on the retributive theory with the purpose to punish an offender for his wrong inflicting injury to any person or State. If wrong is public wrong, then the State takes responsibility to punish an offender. Initially aggrieved person used to take revenge against an offender. Every person was a decision making authority in his own cause which led to retributive theory of punishment where object of punishment was to take revenge from an offender. It was based on Law of Private Vengeance and violent self help. The principle of 'a tooth for a tooth', 'an eye for an eye' and 'a life for a life' was the basis of Retributive theory of punishment. Then other theories of punishment were evolved like deterrent theory wherein, object of punishment was to punish an offender with an object to deter a person having potential to commit crime. Then Reformatory theory or Rehabilitative theory was evolved with an object not to punish a person but bring reforms in him so that after returning in society, he would live his normal life.

In every country, criminal justice system included the punishment but objects were not exactly same. But now, worldwide, punishment is imposed upon an offender with an object to bring reforms in him and helping him to settle again in the society.

Durkheim, a scholar has a different approach to punishment altogether. He treats punishment as the reaction of the society against a crime. According to him if punishment be a proportionate response to the harm caused to the society then the extent of the punishment inflicted must be clearly sorted out.⁴

II. Evolution of Penal Reforms:

A crime or an offence is an act which is committed against the State. Even though injury is inflicted to particular person, it affects society, thus State takes action against the criminal. Every Country has its own forms of punishment but again purpose of punishment was the same to give justice to aggrieved person. That could be to punish an offender by inflicting pain to him, to deter other persons having potential to commit crime, to prevent criminal from committing offence in future, and recently mostly developed theory of reformation that is bringing reforms in an offender, helping him to rehabilitate in the society because sometimes, due to societal conditions, a person is compelled to commit a crime, thus it is primary duty of a State to help such people in rehabilitation. Different theories of punishment were evolved from time to time. Initially it was retributive but now due to societal changes, punishment is backed by Reformatory theory. As the pattern of society changed, the approach of the penologists towards punishment has also radically changed. They shifted their view from 'classical' to 'positive' approach.

Classical school believed to inflict the punishment to fit the crime while Positive School believed it to fit the criminal.

Punishments are divided under following heads:

³ Available at <https://lawtimesjournal.in/deterrence-theory-as-a-theory-of-punishment/>

⁴ Available at http://www.legalserviceindia.com/articles/pun_theo.html

1. Deterrent Theory of Punishment
2. Retributive Theory of Punishment
3. Preventive Theory of Punishment
4. Reformatory Theory of Punishment

1. Deterrent Theory of Punishment:

J. Bentham was the founder of this theory. To deter means to create fear in the minds of criminal as well as other potential offenders by inflicting the punishment preventing them from committing the crime in future. Earlier forms of punishment were deterrent in nature only. Salmond backed this theory of punishment. He believed that this theory could be useful in control of crimes. Critics, however, feel that deterrent punishment is likely to harden the criminal instead of creating fear of the law in the mind, as they are not afraid of imprisonment.⁵ Most of the Muslim countries like Pakistan, Iran, Iraq and Saudi Arabia have adopted the deterrent theory as the basis of their penal jurisprudence. In India also, some punishments were based on this theory like capital punishment to deter the criminal as well as potential offenders preventing them from committing crime in future. Deterrence may be individual deterrence or general deterrence, wherein individual deterrence prevented the criminal from committing crime after conviction. General deterrence led to setting an example for potential offenders creating fear in their minds if they commit such crime, they would face same consequences which offender was facing.

2. Retributive Theory of Punishment:

This theory of punishment was most cruel in nature. It was considered as to be justice to the aggrieved person. The offender used to feel the pain which he inflicted on the victim. The victim also used to feel that he got justice by inflicting same injury which offender inflicted on him. This theory was based on the principle of 'a tooth for a tooth', 'an eye for an eye' and 'a life for a life.' The aggrieved person was allowed to take revenge from the offender and it was justifiable in ancient times.

Retributive theory is closely connected with the notion of expiation which means blotting out the guilty by suffering an appropriate punishment. It is this consideration which underlines the mathematical equation of crime, namely guilt plus punishment is equal to innocence.⁶ Initially it was taking revenge by victim, but later on this responsibility was taken over by State ensuring justice to victim by punishing offender.

But as the societal changes took place, and attitude of looking towards offender changed, this theory was not considered as proper to take revenge from an offender. In modern society, punishment based on this theory was rejected by many of the scholars.

3. Preventive Theory of Punishment:

The preventive theory has the object of preventing or disabling the criminal from committing the offences. The offender is disabled from repeating the offence by punishment like death, exile or forfeiture of an office. By jailing a criminal, he is prevented from committing another crime. However, critics of this theory point out that this

⁵Mahendra Kumar Sharma, *Minimum Sentencing for Offence in India Law and Policy*, p 20.

⁶N.V. Paranjape, *Criminology and Penology*, 9th ed., at p.145

has the undesirable effect of hardening the first offender as they come into contact with hardened criminals in jail. Another object of punishment is prevention or disablement. Offenders are disabled from repeating the offence by awarding punishments, such as death, exile or forfeiture of an office. By putting the criminal in jail, he is prevented from committing another crime. Critics point out that preventive punishment has the undesirable effect of hardening first offenders, or juvenile offenders, when imprisonment is the punishment, by putting them in the association of hardened criminals.⁷ This theory was criticized on the ground of putting hardship on non habitual offenders or juvenile offenders by putting them in jail along with hardened criminals. Actually it was leading to increase the crime rate and leaving no hope for first time criminals to bring positive changes and converting them into law abiding citizens.

4. Reformatory Theory of Punishment:

Criminal Justice System comprises of three components that is Law Enforcement, Courts and Corrections. Every Country has its own set of criminal justice system. There may be procedural changes but it always comprises of punishment in various forms. Every country has accepted certain theory of punishment as it bears its own culture. Classical School backed deterrent theory but modern school or positive school believed in Reformatory theory of punishment. Reformatory theory believed in bringing reforms in the criminal not putting hardship on him. The main object of reformatory theory is to convert criminal into law abiding citizen. Sometimes some social factors are also responsible which compel a person to commit a crime. Thus it is not justifiable to punish a criminal rather it becomes duty of a State to help the person to return to society again and to rehabilitate in the society.

With the passage of time, developments in the field of criminal science brought about a radical change in criminological thinking. According to reformationists, a criminal is to be studied like a patient in his entire socio-economic milieu, and not in isolation to understand causative factors leading to criminality and the attempt to be made to reform or treat and rehabilitate the offender.⁸ Thus punishment must effect as remedial measure and not injury inflicting mechanism. It has been proved that ancient theories of punishment have not proved to be useful in prevention of crime, rather some theories have led to increase in crime rate. Thus as a guardian, it becomes State's duty to take all measures which would help in crime control as well as rehabilitation of criminals as they are also inseparable part of society. If we see today's condition of prison system, then it seems hard to accept that criminals would be rehabilitated there. But some changes are brought in the prison system also. Now, to help the criminals to bring reforms into them, some work is given in jail so that they would get source of earning money. Because of that, after completion of sentence and returning to society, they would not face much problem in settling their life once again. As a human being, they are also entitled to basic human rights and thus it is the duty of a State to protect rights of such people.

The reformatory view of penology suggests that punishment is only justifiable if it looks to the future and not the past. It should not be regarded as settling an old account but rather as opening a new one.⁹ The offenders must be looked as a sick person and thus hard punishment does not work for it rather proper treatment would work for it and such treatment denotes bringing reforms in them, helping them to settle in the society again. Punishment

⁷ K.D. Gaur, *Commentary on the Indian Penal Code*, at p.161

⁸ J. P. S. Sirohi, *Criminology and Criminal Administration*, 4th ed., (1992), p.109

⁹ N. V. Paranjape, *Criminology and Penology*, 9th ed., p. 147

when inflicted upon a person must have inclusive approach of prevention of crime, reformation in the criminal and justice to the victim.

This theory aims at rehabilitating the offender to the norms of the society i.e. into law-abiding member. This theory condemns all kinds of corporal punishments. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. These prisons or correctional homes as they are termed humanly treat the inmates and release them as soon as they feel that they are fit to mix up with the other members of the community. The reformation generally takes place either through probation or parole as measures for reforming criminals. It looks at the seclusion of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism. Though this theory works stupendously for the correction of juveniles and first time criminals, but in the case of hardened criminals this theory may not work with the effectiveness. In these cases come the importance of the deterrence theories and the retributive theories. Thus each of these four theories has their own pros and cons and each being important in it, none can be ignored as such.¹⁰

III. Penal Reforms in India under specific laws:

In India, criminal justice comprises of Law Enforcement, Courts and Corrections. Amongst these, correctional methods are used to bring reforms in offenders. The Parliament of India enacted some laws which are specifically based on Reformatory Theory of Punishment like Juvenile Justice Act of 2000, Probation of Offenders Act, 1958, Parole Rules, etc.

A crime when is committed by a person under 18 years of age, then such offence is termed as juvenile delinquency. The criminal traits in youngster must be timely curbed, so that they do not turn in to habitual offenders in their forthcoming life. It is with this view in end that the problem of juvenile delinquency is presently being handled in India with great significance. Juvenile Justice Act provides for separate procedure for trial of offence committed by a child. They are tried by Juvenile Justice Boards so as to bring reforms in a child. Hard punishment is not inflicted upon such juvenile delinquents. Thus reformatory theory of punishment is useful in such cases.

Another law, the Probation of Offender Act, 1958 was enacted with an object to give an opportunity to offenders to reform themselves rather than turning into hardened criminals. The Probation of Offender Act, 1958 saves minor offenders from becoming regular criminals. This is done by providing them with a chance to reform them rather than getting into prison. The Probation of Offender Act, 1958 aims at providing the release of the accused if he has been found not guilty of an offence not punishable with death or life imprisonment after due admonition. It has been enacted to provide the offenders with an opportunity to prove that they can improve their behaviour and can live in a society without harming them. It involves moulding the habits into constructive ways by rehabilitation and reformation.¹¹

¹⁰ Available at http://www.legalserviceindia.com/articles/pun_theo.html

¹¹ Available at <https://blog.ipleaders.in/probation-offender-act-1958/>

In the case of *Ramji Nissar v. The State of Bihar*¹² the Supreme Court observed that the object of Probation of Offender Act, 1958 is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crimes. The person's age problem is important not for the purpose of assessing his or her guilt, but rather for the purpose of punishing the crime for which he or she is found guilty.

One of the means to rehabilitate offenders is prison reforms. The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system.¹³ In India, Human Rights initiative led to reforms in prison system of India. It helps the prisoners to make them independent after returning to society. They are offered some work through which they can earn money and help the prisoners to become more responsible, creative and potential citizen.

IV. Prison Reforms in India:

Most of the countries have brought reforms in prison administration taking concern towards prisoners. In India, two most important committees on prison reforms are Justice Mulla Committee Report (1983) and Justice Krishna Iyer Committee on Women Prisoners Report (1987).

During 1950's it was realized that the rehabilitative activities for prisoners must include psychological treatment and educational training programmes. To make recommendations on prison reforms, Government of India in 1951 invited Dr. W.C. Reckless, a technical expert of United Nations. Then policy in the form of All India Jail Manual was formed which included following suggestions.

1. The correctional services should form an integral part of the Home Department of each State
2. The reformatory methods of probation and parole should be used to reduce the burden of prisons
3. State After-Care units should be set up in each State
4. Solitary Confinement should be abolished¹⁴

In the year of 1980, Government of India appointed an All India Jail Reforms Committee with Justice A.N. Mulla as its chairman. It suggested setting up of a National Prison Commission as a continuing body to bring about modernization of prisons in India. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with the hardened criminals in prisons.¹⁵ Thus prison must be considered as rehabilitation unit for offenders and not a punishment institution.

¹² AIR 1963 SC 1088

¹³ Available at <http://www.legalserviceindia.com/article/I174-Prison-Reforms-In-Indian-Prison-System.html>

¹⁴ N.V. Paranjape, *Criminology, Penology and Victimology*, 17th ed., at p. 508

¹⁵ *Ibid*, at p. 509

In the case of *State of Gujarat v. Hon'ble High Court of Gujarat*¹⁶ Apex Court observed that reformation and rehabilitation is basic policy of criminal law. It also referred the Report of Justice Mulla Committee of 1983 stating that work to prisoners should not be considered as punishment for offenders, rather as a means of furthering the rehabilitation of prisoners. In another case of *Mohammed Giassudin v. State of A.P.*¹⁷ the Supreme Court observed that

“Progressive criminologist across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals-mental or moral-is the key to the pathology of delinquency and the therapeutic role of punishment. Criminality is curable deviance. Our prison must be correctional houses and not cruel iron arching the soul”.

V. Conclusion:

Mahatma Gandhi said that hate the crime and not the criminal. Every criminal justice system comprises of punishment to control the crime. Punishment is backed by various theories like Deterrent theory, Retributive theory, Preventive theory and reformatory theory. Punishment should not be based on only one theory but it should depend upon the type of crime, nature of offender whether first time offender or habitual offender. But as societal conditions changed, the attitude of looking towards the object of punishment also changed. Initially it was inflicted with an object to control crime by deterring the criminals or preventing them to commit crime in the future, then in some of the countries it was inflicted with an object to take revenge from the criminals. But in modern society, the object of inflicting of punishment changed from deterrent to reformation in offenders. Now it is worldwide accepted that punishing the criminal cannot reduce crime rate rather bringing reforms in criminals would reduce it. The criminals commit crime in different situations. Sometimes societal conditions are responsible to turn a normal human being into criminal. Thus criminal cannot be blamed always for a crime. Thus it becomes necessary to help the criminals to rehabilitate and bring reforms in them so that after returning to society, they can live a normal life. Thus reformatory theory of punishment is widely accepted by most of the countries in their criminal justice system to convert a criminal into a law abiding citizen.

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¹⁶ AIR 1998 SC 3164

¹⁷ AIR 1977 SC 1926

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