



Emerging changes in Penology and its importance in sentencing

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ABSTRACT: The question arises in the mind of modern penologist are whether the traditional forms of punishment should remain the weapon to restrain crime and criminal behavior or it should be replaced by any flexible mode like, reformation, probation, parole and rehabilitation. Penology is a component of the field of penal sciences, which also includes the rigorous study of substantive criminal law, criminal processes, criminal executive law and prison legislation, and crime detection. Penology is a branch of criminology that focuses on the principles and methods used by society to prevent and control criminal behaviour. Penology involves the study of how different societies aim to deter crime and meet public expectations by implementing suitable treatment programs for individuals who have been convicted of criminal acts. Penology focuses on the efficacy of social mechanisms designed and implemented to deter crime by suppressing or inhibiting criminal intentions through the threat of punishment. In contemporary legal terminology, the term "punishment" no longer exclusively conveys the concept of retribution, as it did in earlier times.

Key words: Penology, Punishment reformation, probation, parole and rehabilitation, retribution, criminal law

Introduction

“Progressive penology demands that we should resort to reformation rather than deterrence, it lays greater emphasis on institutional methods of treating the offender rather than the traditional methods of punishment, which have now become obsolete and outdated.”

-Reckless Walter C

Penology is derived from the Latin word "penal," which means punishment, and the Greek word "logos," which means knowledge. Penology is a multidisciplinary subject, it's objectives are to evaluate and study penal sanction to offenders, it also explain the characteristic, effectiveness and justification of punishment. Penology is derived from the Latin word "penal," which means punishment, and the Greek word "logos," which means knowledge. As a systematic discipline, criminal law has arisen as a subject of study and learning within the field of science. Penology, often known as Penal Science, is a branch of criminology that focuses on the theory and practical aspects of society's attempts to suppress criminal behaviour.

It is justifiable to broaden its scope to include other policies, which are not intended to be punitive, such as rehabilitation, medical care, and probation. The primary objective is to rehabilitate the offender so that they can reintegrate into society. Penology primarily focuses on the many criminal sanctions, which are the different penalties imposed for an intentional wrongdoing classified as a crime according to legal statutes.

1.1 CHARACTERISTICS OF PENOLOGY:

- i. Penology primarily focuses on the philosophy and techniques of different forms of punishment.
- ii. Penology proposes that the state determines the appropriate forms of punishment for different sorts of crimes.
- iii. Its primary objective is to uphold social harmony and ensure public safety.

iv. Administers equitable punishment to offenders.

1.2 DEFINITION AND MEANING OF PENOLOGY

The Oxford English Dictionary defines penology as “The study of the punishment of crime and prison management”.’

Caldwell Robert G

Caldwell argues that punishment is a skill that requires the careful consideration of retribution, deterrence, and reformation. This consideration should not only take into account the court's perspective, but also the values of the society in which the punishment is being carried out.

Dean J. Champion

Penology refers to the study of punishment and the management of prisons. Penology is the academic discipline that focuses on the study of prisons and the management of punishment.

From a penological perspective, the primary purpose of criminal punishment is to restore and reintegrate a disrupted legal and social order.

1.3 CRIME AND PUNISHMENT CORRELATED

Punishing the offenders is first and foremost function of any civilized state. crime and retribution has always been the interrelated terms in penal science. The practice of punishment, sentencing, public opinion has been changing according to the social values and public sentiments and states make enactment accordingly. The core area here is whether criminal to be regarded as an evil or enemy to be killed or a patient to be treated or a child to be disciplined.

1.4 PUNISHMENT AND ITS OBJECTIVES

Since time immemorable crime and punishment are interegral part of society and it has some object that shows importance and necessity of punishment without which people a civilized state cant not be live easily.

1.4.1 PUNISHMENT FOR CRIME PREVENTION

Punishment serves as a means of crime prevention, as it involves the imposition of penalties by the governing authority.

1.4.2 SPECIFIC AND GENERAL DETERRENCE

Deterrence serves as a preventive measure against future criminal behaviour by instilling fear in both the defendant and the general population. There are two distinct forms of deterrence: specific deterrence and general deterrence.

1.4.3 PUNISHMENT AS MEANS OF REFORMING THE WRONGDOER

Currently, there is a shift towards treating offenders by considering them as patients and administering medication to them. Humanity acknowledges that those who commit wrongdoing should primarily be seen as patients, and they require treatment rather than punishment. The wrongdoer always perceives punishment as painful, while the psycho-pathological wrongdoer finds treatment to be pleasant, which allows certain types of psychotics to be amenable to psychotherapy.

1.4.4 REHABILITATION

Rehabilitation aims to modify a defendant's behaviour in order to prevent future criminal activity. Rehabilitation includes several forms of intervention such as educational and vocational programmes, placement in treatment centres, and counseling

1.4.5 INCAPACITATION

The method of incapacitation aims to deter future criminal behaviour by isolating the culprit from society. Instances of incapacitation include incarceration, confinement to one's residence, detention, or implementation of the death sentence.

1.4.6 RETRIBUTION

It believes in vengeance, which suggested an evil should return to evil, without any regard to consequences. The supporter of this theory did not trat punishment as an instrument for securing public welfare.EmanuelKant , supporter of the

theory observed that “Judicial punishment can never be used merely as a means to promote some good for the criminal himself or civil society”¹.

Sir Walter Moberly viewed as punishment is a particular application of the general principle of justice, that man should be given their due.²

1.4.7 RESTITUTION

Restitution is a legal process where the court mandates the criminal defendant to compensate the victim for any injury caused, similar to the way damages are awarded in civil litigation. Restitution may be awarded for physical harm, damage to property or financial loss, and occasionally, psychological suffering.

1.4.8 PUNISHMENT AS MORAL COMMUNICATION

Punishment we can take as a means of two-way communication. It serves to convey a message to offenders that they have committed a wrongdoing, while simultaneously serving as an apology from the offender to the victim and the community.

1.5 APPROACHES TO PENOLOGY

Penology has different areas where it can show its importance and implementation such as:

(A) ADMINISTRATIVE PENOLOGY

The administrative penology refers to the diverse penological systems currently used in different countries. It focuses on government programmes for criminals, treatments for criminals; the primary function is to protect, safeguard and rehabilitation of offenders.

(B) SCIENTIFIC PENOLOGY

Scientific penology is inclined towards the treatment of offenders, particularly from a medico-psychological perspective. Criminal penology is unquestionably a component of scientific penology. It is founded on the notion that there is consistently a discernible correlation between cause and consequence.³

(C) ANALYTICAL PENOLOGY

This penology is used to assess the present criminal justice system and its effectiveness with a social issue. “The effective functioning of the criminal justice system and penological system relies on the assistance of scientific penology, which provides a thorough and objective explanation of how the existing machinery operates.”

2.0 THEORIES OF PUNISHMENT

Its well-known function of any civilised state to punish criminals from ancient times. Opinions have always differed as regards to crime and its punishment. Modern penologists consider that opinion as theories of punishment; these theories are stated as follows:

2.1 DETERRENT THEORY

The proponent of this theory was Jeremy Bentham, the father of criminology. It determines the principle of hedonism, according to which a man can be deterred from crime if the punishment of the crime is swift, certain and severe. It basically creates fear in the mind of the public at large. The theory fails in the case of hardened criminals as it has been seen that in the case of hardened criminals they return to prison soon after their release. They prefer to remain in prison rather than living a free life in society.

In its 35th Report, the Law Commission of India noted the findings of The Royal Commission, which highlighted a significant correlation between murder and the death penalty in the public perception. The Law Commission also observed: “It can be inferred that the deterrent effect of capital punishment not only influences the conscious thoughts of individuals who may be tempted to commit murder, but also gradually fosters a strong collective sense of disgust towards the crime of murder within the community.”⁴

¹ Criminology book by Prof. N. V. Paranjape page no. 296

² Sir Walter Moberly: The ethics of punishment (1968 Ed) P. 14

³ Paranjape V. N., Criminology & Penology, 13th Edition (2008) p. 29.

⁴ Law Commission of India 1967, Report no. 35, (Capital punishment) p. 55.

2.1.1 JUDICIAL APPROACHES OF DETERRENCE

In India, the judiciary has likewise relied on these ideas to determine the appropriate punishment, taking into consideration the specific objective or purpose to be accomplished through the punishment. The choice between a corrective or punitive approach depends on the specific circumstances and details of the case. While dealing with serious offences, the use of both reformatory theory and deterrence theory has typically been employed while imposing life imprisonment. When judges award a death sentence, they rely on beliefs such as retribution, deterrence, protection of society, and prevention.

In the case of *Rajendra Prasad v. State of U.P.*⁵, the court assessed the deterrent impact of the death penalty in situations where the severity and characteristics of the crime, as well as the offender's personality, indicate that rehabilitation is not possible. The court concluded that imposing the death penalty serves the purpose of safeguarding society and deterring potential offenders. The court ruled that:

“The Court has the responsibility to determine an appropriate punishment based on the level of criminal behaviour and the need to impose such punishment as a necessary measure to deter potential offenders.”

2.2 RETRIBUTIVE THEORY

Retributive refers to a form of punishment that aims to compensate or seek retribution. Retribution is a form of punishment. According to this notion, the perpetrator should get an equivalent punishment to that which the victim will endure. For example, the phrases "A tooth for a tooth" and "An eye for an eye" means that punishment should be equal to the harm caused. Immanuel Kant provided a highly persuasive argument for the retribution idea in his work “Kant's Theory of Morals as⁶”.

2.2.1 SIGNIFICANCE OF RETRIBUTIVE THEORY ON DEATH PENALTY

Several explanations have been identified about the significance of retribution as the underlying objective of various forms of punishment, including the imposition of the death penalty. A caution has been issued to the state, stating that failure to administer appropriate punishment to the criminal, commensurate with the gravity of the crime, may result in the aggrieved victim or their acquaintances seeking personal retribution by circumventing legal channels or refusing to cooperate with the state in apprehending the offender. Nevertheless, the law committee explicitly said in its report that payback should not be construed as a literal "an eye for an eye" or "a tooth for a tooth" concept. Instead, it should be seen as a form of reprobation.

2.2.2 PENOLOGICAL APPROACH OF JUDICIARY

The retributive aspect has been a key consideration in the imposition of capital punishment as a penological objective. This type refers to the societal discontent arising from the disgraceful behaviour of the criminal, rather than being driven by a desire for vengeance or revenge. In the case of *Bachan Singh v. State of Punjab*⁷, Justice Sarkaria, speaking for the majority, made the following ruling: “Retribution, even in the context of society's disapproval for the most heinous crimes such as murder, is not completely outdated. This perspective is endorsed by many sociologists, jurists, and judges. However, in theory, it may be argued that if the government can definitively prove that the criminal is an extreme societal threat, to the extent that even after serving a life sentence and undertaking efforts to reform and rehabilitate, they can never be reintegrated into society.”

2.3 PREVENTIVE THEORY

Preventive philosophy of punishment is based on the proposition ‘not to avenge crime but to prevent’ .by implementing this measure will safeguard society from criminals and serve as a deterrent against future criminal activity. Currently further preventive measures are being implemented in our daily lives, such as the removal of office, suspension, and termination of licenses for drivers who commit crimes while driving.

⁵AIR 1979 SC 916.

⁶Metaphysical Element of Justice translated by W Hastie. Edinburgh 1887.

⁷AIR 1980 SC 898.

2.3.1 RELEVANCE OF PREVENTIVE THEORY ON DEATH PENALTY

In its 35th Report in 1967, the Law Commission of India recognised the "elimination of the offender" as one of the objectives of the death sentence. The Law Commission's statement is as follows:⁸ "In cases where public safety is in danger and certainly creates threat to public at a large, the death penalty is the only method of permanently removing the perpetrator."

The death sentence is the most effective method of punishment for deterring criminals. The death penalty is seen as an extremely severe form of punishment and it is only used to specific serious crimes such as murder and treason and so many other crime mention in Indian Penal Code any another enactment in India.

2.3.2 PENOLOGICAL APPROACH OF JUDICIARY

In the *SevakPerumal v. State of Tamil Nadu*⁹ case, Justice K. Ramaswamy ruled that:

"Judiciary cannot be lenient by imposing a less or more sentence then it would be as it would be downgrade the justice system and would weaken public trust in the effectiveness of the legal system." In the absence of legal protection, individuals who have been harmed would likely seek retribution through private acts of revenge. Hence, it is the responsibility of every court to provide an appropriate punishment, taking into consideration the nature of the offence all the circumstantial evidence, witnesses and the way in which it was carried out."

2.4 REFORMATIVE THEORY

Mahatma Gandhi, father of reformatory theory, "Condemn the Sin, not the Sinner", With the development of criminal science we have witness to see the radical changes in the mind if criminologist, that bring fresh approach to deal with crime and punishment that is reformation, Individuals who are cruel and callous have the potential to be transformed and rehabilitated into law-abiding and refined members of society. The current correctional facilities should be transformed into reformatories that implement a comprehensive regimen of labour, education, and religious services.

2.4.1 PENOLOGICAL APPROACH OF JUDICIARY

The observation made by Justice Krishna Iyer in the case of *Mohd. Giasuddin v. State of Andhra Pradesh*¹⁰ "Every saint has a past, and every sinner has a future" recapitulate the theory and added crime is often related linked to the existing physical or emotional condition of the patient, the behavior of society towards criminal and circumstances around him. Considering this point, the reformatory theory regards criminals as a patient. Accordingly, the state must make efforts to reform the offender during the period of his incarceration and make sure that he is capable of leading a dignified life after they have undergone their punishment.

2.5 EXPIATION THEORY

The term 'expiation' is synonymous with 'compensation'. Expiatory Theory relies on the principle, "To pay for the sin committed". It favours that a wrongdoer must be punished for inflicting pain or causing any sort of loss to another person. Expiatory forms of punishment favour economical and compensatory forms of punishment Expiatory Theory is one of the most ancient theories of punishment prevalent in ancient Indian criminal jurisprudence and was deeply admired by the ancient Hindu law commentator. Hagal & Kohler are the main supporters of this theory. Hagel defines "the punishment makes the criminal to expiate for the wrong done" According to this theory, expiation or repentance by offender itself is a punishment. If the offender expiates or repents, he must be forgiven.

2.5.1 PENOLOGICAL APPROACH OF JUDICIARY

*Syed Asifuddin And Ors. V. The State Of Andhra Pradesh*¹¹, in this case Justice Motilal Naik pronounce the sensational judgment considering expiation theory, Sayyaduddin and his brother raided Maslehuddin due to personal grudges, resultantly Maslehuddin was killed. The High Court imposed three years imprisonment to the accused and awarded Rs. 60,000/- as compensation payable by the accused to the family members of Maslehuddin. Delivering the judgment, Justice Motilal Naik observed: "By imposing imprisonment on the accused could not be helpful to the family members of the victim. In my opinion, it is better to help the victim's family members, as there is no one to look

⁸ Law Commission Of India 1967, Report no. 35, (Capital punishment) p.54.

⁹ AIR 1991 SC 1463.

¹⁰ MANU/SC/0108/1977

¹¹ 2006(1)ALD(CRI)96

after them after the death of the bread-earner. Therefore, it is justified to impose a penalty/fine of Rs. 60,000/- on the accused besides sending him to prison for three years.”

CONCLUSION:

Theories of punishment has been a great importance while punishing the criminals ,many jurist , criminologist and sociologist give their view and theories according to their understanding ,social circumstances in their respective era's, the purpose is always either to create deterrence or revenge or to make offender fearsome before violating law and order of the society.The theories of punishment marked by the jurists at various periods are all significant but at the same time, none of them is perfect and cannot function in a solitary state. In fact, all the theories prevalent in criminal jurisprudence somewhere or the other do relate and rely on one another. Every theory has its highlights and challenges and thus has been criticized as well as acclaimed on different grounds.

The impact of the theories we have seen in judicial pronouncement, such as in mid-fifties we have seen deterrent and retributive theories while awarding capital punishment however system of open prison , parole, probation are provisions of reformatory theory. The preventive theory is irrelevant when deciding between death penalty and life imprisonment, as is the case in India.”

When analyses critically, it is observed that to maintain equilibrium or prevent criminality in society, all sorts of theories of punishment must be present in a criminal system and work unanimously.In contemporary legal terminology, the term "punishment" no longer exclusively conveys the concept of retribution, as it did in earlier times.

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