

***“AN EYE FOR AN EYE WILL TURN THE WHOLE WORLD BLIND - IN SPECIAL CONTEXT
TO REFORMATIVE THEORY OF PUNISHMENT”***

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“An eye for an eye will turn the whole world blind”

– Mahatma Gandhi²,

This line by Mahatma Gandhi is the thrust of the Reformative Theory of Punishment . The most recent and the most humane of all theories are based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crime³. Reform in the deterrent sense implied that through being punished the offender recognized his guilt and wished to change. 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 punishments⁴. Though this theory works stupendously for the correction of juveniles and first time criminals, but in the case of a hardened criminal this theory may not work with the effectiveness⁵.

A Prolegomenon

“Crime is behaviour or action that is punishable by criminal law. A crime is a public wrong, as opposed to a moral, wrong; it is an offence committed against (and hence punishable by) the state or the community at large. Many crimes are immoral, but not all actions considered immoral are illegal.”⁶ According to Durkheim, “crime exists in every society which do and do not have laws, courts and the police. He asserts

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² Mahatma Gandhi used the phrase “An eye for an eye, and soon the whole world is blind”, in reference to his Satyagraha philosophy of non-violent resistance.

³ Sue Rex & Michel Trony, “Reform and Punishment” Willian Publishing

⁴ Ratan Lal v State Of Rajasthan and Ors; 2007 CriLJ 2467

⁵ Ibid.

⁶ Shaswata Dutta, ‘Theories Of Punishment - A Socio-Legal View’
At www.legalserviceindia.com/Articles/Pun_Theo.htm accessed on 3rd January, 2011

that all societies have crime, since all societies involve a differentiation between two kinds of actions, those that are allowed and those that are forbidden. He calls the latter type criminals.”⁷

The theory of criminal justice is the branch of philosophy of law that deals with criminal justice and in particular punishment. It has deep connections to other areas of philosophy, such as political philosophy and ethics, as well as to criminal justice in practice.⁸ Reformatory theory forms a crucial part of the theory of criminal justice. 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 effectiveness⁹. 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. Reform theory argues that the amount of punishment should be enough to cause reform in the offender. Reaction to crimes has been different at different stages of civilization and even at a given time they have been different in different society at a given time. The attitude towards criminal has always been coloured by extreme types of emotions displayed by society¹⁰. In words of Elmer Hubert Johnson¹¹ the criminal may be described as monster or be pictured as a hunted animal or as the helpless victim of brutality.

Reformatory Theory

“Every saint has a past, every sinner has a future.” -V. R. Krishna Iyer, J¹². “... the humanistic approach should not obscure our sense of realities.”

⁷ Seamus Breathnach, “Emile Durkhiem on Crime and Punishment (An exegesis).

⁸ A quotation from Exodus, 21:23 - 27.

⁹ Bishnu Dayal v State Of West Bengal; 1979 Air 964,

¹⁰ Ranka Sahu v State Of Orissa; 1995 II OLR 1

¹¹ Elmer Hubert Johnson, ‘Crime, Correction and Society’, (Elmer Hubert Johnson Homewood, Illinois: The Dorsey Press, 1964.) (3)

¹² Jeremy Bentham, ‘An Introduction to the Principles of Morals and Legislation’, (J. H. Burns & H. L. A. Hart eds., 1970) (1789) cf Pillai, P S A, Criminal Law, 9th Ed., Butterworths India, New Delhi, 2000, p. 286.

When a man commits a crime against society by committing a diabolical, coldblooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequence of his act. Such a person forfeits his right to life.” - A. P. Sen, J¹³

These two statements of the scholarly figures of the Indian judiciary reflects the heated debate going on in the country with regards to the imposition of punishment upon the convicts.

A crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraint imposed by character is weaker¹⁴. The reformatory theory seems to strengthen the character of the man so that he may not become victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine.

According to this theory crime is like a disease. This theory maintains that you can cure by killing. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society¹⁵. But that is the beginning of a new story--the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life.¹⁶

The basic principle of the reformatory theory emphasizes on the renewal of the criminal and the beginning of a new life for him.¹⁷ Efforts started from the year 1956¹⁸ for the abolition of death penalty with the filing of the bill in Lok Sabha but the same couldn't be achieved till now.¹⁹

The most recent and the most humane of all theories are based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crimes²⁰. Though it may be true that there has been a greater onset of crimes today than it was earlier, but it may

¹³ Immanuel Kant, the Philosophy of Law (W. Hastie trans., 1887) (1797).; Rajendra Prasad vs State of Uttar Pradesh 1979 INDLAW SC 277

¹⁴ Shyokaran and Ors. v State Of Rajasthan and Ors; 2008 CriLJ 1265

¹⁵ H.L.A. Hart, 'Punishment and Responsibility' Oxford University Press.

¹⁶ J. M Finnis, 'Natural Law: the Classical Tradition' in Jules Coleman and Scott Shapiro

¹⁷ H.L.A HART, in Radzinomics and Wolfgang(eds.) 'Crime and justice, Vol. II, 1971 - 1972

¹⁸ "Should Capital Punishment be abolished?" , The Times of India, June 27,2004, 'The first bill was introduced in the year in 1956 which was rejected.'

¹⁹ Ibid.

²⁰ Andrew Ashworth, "Principles of Criminal Law" 5th edn., 2006, Oxford University Press

also be argued that many of the criminals are also getting reformed and leading a law-abiding life all-together. Reformative techniques are much close to the deterrent techniques.²¹

Reform in the deterrent sense implied that through being punished the offender recognized his guilt and wished to change. The formal and impressive condemnation by society involved in punishment was thought to be an important means of bring about that recognition²². Similarly, others may be brought to awareness that crime is wrong through another's punishment and, as it were, 'reform' before they actually commit a crime. But, although this is indeed one aspect of rehabilitation, as a theory rehabilitation is more usually associated with treatment of the offender. A few think that all offenders are 'ill' and need to be 'cured' but the majority of criminologists see punishment as a means of educating the offender²³. This has been the ideal and therefore the most popular theory in recent years. However, there is reason to believe this theory is in decline and Lord Windlesham has noted that if public opinion affects penal policy, as he thinks it does, then there will be more interest shown in retribution in the future²⁴. The court in the case of *Ramdeo Chauhan alias Rajnath Chauhan v State of Assam*²⁵, explicitly relied upon the theories of punishment and expressed that

*'Though an eye for an eye, a tooth for a tooth and death for death is not true in civilized society but it is equally true that when a man becomes beast and a menace to society he can be deprived of his life according to the procedure established by law.'*²⁶

Punishment: Meaning and objects

Punishment is the sanction imposed on a person for the infringement of the rules of society. It is primarily used as a method of protecting society by reducing the occurrence of criminal behaviour.²⁷ The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal." In *Ravji v State of Rajasthan*,²⁸ a Division Bench observed that 'it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial'. A

²¹ Hall Jerome, 'The Aims Of Criminal Law'

²² Kenworthy Bilz, "What's Wrong with the Harmless Theories of Punishment"

²³ Russell L. Christopher, "Deterring Retributivism: The Injustice Of "Just" Punishment"

²⁴ J. Bentham, 'Principles of Penal Law'

²⁵ 2000 INDLAW SC 390

²⁶ *Dina Bawri v State Of Assam*

²⁷ Gaur, K D, *Criminal Law: Cases and Materials*, 3rd Ed., Butterworths India, New Delhi, 1995, p. 295.

²⁸ (1996) 2 SCC 175

dispassionate analysis of criminological jurisprudence would reveal that capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to society.²⁹ Society has resorted to many different methods in executing criminals and other allegedly dangerous persons in the past e.g. drowning, stoning to death, burning at the stake and beheading etc. These methods, however, appear barbaric especially in comparison to the seemingly sanitized, quick, and painless procedure of death by lethal injections, the most commonly used method of execution in contemporary America.

Reformative Approach

In *Narotam Singh v. State of Punjab*³⁰ the Supreme Court has taken the following view-

“Reformative approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice.”

A. Legal Arguments

Arguments based on International and Municipal laws may be advanced as under:

I). Death penalty violates the constitutional guarantee of equal protection because inherently all murders are same, but only a few offenders are sent to gallows. While some are not given capital punishment, others even after judicial pronouncement escape the noose by getting the pardon, commutation, etc. by the President or Governors.

II). Section 354(3) of Code of Criminal Procedure, 1973³¹, gives too wide a discretion to the judges without proper and adequate legislative guidelines.

III). India being a party to the Stockholm Declaration of 1977 was committed to abolish the death penalty.

C. Arguments Based on Theories of Punishment

²⁹ Paranjape, N V, ‘Criminology and Penology’, 11th Ed., Central Law Publications, Allahabad, 2001, p.184.

³⁰ AIR1978SC1542.

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A theory of punishment can be best defined as the approach or reaction of the penologists towards a perpetrator of crime while deciding the question of sentence to him³².

Community sentences can be a variety of things including probation, where an offender's behaviour is monitored closely by the state, and community service orders, where an offender repays his debt to the community in labour.³³ That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath of vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety.³⁴

Concluding Remarks

This Theory aims at transforming the criminal minds in a way that the inmates of the peno-correctional institutions can lead the life of a normal citizen. It aims at their rehabilitation and conforming to the norms of the society; into law-abiding member. This theory condemns all kinds of corporal punishments.³⁵ 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.³⁶ Though this theory works stupendously for the correction of juveniles and first time criminals as relies upon humanitarian modes of punishment but in the case of hardened criminals this theory may not work with the effectiveness. In these cases comes the importance of the deterrence and the retributive theory.

This theory of the punishment discussed above may seem perfect if used collectively, but this becomes a mere joke when tried to implicate in the practical sense.³⁷ The understanding suggests that offences need to be legally defined as suitable or unsuitable for non-custodial or community sentences. Murder, drug trafficking and rape could not for example be punished by imposing a community sentence on the offender. Only small offences like petty theft or common assault are recommended for alternative sentencing by the report. Punishment according to the reformatory theory is seen as reforming or rehabilitating the offender but not to destroy him.³⁸

³² Gangoji Rao Salanke v State; ILR 1993 KAR 782

³³ Pappu Khan v State Of Rajasthan And Ors. 2006 (1) WLC 31

³⁴ Katherine S. Williams, "Textbook on Criminology" 4th edition, Oxford University Press.

³⁵ Bachan Singh v State Of Punjab; AIR 1980 SC 898

³⁶ Sangappa Andanappa vs Shivamurthiswamy; AIR 1961 Kant 106

³⁷ 156th Report on 'Indian Penal Code', Law Commission of India, August 1997, Vol. 1

³⁸ Sri Mithu Kalita Alias Mitu Kalita v State Of Assam, 2006 CriLJ 2570; State of H.P. v Ishwar Dass and Ors, 1999CriLJ 393; Bishnu Deo Shaw @Bishnu Dayal v State Of West Bengal, 1979 AIR 964.