



Research Article

REFORMATIVE THEORY OF INDIA- AN ANALYSIS OF THE NEED FOR A REVISION

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ABSTRACT

The human civilization has always been governed under the rule of a supreme power. The role and form of supreme power has changed over the centuries. Starting from the monarchy form of government to the present democratic, republic and other forms of government, the responsibility of the supreme authority has varied a lot. The concept of punishment has also changed like the concept of State responsibility over the centuries. The nature of punishment depended on the basis of religion and the administration of the Kings. During ancient times, the concept of punishment was retributive basis, where the criminals were given barbaric form of punishment. Later, over the passage of ages, the importance of human rights increased which in per se paved way for the substitution of Retributive theory by Reformatory and Rehabilitative theory. Under the Reformatory and Rehabilitative theory, the accused are provided with such forms of punishment which would reform him and prevent him from committing such crimes.

The theory of punishment being followed in India with the objective to reform the criminals instead of punishing them is not that effective in prevention of the occurrence of crimes in India. The basic nature of law is not to be static but to be dynamic in nature. Only then the law will be able to be effective in all fields of the society.

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INTRODUCTION

The human civilization has always been governed under the rule of a supreme power. The role and form of supreme power has changed over the centuries. Starting from the monarchy form of government to the present democratic, republic and other forms of government, the responsibility of the supreme authority has varied a lot. During the ancient times the role of a State was that of a Police State, where it's only duty was to protect the State from internal and external aggression and maintenance of peace. But, at the present time the role has changed from police State to Welfare State, where the role of the State is not only to protect from external aggression and maintenance of internal peace but also to develop the welfare of its subjects. The famous jurist Austin has defined law as, those which descends from the Supreme authority of a society and not from any other source. Thus, in accordance with his view, the State has the vital responsibility to legislate laws which would ensure peace and security and also enhance the welfare of the society.

The concept of punishment has also changed like the concept of State responsibility over the centuries. The nature of punishment depended on the basis of religion and the administration of the Kings. During ancient times, the concept of punishment was retributive basis, where the criminals were given barbaric form of punishment. Later, over the passage of

ages, the importance of human rights increased which in per se paved way for the substitution of Retributive theory by Reformatory and Rehabilitative theory. Under the Reformatory and Rehabilitative theory, the accused are provided with such forms of punishment which would reform him and prevent him from committing such crimes.

Over the passage of years, the crimes rate in India has increased drastically and has not decreased though there are laws governing the prevention of such crimes. The intensity and forms of crimes has changed in such a manner that the present laws are not suitable to decrease the ratio of the crimes. The theory of punishment being followed in India with the objective to reform the criminals instead of punishing them is not that effective in prevention of the occurrence of crimes in India. The basic nature of law is not to be static but to be dynamic in nature. Only then the law will be able to be effective in all fields of the society.

Thus this paper studies about the present theory of punishment being followed in India, examines the statistics of occurrence of crimes in India, compares the statistics of crimes in countries following retributive theory of punishment and suggests suitable amendments to be made in order to reduce the crime rate in India.

Objectives

1. To study about the existing theory of crime in India.
2. To analyze about the reformatory techniques followed in India.

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3. To compare the reformative theory of India with the contrary retributive theory of punishment.
4. To analyze the status of crimes under the two contrary theories.
5. To suggest an alternative theories and remedies.

Theoretical aspect

Crime- the literal meaning of crime denotes the 'unlawful act' of an individual¹. It is a category of offenses created by law in order to distinct the lawful and unlawful acts in a society. The acts that are categorized as crimes will be generally harmful in nature to the subjects of a State and hence in order to prevent the occurrence of such crimes the State has to draw a distinct line and separate them from those of the lawful acts. The State which is the sovereign power has the authority to punish such acts which are deemed to be crimes under its respective penal laws. The categorization of crimes has gradually developed over the various centuries in India. The crimes like Theft, Murder, and Rape etc are those crimes which have been recognized by law from the ancient times. Whereas, the crimes like Cyber crime, Acid attack etc are those crimes which has been recognized under the Modern law. Eminent jurist Sir William Blackstone in his classical textbook of *Commentaries on the Laws of England* has defined the term 'crime'² as "*an act committed or omitted in violation of public law forbidding or commanding it.*" By this definition is clear that a crime is such an act of either omission or commission of the required acts under the penal laws of State.

Punishment- according to the Dictionary meaning, Punishment³ is "*an infliction of pain or forfeiture of a property.*"

It is a resultant act of a person omission or Commission of an unlawful act prohibited by the law of a State. The authority of the State to punish a person is the basic essence of the Sovereignty of a State. The basic objective of a punishment is to make the person realize his offense in order to prevent him and others from repeating such offense. This could be achieved only when the offender has been inflicted with pain, restraintment of his liberty etc.

The objectives of the punishment are being achieved through the application of various theories of punishment followed by the State. The theories of punishment have changed from one phase to the other phase of the administration of justice in India. The theory of punishment followed during the ancient times was the Retributive theory of punishment, where the intensity of the punishment of an offender equals to the intensity of the crime committed by him.

The various theories of punishment are as follows

Deterrent theory- according to this theory, the offender should be punished with equal intensity of the crime committed by him. By this the offender could realize the crime committed by him.

Retributive theory- according to this theory, the offenders must be punished with barbaric forms of punishment in order to prevent him and at the same time the society in the

repetition of the crimes. The basic principle of this theory is "*eye to eye*".

Reformative theory and Rehabilitative theory- according to this theory, the offenders are punished in a reformative manner rather than inflicting a painful punishment. The basic objective of this punishment is that by reforming an offender, he self realizes his act of crime and thereby the repetition of such crime by him is prevented.

Theory of punishment in India

The theory of punishment being followed in India is the Reformative theory of punishment.

As stated above the basic objective of this theory is to make the offender realize the unlawful act done by him by form of reformation. This theory is contrary to the Retributive theory as in this theory the offenders are punished with intensity equal to the intensity of the crime done by him.

Reformative theory- psychological approach- according to this theory, punishment should serve as a means of social education. It emphasizes reformation of criminals through the methods of individualizations. It says that offenses are committed under the influence of motive upon character. Therefore, they can be checked either by a change of motive or by changes of character. According to this theory, crime is the result of a disease and the criminal is a patient who should be given proper treatment. The legitimate purpose of punishment according to this theory is to reform the character of the offender so that he will desire to do what is right instead of yearning to do what is wrong. According to the eminent Jurist Salmond, "*a Reformative element in punishment is important and should not be overlooked but at the same time it should not be allowed to assume undue importance. He says that crime cannot be treated as a disease*".

Criticism of Reformative theory- Reformative theory considers the offender as a patient and admits punishment to cure him so that he can become a good citizen. It is a result of growing sociological outlook and the recent researches in psychology. It has been criticized on many accounts. Firstly, there are some criminals who are incurably bad. Secondly, if the offenders are kept in prisons very comfortably, the prisons might turn into dwelling houses, at least for the poor and destitute. Thirdly, this theory does not take into consideration numerous other causes of committing crime.

In those cases where crimes are committed casually the Reformative punishment is useless. Jurist Salmond has stated that, "*the application of the purely Reformative theory, therefore, would lead to astonishing and inadmissible results*".

In India Reformative theory of punishment is followed where the punishments other than 'Imprisonment' are barbaric and the period of imprisonment brings the required reformation in an offender.

Retributive theory- barbaric approach- the Retributive aspect of punishment was accorded exclusive recognition in ancient penology. "*An eye for an eye and a tooth for a tooth*" is the

1. P.S.A.Pillai, Criminal Law 8 (Lexis Nexis, 12th edition, 2014).

2. P.S.A.Pillai, Criminal Law 8 (Lexis Nexis, 12th edition, 2014).

3. http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09_chapter%204.pdf, last seen at 03/09/2017.

4. Dr.Avtar Singh, Dr.Harpreet Kaur, Introduction to Jurisprudence 179(Lexis Nexis,4th edition, 2013).

5. Dr.Avtar Singh, Dr.Harpreet Kaur, Introduction to Jurisprudence 182(Lexis Nexis,4th edition, 2013).

maxim on which primitive society proceeds. This theory involves two conceptions

1. that punishment is an end in itself, and,
2. that the primary justification of punishment is found in the fact that an offense has been committed and not in any future advantages to be gained by its infliction, whether for society or for the offender as an individual⁶.

Criticism of Retributive theory- this theory is based on the idea of revenge against the wrongdoer. According to this theory the ground of punishment is the moral blameworthiness of the offender. The main defect of this theory is that it ignores a very important purpose of punishment as well as of law. It considers punishment as an end in itself and not as a measure of social security and welfare. Jurist Salmond has stated that, "*it is scarcely needful to observe that, from the utilitarian point of view hitherto taken up by us, such a conception of Retributive punishment is totally inadmissible. Punishment is in itself an evil and cannot be justified only as the means of attaining a greater good. Retribution is in itself not a remedy for the mischief of the offense, but an aggravation of it*".⁷ The ethical approach of this theory towards crime is no longer favored and the sociological approach which is concerned with social welfare is receiving wider support now.

The Arab countries are the major follower of this theory, though this theory has been subjected to criticism by various countries.

Retribution as Expiation- according to this view of retributive theory, the offender has not only to undergo punishment but also has to pay debt to the victim affected by him and only then the punishment will be fulfilled⁸.

Hence, under this theory the concept of victim compensation is being followed, where the offender is made to compensate the victim by means of restoration of property etc. By this the spirit of vengeance is satisfied.

Reformative Techniques in India

The Indian Penal Code of 1860 is the confinement of classification of offenses and the punishments for the respective offenses. The most widely used form of punishment stated in the Indian Penal Code is the Imprisonment.

The various kinds of imprisonment stated in IPC are Life imprisonment, Solitary Confinement, Rigorous imprisonment, Simple Imprisonment, Death, Forfeiture, Fine etc⁹. The object to follow imprisonment as the major form of punishment is that, by restricting a person's liberty of movement from one place to another, restricting his freedom of communication with the outside world etc may create an impact in the psychology of the offender and as a result of which a reformation could be brought in him.

The Prison is considered as the potential tool for the reformation of a person in India.

Challenges of Reformative theory in India- the prison system which acts as the potential tool for the reformation of an offender in India is not that much effective in fulfilling its objectives. Though this mode of punishment is accepted by various jurists and experts across the world, the effectiveness of this mode in bringing about reforms in the society is not satisfactory in nature. The prison system is also acting as a burden to the Government of India in terms of its financial maintenance. The government of India is responsible for the maintenance of the prisoners during their entire period of imprisonment in terms of their food, clothing, medical facilities, hygienic facilities etc. The rate increasing rate of prisoners is high when comparable to the rate of offenders getting released.

This has created a burden to the government. Hence, the prison system is gradually becoming a challenging issue for the government. Some of the challenges of following this theory in India are as follows

Overcrowding in the prisons- as stated above the rate of inmates is high when compared to the rate of offenders released from the prison. This results in the overcrowding of the prisons.

S.no	Name of the jail	Capacity of the jail
1.	Central jail	1,59,158. (43.4%)
2.	District jail	1,37,972. (37.6%)
3.	Sub jails	46,368. (12.6%)
4.	Women jails	4,748. (1.3%)
5.	Open jails	5,370. (1.5%)
6.	Borstal schools	1,830. (0.5%)
7.	Special jails	10,915. (3.0%)

capacity of jails in the country¹⁰

The total capacity of jails in the country as estimated by the National Crime Record Bureau of India as of 2015 is 3,66,781. Whereas, the total number of jail inmates reported by the same as on the date of 31.12.2015 is 4,19,623. The occupancy rate of the prisons for three consecutive years in India are as follows, 2013-118.4%, 2014-117.4%, 2015-114.4%¹¹.

Human Rights Violations- the overcrowding in the prison results in the poor maintenance of the prisons by the government. The prisoners are denied from receiving good quality of food, hygienic facilities, clothing etc. these results in psychological effect upon the prisoners. It is considered that inside the prisons the prisoners are unofficially deprived of their rights and officially denied¹². The vocational training given to the prisoners are not that much effective in providing reformation and there are several cases filed on the grounds that the prison authorities inside the prison are ill-treating them.

Disparity in sentencing- the Indian Penal Code establishes the definitions for each offense and prescribes punishment for the offenses depending upon the gravity of them. But the

6. Dr. Avtar Singh, Dr. Harpreet Kaur, Introduction to Jurisprudence 180(Lexis Nexis, 4th edition, 2013)
 7. Dr. Avtar Singh, Dr. Harpreet Kaur, Introduction to Jurisprudence 182(Lexis Nexis, 4th edition, 2013)
 8. http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09_chapter%204.pdf, last seen at 03/09/2017
 9. http://ijlljs.in/wp-content/uploads/2017/02/Correctional_and_Rehabilitative_Techniques_ARTICLE_-_Vidit.pdf, last seen at 05/09/2017.

10. <http://ncrb.nic.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>, last seen at 05/09/2017.
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 12. http://ijlljs.in/wp-content/uploads/2017/02/Correctional_and_Rehabilitative_Techniques_ARTICLE_-_Vidit.pdf, last seen at 05/09/2017.

punishment provided by it is just a range from minimum sentence to high sentence and not a definite sentence for the offenses. Thus, the awarding of sentences for the offenders falls in the discretion of the judges.

Though on one aspect, this will help in the flexibility of the punishments in accordance with the circumstances and nature of the offender, the other negative aspect of this is the fact that the Judiciary in certain cases has failed to provide required intensity of punishment for the offenders who had committed grave offenses. Many offenders found guilty of rape has been provided with minimum period of imprisonment due to the indefinite prescription of the punishment. This nowadays acts as a loophole for the offenders to easily escape from the clutches of the law.

In *Macchi Sing Case* the court gave a widened scope for providing death sentence by providing that it should be given only in the rarest of the rare cases where the gravity of offense is not non-compoundable for sentencing the offender with imprisonment. In another case¹³ the Supreme Court has held that the unevenness in the punishment has resulted in the absurdity in some judgments.

Thus the prison system in the recent years is not being that effective in fulfilling the objectives of the prison administration. The prisoners in many prisons are not being reformed in a proper required manner. Certain instance of ill-treatment of prisoners by the prison authorities reflects the negative impact of prison system upon the prisoners. But, this doesn't mean that the entire prison system in India is not being effectively implemented in terms of reformation of the prisoners. The Tihar Jail Rehabilitation programme being followed in Tihar jail is highly praised by several authorities and officials of India. The various types of rehabilitation programmed followed in a Tihar jail is discussed below.

Rehabilitation programme- Tihar jail

Recreational facilities- the prisoners inside Tihar jail are made to play several sports like football, basketball, kabaddi etc. The then Chief Minister of Delhi Sheila Dikshit and various Judges of both Supreme Court and High Courts have praised this mode of rehabilitation as sports is the best method to bring reformation and sense of peace in a person's mind¹⁴.

Educational/vocational training- various education courses like Bachelor degree in Diploma, Arts, Commerce and several other courses are provided for the prisoners inside the prison with the help of Indira Gandhi National Open University (IGNOU), New Delhi and National Institute of Open Schooling (NIOS) and also with the help of several NGOs¹⁵. Apart from these courses, the educated prisoners in Tihar jail are made to teach education for the illiterate prisoners. In terms of vocational training the prisoners have been opportunities to learn linguistics like English, Hindi and some other regional languages of India with the help of Directorate of Training and Technical Education and certificates are provided for successful students. Computer courses are also being provided for duration of six months for the eligible and willing prisoners.

The expenditures for the these facilities are met with the income gained from the commercial business of the various range of products being manufactured by the prisoners of India in the brand name of 'TJ's' and also by the government. Various Chief Ministers, Government Officials, Judicial officers etc has visited the prison and also has praised about its administration in bringing about effective reformation to the prisoners during their sentencing period.

Yoga and Meditation- to bring about best and effective reformation in the prisoners, they are offered with Yoga and Meditation training. In 1994 the Tihar jail created a history by organizing Vipassana Yoga and Meditation camp for more than one thousand prisoners and its victory made it to conduct it every year after that.

Creative Art- creative art is another reformation technique adopted by the prison authorities of Tihar jail. Art requires the entire focus of mind of a person and hence it will not let the mind of any person to deviate part from the painting. The Art works of the prisoners were displayed in various art galleries as follows

1. Central Cottage Industries Emporium, New Delhi.
2. Khala Ghoda Art Gallery, Opp. Jahangir Art Gallery.
3. India International Trade Fare, New Delhi and many more.

Social participation in reformation- several NGO's and social activists involve in after math effect of the prisoners. In order to prevent the prisoners from again getting involved with crimes, they give them certain training programmes.

Further the prisoners are also given experience certificates on the specified jobs which they did during their stay in the prison. With those certificates they are able to find their suitable jobs after their release from the prisons.

Certain officers of the jail have given a brief about the form of reformation adopted inside the Tihar jail. The above stated information establishes the fact that not all the prisons in India are ill-treating prisoners India by not providing their adequate facilities. The Tihar jail is an existing example for adoption of an effective reformation programmes.

Crime Stats- comparative study between Retributive and Reformative theory of punishment

The United Arab Emirates is the major follower of Retributive theory of punishment which follows the implication of barbaric punishment upon the offenders. The statistics on the ratio of crime occurring in those countries is 7.64 which are 4 times less in average. On the basis of a comparison made with the United States the report states that the crime level occurring in United Arab Emirates is 13.93%, whereas the crime levels occurring in United States is 55.84%¹⁶.

The fear of crime in United Arab Emirates is 21.69% and whereas in United States of America it is 32.55%. This report shows that in a country following Retributive theory of punishment the crime rates is less when compared to the crime rates occurring in a country following a contrary theory of punishment.

13. swamy shradhananda Vs State of Karnataka 2008 SCC(13) 767.

14. <http://tiharprisons.nic.in/html/reform.htm>, last seen at 06/09/2017.

15. <http://tiharprisons.nic.in/html/reform.htm>, last seen at 06/09/2017.

16. <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>, last seen at 06/09/2017.

The crime rates report in India as of 2015 is 2949400 and the percentage of crimes occurring in India is 4 times higher than the occurrence of crimes in Arab countries.

The comparative study done above, on the basis of the reports of the crime rates in India and the United Arab Emirates shows that the latter country following the Retributive theory of punishment is comparably having low crime rates than the former country following the Reformatory theory of punishment. But, on the basis of only this one cannot conclude that the Retributive theory of punishment is more suitable for our country. The Retributive theory is the most criticized theory of punishment by the jurists and experts around the world. The barbaric forms of punishments given under this theory are sometimes completely inhuman in nature. According to the various International Conventions on the Treatment of Prisoners and Human Rights establishes that any act in violation of basic human rights is unbearable under the international law. But, on the other hand the growing rate of crime rates in India showcases the failing nature of the Reformatory theory in India. The prisoner who is being completely reformed under the prison administration followed in India is hardly few. Hence there requires a balanced form of approach in punishing the offenders of a country.

Deterrent theory-a balanced approach

According to the deterrent theory, the evil-doer should be given such a punishment that he becomes an example and warning to others that might similarly feel inclined to deviate from the straight path of duty¹⁷. Here, punishment should serve as a warning to others and the more hardened a criminal, the severer should be his punishment.

Deterrent theory justifies exemplary punishment because it not only dissuades the offender from repeating the crime but also deters others from indulging in criminal activities.

Criticism of the theory- to deter the criminal as well as others is the purpose of punishment and has been the view of the jurists since very early times. But it is true also that the punishment cannot have its deterring effect in all the cases¹⁸. When the offenses are committed under the heat of passion or extreme or provocation, the offender loses his mental balance and in this unbalanced state of mind commits the offense without thinking about the consequences of his act.

Suggestions

1. To review the criteria of implementation of the punishments in India.
2. To alter the punishments in a more severe manner in order to prevent the future occurrence of crimes.
3. To review the theory of punishment being followed in India.

CONCLUSION

The State is duly responsible for the welfare and maintenance of peace and order in a society. The basic object of State Sovereignty is its power to punish its subjects for their crimes. This implies that the State is obliged to follow an effective mode of punishment in order to maintain the law and order among its citizens. The theory of punishment being followed in a country decides the mode of punishment being implicated upon its citizens. Among the various theories of punishments which have been discussed in this paper, a theory more suitable to our country should be followed in order for the punishments to be effective.

Retribution and Reformatory are two extreme contrary theories of punishment. The former implies barbaric form of punishments and the latter implies a Reformatory form of punishments. India is the follower of the Reformatory theory of punishment. According to the basic objective of this theory, the crime rates in India should have decreased by this century where the legal system is combined with technology which enables the system to be more effective and faster. But the report of crime rates as discussed in this paper reflects that the crime rates in India have only increased over the decades. But, this doesn't justify the application of Retributive theory though its impact on Arab countries is more effective, as it violates certain basic human rights. Hence, the Deterrent theory acts as a balanced form of approach between the Retributive and Reformatory theories. The criteria for the sentencing of the punishments should be altered in a way that it not only reforms the offender but also creates a sense of fear in that offender towards the repetition of such crime.

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