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Criminal Justice System in the Light of Free will versus Determinism Debate

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ABSTRACT

The debate of determinism and free will has been ongoing between philosophers, scientists, legal professionals etc. This topic has been a centre of research for many years. We, as common people tend to be motivated by the fact that we are free and the decisions we make our free. However, the same has been negated by various experiments and studies. There have been studies, experiments and observations that have proved that humans do not have free will. There have been developments made in both the concepts- free will and determinism. These concepts have played an important role in the study of the criminal justice system of various countries all over the world.

The intersection of the debate of free will versus determinism and the study of criminal justice system has been the aim of the research paper. In this research paper, the researcher aims to review the literature of philosophers with different point of views on the topic and critically analyse the same. The research paper aims to understand the concept of moral responsibility and human conduct with respect to the debate of determinism versus free will. The inter-relation of determinism versus free will with the criminal justice system and the legal punishments has been brought about in this paper.

Keywords: Determinism, Free will, Criminal Justice system, moral responsibility, human conduct, legal punishments, reformation.

I. INTRODUCTION

In Man can do what he wills but he cannot will what he wills — Arthur Schopenhauer

The Determinism versus Free Will debate has been ongoing since a considerable long time. Professionals and scholars including scientists, neurologists, psychologists and philosophers have conducted experiments and studies to examine whether these concepts can co-exist or not and whether free will is real or not. Determinism is an idea which states that every action or event is an antecedent cause which could be physical force, past experiences or physical conditions and therefore, it is ought to happen. Scientists have proved that something as simple

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as flipping a coin is deterministic, if we consider the speed of air and other physical forces. Therefore, every action or event is pre-determined. The contrary idea of this concept is that of free will. Free will states that human beings are capable of making decisions according to their will and thus, humans are able to control their actions. Free will states that humans have the ability to make a decision or take an action freely. These concepts are antagonistic to each other. In the 18th century, during the period of enlightenment one of the most central question pertaining to human existence was that whether free will exists or not? Scientists and philosophers have conducted studies and experiments to come to a conclusion that humans do not have free will. Free will is often regarded as an illusion. However, if it is an illusion, why are the legal systems of various countries, including India, based on the premise that human beings have free will?

(A) Literature Review

1. The Nature, Common Usage, and Implications of Free Will and Determinism² By S Ogletree & C. Oberle

In this article, the author holds the view that free will is entirely an illusion and that the variables people talk about such as choice are ignorant of the fact that a cause from a causal chain leads to a particular conclusion. The author proposes to conduct a few studies to show the perceptions of a layman especially college students with regard to the free will versus determinism debate. The students were given different choices which represented free will and deterministic behaviour. The study showed that the college students believed that humans are free and thus, their actions are independent of other variables such as the past, neurology of a person and the circumstances. The author linked the concepts of moral responsibility, free will and determinism. The author believes that persons tend to blame and punish others for their wrong doings because of the fact that the layman thinks that they have a free will.

The researcher agrees with the author over the fact that the morality of a person is assigned to them through various segments of life. It is acquired through a period of time. However, the author blames the concept of free will for the people's attitude of blameworthiness. Assuming, if we live in a fully deterministic society, then the concept of accountability, praiseworthiness and responsibility will have no value since humans are devoid of choice and everything is already determined.

2. Another Scientific Threat to Free Will³ by A Mele

This article aims to criticise the scientists and the psychologists who believe that free will is an

² Ogletree, S., & Oberle, C. (2008). *The Nature, Common Usage, and Implications of Free Will and Determinism*. *Behavior and Philosophy*, 36, 97-111

³ Mele, A. (2012). *Another Scientific Threat to Free Will? The Monist*, 95(3), 422-440.

illusion. The author believes that the premise that free will is an illusion cannot be justified by data. The author completely agrees with the premise that all the conscious decisions taken by humans have a neurological antecedent. However, the author points out to the sub-conscious decisions taken by the beings. The author feels that meaning of free will according to a layman is completely different from what a scientist or a psychologist understands about the same. It is contended in the article that there might be evidences showing that there is no such concept of free will however, there is not enough evidence to show that free will is an illusion.

The researcher feels that the author did not rely on enough valid arguments and evidences to support their premise. There are some evidences from the psychologists in the form of experiments that prove that free will is not true. The author in order to counter the argument, does not present with any substantial evidence. The author rather relied on experiments done on layman persons who are not acquainted with the concept of determinism and free will. However, it was proved that most of the common people think that they have free will up to a certain extent. A layman's knowledge would be different from that of a scientist, a philosopher or a legal professional. Therefore, in order to understand the debate, one must be fully acquainted with the intricacies of the concept.

3. Free Will and Determinism⁴ By Wim Smit

This article tends to provide a religious perception of determinism and free will. The author aims to explain what the Greeks and the Catholics views are regarding the ongoing debate. This article does not support determinism or free will but provides a very idealistic view wherein both free will as well as determinism prevails. The author refers determinism as a static concept because everything is predictable and predetermined. The only thing left is to discover all the laws of nature and forces that bind the people and decision together. Whereas, the article describes free will as a dynamic concept, since it depends from situation to situation. Free will is seen as a 'drive' that leaves people in unforeseeable circumstances. The author compares determinism with the dead matter whereas free will with the living matter. According to the author, determinism and free will are complementary to each other. According to the author, free will is attainable if everybody expressly participates in the gains of science and technology.

The researcher holds the opinion that the point of view of the author is very idealistic and unreal. There might be a possibility that free will and determinism co-exist and are complementary but the researcher doesn't find any nexus between free will and participation of people. According to the researcher, maximum participation of persons is not required for determinism and free will to co-exist.

⁴ W. Smit (2005) *Free Will and Determinism*. Conference: IAS Symposium (Ed. Markus Locker)

4. Free Will is no bargain: How misunderstanding Human Behaviour negatively influences our criminal justice system⁵ By Sean Daly

In this article, the author has defined various definitions of free will. The author holds the view that the legal system should be made independent from the concept of free will. According to the author, free will's conception gives rise to a feeling of hatred and increases the human's tendency to blame others for any action. We, as humans do not have the ability to control our behaviour and thus a legal recognition to the fact that free will is an illusion would serve a greater purpose in the criminal justice system.

According to the researcher, the author ignored the fact that once our criminal justice system is independent of free will, it would lead to a chaos since nobody would be held accountable for their actions. This is a misconception and a very uninformed point of view that free will harbours a feeling of hatred among individuals. We are social beings who has an advanced brain to think and act rationally. If we feed on the concept of hard determinism, how different would we be from a wild animal? If a tiger runs away and eats a human, we wouldn't punish the tiger since it had no other choice but to eat it. However, if an individual tends to murder another person, they would be held accountable for that action. Determinism wouldn't hold this view. This is because, according to this theory, the person did the action due to a series of causes and had no other option but to commit murder. Since, we haven't negated the concept of free will from criminal legal system, the person would be held responsible and would be incapacitated since they are a threat to the society.

II. HUMAN CONDUCT: FREE WILL VS DETERMINISM

Human Conduct and Determinism

Human conduct can be defined as a way in which individuals act or respond to an external or internal stimulus. For example, an atheist's conduct in a temple would differ from a religious person.

The deterministic view of human conduct points out that the conduct of an individual is driven by certain forces, beliefs, actions, intentions, past experiences etc. Therefore, all the activities are pre-determined and arise from a cause and thus, it is predictable. Therefore, certain actions and events are bound to happen. Human behaviour and human biology cannot be separated.

For example: A person commits a murder, then this conduct of the person was because of the fact that the forces (internal or external) led him to commit the act. These forces could be psychological, emotional or even physical. Neuroscience has suggested that our brains make "decisions" before we

⁵ S. Daly (2015) *Free Will is no bargain: How misunderstanding Human Behaviour negatively influences our criminal justice system*. Nev. L.J. 992

become consciously aware of them⁶.

The conduct of a person largely depends upon their genes, their external environment and brain mechanisms. Determinism totally negates the premise that one person can determine their own fate or outcome themselves. It also negated the concept of will, since everything occurs due to the factors external to the will of a person. For example: If one has been given a choice to choose to eat cornflakes or sandwich for breakfast, and one chooses sandwich, it isn't their free will but their desire that dominates and therefore, leads them to the decision.

Human Conduct and Free Will

According to the concept of free will, an individual has the free choice and one has the power to control their choices actions without any other factors affecting their decision making. Humans like to believe that they have free will since it is central to ones' self- conception. We, as humans like to think that we are capable of rational deliberation and are not affected by any stimulus but only our will to do a particular thing. This concept has been negated by scientists over years since they contend that there is always a stimulus that affects our conduct.

For example: A man murders his wife. After the court case, it is seen that they both used to fight all the time and his frustration led him to do the act. Therefore, it wasn't the man's free will that led him to do the act. The man didn't kill his wife just because he was free to do so. He did it, out of frustration and anger.

However, the researcher feels that the concept of free will is not clearly understood by a vast majority. Free will, according to the researcher, is the ability to think rationally and then act at one's own discretion. To think rationally, one has to be conscious of their past choices or decisions. If one is not, then they would blatantly commit the same mistakes as they committed in the past. So, the premise that free will doesn't exist because of the fact that one's conscious mind acts as a stimulus is not true. For example: If one has been given a choice to go to Nainital or Shimla for a trip. And one has had a bad experience in Shimla, in order to avoid the same experience, one would choose to go to Nainital. This way, that person has used their rationality and past experiences to act on their own discretion.

III. MORAL RESPONSIBILITY: FREE WILL VERSUS DETERMINISM

Moral Responsibility and Determinism

In a deterministic universe, people aren't the source of their actions. The causal factors are so many

⁶ Greene, J and Cohen, J 2004, '*For the Law, Neuroscience Changes Nothing and Everything*', Philosophical Transactions of the Royal Society B: Biological Sciences 359:1775-1785.

such that the agent or the person can never initiate the causal sequence that led to them do the act. Therefore, according to determinism, since the agent did not initiate the causal sequence, the agent shouldn't be held morally responsible for his actions. Even though the agent directly caused the act however, the ultimate source of the act traces back to the time. The concept of determinism negates the concept of moral responsibility.

For example: If A bodily injures B. Looking at the history of A, it was observed that A was tortured by his parents and that led him to do he act. Then Mr A wouldn't be held morally responsible for his actions against Mr B since the causal sequence Mr A's parents' torturing him led him to the act.

Moral Responsibility and Free Will

In the case of free will, since everybody has the discretion to act upon, everybody is morally responsible. Hence, people have choice to act upon and they voluntarily choose according to their own discretion. When this condition is taken into account, people tend to blame or praise a person according to the choices or the decision made. We live in a society wherein everybody has been assigned a certain level of responsibility to each other. Humans are rational beings and that's what distinguishes us from animals. Implying that we have the ability to use our reasonability. Without moral responsibility towards each other, the society would be in a chaos. Morality and moral responsibility help in holding a society intact. Free will does not invalidate the concept of moral responsibility.

However, in the cases of offences committed by persons with insanity and the juvenile delinquencies and other related cases, it is important to understand the causal sequence. If a child of 7 years of age commits a serious offence, it is important to understand as to why the child committed the offence? What led the child to commit it? One cannot completely ignore the fact that our previous experiences lead us and shape us to who we are today. A series of events do affect our decision making; however, it doesn't exempt us from the moral responsibility we have to the society.

IV. CRIMINAL JUSTICE SYSTEM: DETERMINISM AND FREE WILL

The Criminal Justice system of majority of the countries is based on the theory that every individual is free to choose what is right and wrong according to the law. The common notion of free will is woven into the very foundation of our criminal justice system. The fact that individuals are punished because of the non-compliance of law shows that the legal system believes that every individual is capable of taking a decision and is responsible for the acts committed by them.

However, if we closely examine the Penal Laws all over the world, we can notice a deterministic approach too. There are countries such as England, United States of America, India, etc that provide

for the provisions for the exceptions⁷. These exceptions are given in the case of insanity, undue influence and coercion.

For example: If a man commits murder and later it is known that the man has psychological problem because of which he committed murder. Then the man can be held not guilty under the reason of insanity. In this case, we looked at the causation chain to determine the reason behind the act. Determinism states that everything happens due to a series of causes that are external to our will. But what if our criminal justice system truly ascribes to this theory? The end result would be the dismissal of charges against the criminals which would eventually lead to chaos.

It is very important to not ignore the deterministic approach of the legal systems. Addiction is a good example of how the concept of free will has influenced our rules. Indeed, owing to "assumptions of free will and duty," courts are now uniformly unable to criminalise the simple state or circumstance of being actually addicted to an illicit substance. Suffering from an addiction is similar to catching a cold in that these are illnesses over which the victim has little influence. As a result, the addict's opioid use can be treated as a psychological disorder that requires medication rather than a spiritual failure. The U.S. Supreme Court has stated that criminalizing the "status" of being an addict would be equivalent to criminalizing someone for being "mentally ill, or a leper, or to be afflicted with a venereal disease"⁸.

The criminal justice system is a perfect example of how free will and determinism work together. There have been philosophers who contend that free will and determinism cannot exist together⁹. But we closely study the Criminal Justice System of countries, we get to see a combination of both the concepts- determinism and free will.

V. LEGAL PUNISHMENTS: FREE WILL AND DETERMINISM

There are two theories of legal punishments, which are: the consequentialist theory and the retributivist theory. The three main consequentialist philosophies of retribution are recovery, which aims to transform the criminal so that he may not commit further offences, confinement, which entails incapacitating the offender so that he cannot commit crimes while incarcerated, and prevention, which aims to prevent either the offender or the victim from committing future crimes or other persons from committing a similar offence. Retributive philosophy holds that punishing an inmate is justified solely because the offender merits it, regardless of the

⁷ Postema, G 2011, *Legal Philosophy in the Twentieth Century*. The Common Law World, Springer, Dordrecht. 21, 91-121

⁸ Caruso, GD 2016, 'Free Will Skepticism and Criminal Behavior: A Public Health Quarantine Model', *Southwest Philosophy Review* 32(1): 25-48.

⁹ Canfield, J. (1962). *The Compatibility of Free Will and Determinism*. *The Philosophical Review*, 71(3), 352-368.

punishment's real consequences. In this way, retribution is a goal in and of itself, rather than a means to an end.

Although most retributivists do not advocate for a "eye for an eye" approach to justice, they do believe that one should be punished in accordance with his or her fate. This raises a significant question: when is it appropriate to discipline someone for their actions? The solution is based on the widely held belief in free will¹⁰.

A person is supposed to be punished for doing a crime if they were free to do so and they chose to do it. As a result, without free will, retributive justifications for punishment are rendered meaningless, as there is no reason for blaming others for their acts and no way in which anyone needs to be punished. Over all, finding vengeance against a wrongdoer appears to be at the heart of our sense of justice, and retribution can be traced down to seeking a revenge. This response is understandable, given how strong the need for vengeance can be¹¹.

One of the most prevalent responses to the notion that people lack free will and therefore cannot be held responsible for their decisions is the assumption that we are obligated to release all prisoners and that all justifications for prosecuting criminals have no value as such¹². This way, one cannot absolutely rely on the deterministic approach to take over.

Punishments serve many purposes in the society. Punishment may: (1) prohibit one person (or others) from committing similar behaviour and harming others; (2) reform one so that one is less likely to commit similar conduct and injure others; or (3) incapacitate one person so that they are unable to commit similar conduct and harm others, regardless of whether you openly want to act.

When a bear escapes from a zoo and wanders the streets, endangering anyone in its path, we don't really think of the bear as having free will. Instead, most of us understand that a bear has no choice but to follow its genetically derived impulses. Capturing and confining the bear seems to be the only option; if possible, reforming the bear to become as gentle as a domesticated dog will be much better.

However, we cannot compare a bear with a human. If a human commits an offence, we cannot just let them go because of the fact that they did not have a choice but to commit the offence. A human is capable of making decisions. But at the same time, it is important to look deeper

¹⁰ Green, TA 2014, *Freedom and Criminal Responsibility in American Legal Thought*, Oxford University Press, Oxford. 212-242

¹¹ Farrell, B., & Koch, L. (1995). *Criminal Justice, Sociology, and Academia*. *The American Sociologist*, 26(1), 52-61.

¹² Pereboom, D 2001, *Living Without Free Will*, Cambridge University Press, Cambridge. 34, 92-110

into the cause of committing the offence. A criminal legal system tends to incapacitate a person because they tend to be a threat in a society. Humans are rational beings and are capable of understanding and deciding. Thus, regardless of the nature of free will, the importance of incapacitation is self-evident; regardless of the real roots of human conduct, locking you up will preclude you from hurting others in an open society.

VI. CRITICAL EVALUATION OF FREE WILL VERSUS DETERMINISM DEBATE

1. **Interpretation of free will:** As discussed above, there is a need to interpret and define free will. The scientific picture suggests that our acts are the product of predetermined mental states and processes, whereas the public's perception is that there is "something more—a single self that stands beyond both of these states and processes and may choose to disregard their promptings. As a result, it seems that the common understanding of free will is based on two assumptions: (1) that each of us may have acted differently in the past, and (2) that we are the deliberate cause of the majority of our current thoughts and behaviour.

2. **Determinism is inconsistent with moral responsibility.** According to determinism, since everything is already determined, one shouldn't be held responsible for their actions. Accountability and answerability are also inconsistent with determinism. For example: If a public authority indulges in corruption to provide support to their family, determinism would not hold the public authority accountable for their actions. If there is no sense of responsibility towards each other, there would be chaos. Every action would be excusable because of the fact that the person apparently shouldn't be blamed because there might be a series of causal actions behind the act.

3. **Free will and Immoral Behaviour:** There have been contentions from various philosophers that claim that free will increases bad or immoral behaviour. This is because, humans believe that they are free to do anything according to their will and therefore, conduct immoral acts. The researcher disagrees with this argument. The researcher believes that free will increases a sense of accountability and responsibility among the people. It invokes a sense of personal accountability. Since the actions of the individual can be controlled, they will be more vigilant with their actions and conduct. If people are aware that they are free to do anything, they would also be aware about the consequences for their actions. Hence, they would act responsibly and reasonably.

4. **Limitation of Human Capability and Scientific influence:** The deterministic point of view often reduces the human to merely a quantitative property made up of atoms. Humans are much more than that. Science has (up to a certain extent) proved that every event has a cause. Thereby denoting that free will is an illusion and everything is already determined according to certain forces and laws. This is seen from a very scientific point of view. One can calculate but one cannot make definite predictions for a certain event. Thus, the laws of science cannot define or

determine the future. Universe transcends science. A person cannot be limited to a quantitative property constituted by atoms. Humans aren't robots rather we are biological beings who have the ability to reason and experience spontaneity. Still, if our options are still predetermined, what exactly does it mean to talk about free will? If you think about it, the solution is self-evident: we have free will if our decisions are influenced by what we agree with on a personal level. In the way that I consider my tastes and preferences—as actively felt by me—as reflections of myself, I agree with them My decisions are also open in the sense that they are driven by my personal feelings and preferences. Why do we believe that metaphysical materialism—the idea that our decisions are influenced by neurophysiological behaviour in our own brain—is incompatible with free will? And, no matter how much we try, we can't relate to neurophysiology, particularly our own. The neurophysiological process of our brain is simply an abstraction in terms of our conscious lives. What we have actual and clear knowledge of are our worries, impulses, inclinations, and other emotional states as they are experienced—that is, our felt volitional states.

VII. CONCLUSION

As seen from the above discussion, we can only have a meaningful debate on determinism and free will if we define and interpret determinism and free will. Free will, determinism and the criminal legal system are closely interwoven. There is a conception that the concept of free will entails and fosters our desire to blame and hate others. However, in the view of the researcher, the concept of free will increases a sense of accountability and responsibility to others. One cannot separate criminal legal system and the concepts of determinism and free will. The main purpose of the criminal justice system must be to reform individuals in the society and not seek revenge by merely providing punishments to the convicts. The goal of the criminal justice system should be based on the consequentialist theory of punishment which aims at reformation, recovery and transformation of the criminal and this is only possible if we do not separate free will from the criminal justice system. Scientists must have proven that every action is deterministic however, it is the humans who have the ability to experience creativity. There is something beyond science. We, as humans are programmed by our experiences. But free will presents another programming opportunity in that certain brain processing will select and change responses to experience consciously. When needed, we should over-ride biased and stereotyped implicit decision-making. In addition, certain of our interactions can be selected and others avoided and thereby influence our own decision making Even though the researcher agrees with the idea of determinism, however, the researcher feels that determinism often limits human capability. In order to move forward in this debate, it is important to firstly interpret free will. The themes of determinism and free will can co-exist in a system which

has been proved above. In the study of philosophy, as neither determinism nor free will can be shown to be a reality, it must be concluded by pragmatic humanism that any person bears moral responsibility for his or her acts. Any other path is likely to have devastating societal repercussions.

VIII. REFERENCES

- Canfield, J. (1962). *The Compatibility of Free Will and Determinism. The Philosophical Review*, 71(3), 352-368.
- Caruso, GD 2016, 'Free Will Skepticism and Criminal Behavior: A Public Health Quarantine Model', *Southwest Philosophy Review* 32(1): 25-48.
- Farrell, B., & Koch, L. (1995). *Criminal Justice, Sociology, and Academia. The American Sociologist*, 26(1), 52-61.
- Greene, J and Cohen, J 2004, 'For the Law, Neuroscience Changes Nothing and Everything', *Philosophical Transactions of the Royal Society B: Biological Sciences* 359:1775-1785.
- Green, TA 2014, *Freedom and Criminal Responsibility in American Legal Thought*, Oxford University Press, Oxford. 212-241
- Mele, A. (2012). *Another Scientific Threat to Free Will?* *The Monist*, 95(3), 422-440.
- Ogletree, S., & Oberle, C. (2008). *The Nature, Common Usage, and Implications of Free Will and Determinism*. *Behavior and Philosophy*, 36, 97-111
- Pereboom, D 2001, *Living Without Free Will*, Cambridge University Press, Cambridge, 34, 92-110
- Postema, G 2011, *Legal Philosophy in the Twentieth Century: The Common Law World*, Springer, Dordrecht, 21, 92-121
- S. Daly (2015) *Free Will is no bargain: How misunderstanding Human Behaviour negatively influences our criminal justice system.* *Nev. L.J.* 992
- W. Smitt (2005) *Free Will and Determinism*, Conference: IAS Symposium (Ed. Markus Locker)
