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Reformative Theory of Punishment: Analysing the Status in India

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ABSTRACT

Punishment is one of the cornerstones of contemporary civilisation since it is the coercion employed to uphold the rules of the state. A peaceful society and way of life are things that the state must provide. Lack of punishment renders the law ineffective, which ultimately leads to a society that is “unable to uphold law and order and a government that is unable to defend its citizens.” However, the reformative approach to decreasing such crimes and reforming the offenders has emerged in order to protect the fundamental rights to which every person has a right. Rehabilitation aims to fundamentally alter the way criminals behave and think. Similar to how therapy normally uses counselling and education to lessen the probability of future crime. The entire article focusses on the aspect of Reformative theory of punishment and its exact utility in India. The research objective includes in depth knowledge of what exactly is the reformative theory, its origin and status in India and finally the way it has been exercised in India since its inception.”

Keywords: Punishment, State, reformative theory, rehabilitation.

I. INTRODUCTION

“An eye for an eye blinds the whole world.”

The reformative idea of punishment is said to have its roots in this Mahatma Gandhi quote. Punishment should be used to transform rather than only to inflict punishment. Punishment ought to be intended to alter the offender's character. Punishment is a sort of social control that permits a society to uphold its rules and laws as well as the safety and tranquilly of its members' lives. The neighbourhood and people's daily lives will be disrupted if the crime is not stopped. Around the 18th century, a new idea known as the reformative idea become fashioned to cope with fallacious movements or crimes that would be taken into consideration as violators of the regulation.

“The idea is precise in that, in evaluation to all other theories of punishment, it makes a speciality of the culprit in place of the offence and seeks to alternate the culprit's angle for you to rehabilitate her or him as a regulation-abiding member of society. The purpose of punishment,

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according with reformatory philosophy, must be to change the offender through an individualization strategy. The humanistic concept that a wrongdoer does no longer instantly end to be a stay person just because he commits crimes serves as its foundation. The fundamental guiding principle of reformatory principle is individualism.² Offenders ought to go through metamorphosis, and there must be faith in efforts to rehabilitate and educate them. This concept holds that each the surroundings and situations of society, as well as the crook's general physical or emotional kingdom, are related to crime. The offender is therefore seen as a patient. Because of this, punishment is not employed to get back at the offender or to torture or harass them.”³”

II. CONCEPT OF PUNISHMENT AND JUSTICE

Punishment is a method of gaining social control. H.L.A. Hart, Mr. Bean, and Professor Flew have defined “punishment” in terms of five components:

- There must be some sort of unpleasant result, such as pain.
- It must be for a violation of the law.
- It must be imposed and managed by an authority established by a legal system against which the offence is done, be administered with the intent of humans other than the offender, and be imposed on an actual or alleged criminal for his offence.

“According to Greenhut,” three elements must be present “if punishment is to act as a reasonable means of checking crime.”

- “Early and unavoidable detection and prosecution must persuade the offender that crime is not profitable.”
- “The offender must have completed punishment after.”
- “The offender must have a fair chance of a fresh start after punishment.”
- “The State which claims the right to punishment must uphold superior values which the offender can reasonably be expected to acknowledge.”

When describing the concept of punishment, Sutherland and Cressey noted two key concepts:

- It is inflicted on someone who is viewed as a member of the same group by the group acting in its official capacity. Given that foreigners are the target of war; it cannot be

² LawBhoomi (2023) *Reformatory theory of punishment in India*, LawBhoomi. Available at: <https://lawbhoomi.com/reformatory-theory-of-punishment-in-india/> (Accessed: 22 May 2023).

³ O.B. (2022) *Reformatory theory of punishment*, iPleaders. Available at: <https://blog.ipleaders.in/reformatory-theory-of-punishment/> (Accessed: 22 May 2023).

considered a kind of retribution.

- “It entails intentional pain or suffering that is justified by a perceived value of the experience.”⁴

“The genesis and development of the administration of justice are the same as those of man. Man’s social nature compels him to live in society. Man must have encountered a conflict of interest while living this way, and this led to the requirement for the provision of the administration of justice. Without it, injustice goes unchecked and triumphs, and people’s lives are lonely, miserable, brutish, and brief. Only when coupled with and strengthened by the concentrated and unstoppable force of the society is social sanction an effective tool. Force is required to compel the rebellious minority and stop them from unfairly benefiting from the majority of citizens abiding the law in State. As the State’s authority grew, it started to exercise its judicial authority to determine guilt and execute punishment. It ceased to be a guardian of personal retribution. Private retribution was replaced with public investigation and punishment. In place of the violent self-help of the prehistoric era, the civil law and administration of civil justice assisted the injured. The modern administration of justice follows naturally from the expansion of the political State’s power. Crimes are both civil and public wrongs. Private wrongs and public wrongs are two different kinds of wrongs, according to Blackstone. The latter are distinguished by the severe designation of crimes and misdemeanours and involve a breach and violation of public rights and obligations that have an impact on the entire community taken as a whole. The former are violations of an individual’s private or civil rights when viewed as an individual, and are hence usually referred to as civil injuries.”⁵

III. LAWS EXISTING IN INDIA FOLLOWING REFORMATIVE THEORY

- Article 72 and Article 161 of the Indian Constitution

“The President of India has the authority to pardon an offender under Article 72 of the Indian Constitution of 1950. Article 161 of the Indian Constitution grants the state's governor the same power. When the President pardons a criminal, all penalties, fines, and disqualifications associated with the conviction are entirely lifted. It has long been understood that giving that power to a body other than the legal system is vital since the authority of pardon originates to prevent injustice, whether it be from harsh, unfair laws or from verdicts that lead to injustice. When the President is deciding whether to impose the death penalty, when he is deciding

⁴ Priya, T. (2019) *Reformative theory of punishment, Academike*. Available at: <https://www.lawctopus.com/academike/reformative-theory-of-punishment/> (Accessed: 22 May 2023).

⁵ Ibid.

whether to punish someone for breaking a union law, or when he is deciding whether to review a court-martial or military court's punishment order, he may use his pardoning authority in any of these situations.⁶

- The Juvenile Justice (Care and Protection of children) Act, 2015

“One of the most important aspects of the Juvenile Justice (Care and Protection of Children) Act, 2015, is the philosophy of handling juvenile offenders. The purpose of the Act is to rehabilitate children and prepare them to contribute to society. This is shown by the fact that juvenile offenders are referred to as delinquents rather than criminals if they are under the age of 18 (16 years in the case of grave offences). Sections 14, 18, 21, 40 and 74 of the Act explains the reformatory nature of punishments under the given Act.”⁷

- Sections 54 and 55 of the Indian Penal Code, 1860

“The commutation of sentence is covered by these articles of the Indian Penal Code, 1860. The death penalty may be commuted to any other form of punishment under section 54 of the Indian Penal Code, and a 14-year prison term may be commuted under section 55 of the same law. The power to commute a sentence refers to the choice between a higher and a lower penalty or punishment given by the legal system. The ability to lessen or minimise a sentence imposed as a result of a criminal conviction is what it refers to. A 10-year sentence, for instance, could be reduced to a 5-year term.”

- The Probation of Offenders Act, 1958

“The Probation of Offenders Act, 1958’s section 4 handles the release of a wrongdoer due to good behaviour. If the offender is found guilty of an offence carrying a death or life sentence, section 4 of the act does not apply to them.”

- The Code of Criminal Procedure, 1973

“The court may issue a discharge on probation with good behaviour or following a warning under Section 360 of the Criminal Procedure Code. According to section 432 of the Criminal Procedure Code, the government has the legal authority to postpone or remit the punishment in full or in part at any time after a person is found guilty of any crime. According to section 433 of the Criminal Procedure Code, the government has the authority to substitute another type of punishment for a death sentence, a life sentence for a term of imprisonment not to exceed 14 years, or a hard sentence for a term of simple imprisonment. According to section 27 of the

⁶ Supra Note 3.

⁷ Supra Note 3.

Code of Criminal Procedure, 1973 any crime not punishable by life in prison or death if committed by a person who is under sixteen years old on the day they appear in court or are introduced to it may be tried by the court of the Chief Judicial Magistrate or by any court specifically authorised under the Children's Act, 1960, or any other current law allowing for the treatment, mentoring, and rehabilitation of children.”

IV. SUPPORTERS OF REFORMATIVE THEORY

- **SOCIOLOGISTS**

“Some crimes are the result of social injustices. For instance, stealing is illegal. The moral law's authority requires that everyone involved in theft receive punishment. However, a thorough investigation reveals that poverty is the root cause of the crime. Therefore, according to criminal sociologists, preventing crime requires bettering the social and economic circumstances of the general populace. Crimes will be avoided only if the principles of justice and equity are deemed to be the foundation for a society. The proponents of this viewpoint go by the name of criminal sociologists.”

- **PSYCHOLOGISTS**

“Psychologists back up this view. They contend that crimes are not the result of deliberate transgression of morality. Crimes are actually caused by mental illness or insanity. Criminals shouldn't be punished because of this. Hospitals or reformatories should care for them in order to reform them. Instead of punishing the wrongdoer, the therapy should be educational or medical. However, some crimes are perpetrated by some persons as a purposeful breach of morality. Consequently, they ought to be punished. Thus, punishment deters potential offenders from committing the same acts. Additionally, a criminal mind can be trained to refrain from choosing the illicit course.”⁸

- **PHYSIOLOGISTS**

“According to physiologists, crimes are caused by physiological flaws. As a result, offenders ought not to be punished. Instead, they ought to receive care from psychologists or psychoanalysts in hospitals. This idea holds that crime is not an intentional act of violation on the part of the offender. Only his mental fragility can explain it. According to criminal anthropologists, criminals shouldn't be punished. Instead, they should receive care in hospitals or prisons. But the issue is that not all crimes are brought on by mental illness or physical flaws.

⁸ Supra Note 4.

There are some crimes that are blatant transgressions of morality and ought to be punished.”⁹

V. PERSPECTIVE OF REFORMATIVE THEORY IN INDIA

“The importance of the reformatory philosophy of punishment has frequently been emphasised by Indian courts. In the case of *Gulab Singh v. Yuvraj Singh* (1994), the Supreme Court declined to increase the punishment of the accused, noting the reformatory nature of the Indian criminal system. There are several legal issues that illustrate how crucial reform is in India's penal system.¹⁰ Few reformatory social control systems that prioritise treating criminals in accordance with their psychological characteristics exist at the moment,” including:

- **PROBATION:** “Probation is a criminal consequence that is carried out under a correctional officer’s supervision in place of a jail sentence for the offender. If a defendant behaves themselves, a minor criminal conviction may result in probationary release. The judge presiding over the case will often make the decision on probation. Probation is commonly given for nonviolent offences.”
- **PAROLE:** ““Parole is the permission granted to a prisoner to be released from custody earlier on the condition that they will behave well in public.” An interim or permanent discharge may be granted before the term is up as reward for good behaviour throughout the sentence.
- **PARDON:** “A pardon releases the person from all criminal charges, the consequences of the offences for which it has been granted, and all statutory or other penalties that follow a conviction.¹¹”
- **ADMONITION:** “According to the Andhra High Court’s decision in *The State v. Ghanshamdas* (1995), “an admonition by a court is a rebuke, censure, or reproof alerting the culprit that this time he is being left free but that if he repeats the offence, he will be brutally punished in accordance with the law.”¹²
- **INDETERMINATE SENTENCE:** “A period of incarceration without a set end date or maximum punishment. The decision to release the person on parole or not will be made by the parole authorities. Indeterminate phrases were first used in the nineteenth century by the reformatory movement. According to this theory, rather than a sentence given by a judge, the prisoner’s improvements in the training programme were utilised to

⁹ Supra Note 4.

¹⁰ Supra Note 4.

¹¹ Supra Note 4.

¹² Supra Note 4.

determine when they would be released.”¹³

VI. CRITICISM

“There is some debate over whether restorative or transformative justice will actually work in practise, despite the fact that there is not much opposition to the philosophy or ideological foundation of these concepts. It is true that non-habitual offenders can be successfully reformed using the Reformatory theory. However, there are times when therapy fails because a hardened criminal cannot be changed. Criminals will commit the same offence again if we allow it. That is why he should be punished rather than attempting to change his criminal thinking.

In light of this, it could be argued that the “reformatory approach will operate better if it is meant to supplement conventional punishment rather than to entirely replace it.” The reformatory idea holds that punishment is only appropriate when it concentrates on the present rather than the past.¹⁴ Hardened and professional offenders hardly react favourably to reformatory ideas since they are incorrigible criminals for whom crime is not so much a bad habit as it is an entrenched impulse in them.¹⁵ For such perpetrators, deterrent punishment can be the only alternative. Some of the most seasoned criminals are incurably awful, even when treated as patients. Prisons might turn into places to live if they were improved, at least for the poor. Crime rates continue to climb despite the concept being in place. Salmond claims that the use of the solely reformatory theory “leads to astonishing and inadmissible results.”¹⁶ The reformatory concept of punishment has very little practical use. Psychologists claim that habits are difficult to change because they are patterns of behaviour. Additionally, not all societies can use this notion. The natural justice maxim that the harmed may not receive compensation while the guilty must not escape punishment is violated by this situation. It is improper to impose that penalty. It is wrongful to consider punishment having a single objective.”

VII. CONCLUSION

“This idea seeks to transform criminal minds so that people housed in penal-correctional facilities can lead normal lives. Its objective is to help them recover and become law-abiding citizens. This philosophy is against any kind of physical punishment. It frequently sees the separation of convicts from society as an effort at rehabilitation and social protection for the offender. This idea works exceptionally well for the rehabilitation of juvenile offenders and first-time criminals because it largely focuses on humanistic processes of punishment, but it

¹³ Supra Note 3.

¹⁴ Supra Note 4.

¹⁵ Supra Note 4.

¹⁶ Supra Note 4.

might not be as beneficial for more serious criminals. In these circumstances, deterrence and retributive theory are essential.”¹⁷

¹⁷ <https://blog.ipleaders.in/reformative-theory-of-punishment/>