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Aim and Objective of Imprisonment

HARSHIT SAHAY¹ AND SAURABH SUMAN²

ABSTRACT

Prison, an institution for the imprisonment of people who have been remanded (held) in guardianship by a legal position or who have been denied of their freedom following conviction for a crime. An individual saw as blameworthy of a lawful offense or a wrongdoing might be required to serve a jail sentence. The holding of blamed people anticipating preliminary stays a significant capacity of contemporary prison, and in certain countries such people comprise most of the prison population. In the United Kingdom, for example, generally about one-fifth of the prison population is unconvinced or unsentenced, while more than two-thirds of those in custody in India are pretrial detainees

Crime is a violation of the legally established order and the Punishment is the penalty for such transgression of the law inflicted by the group. Since the problem of crime and its control is as complex as the society from which it springs, the society has to evolve a penal system which can "reduce crime by making as many people as possible to obey the criminal law", and to provide security to persons and property by preventing criminal act that threaten or violate them. The criminal law can achieve this objective, "... through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals or society". Naturally, the distinctive features of criminal law are strict prohibitions of actions, which cause harm to persons and property, and infliction of punishment for such harm.

Keywords – Crime, Prison, Criminal, Imprisonment, Law.

I. ORIGIN OF PRISON

From the birth of modern civilization in 3rd millennia BC, almost every major ancient civilization used concept of prisons as a mean to detain and remove personal freedoms of incarcerated people. In those early periods of history, prisons were often used as a temporary stopgap before sentencing to death or life of slavery, but as time went on and our civilization developed, prisons started morphing into correctional facilities that started implementing the concept of rehabilitation and reform of prisoners. Moreover of holding indicted or suspected criminals, prisons were regularly utilized for holding political prisoners, foes of the state and

¹ Author is an Advocate at Ranchi High court, India.

² Author is an Associate at GGC Legal, India.

prisoners of war.

The soonest records of detainment facilities originate from the first millennia BC, situated on the regions of forceful old civilizations of Mesopotamia and Egypt. During those times, prisons were almost always stationed in the underground dungeons where guilty or suspected criminals spent their life either awaiting death sentence, or a command to become slaves (often working as galley slaves). Special case from that standard originates from the home of present day democracy - Greece. There, prisoners were held in the poorly isolated buildings where they could often be visited by their friends and family. Primary source of their detention were not dungeons, high walls or bars, but simple wooden blocks that were attached to their feet. Ancient Roman Empire anyway kept on utilizing harsher strategies. Their prisons were assembled solely underground, with tight and claustrophobic ways and cells. Prisoners themselves were held either in basic cells or anchored to the dividers, forever or for time. As servitude was acknowledged standard back then, greater part of prisoners that were not condemned to death were sold as slaves or utilized by the Roman government as workforce. One of the most renowned uses for the slaves in Roman Empire was as "gladiators". Notwithstanding battling in the arena (now and then after lifetime of preparing in the extraordinary combatant preparing houses, or Luduses), numerous slaves were entrusted as a help workforce that empowered smoother keep running of the prevalent fighter business. The most acclaimed Gladiator battleground, the relentless Coliseum Arena in Rome had a slave armed force of 224 slaves that worked every day as a power wellspring of the confused system of 24 lifts that shipped fighters and their wild animal adversaries from the underground cells to the arena floor.

II. OBJECTIVE AND PURPOSE OF IMPRISONMENT

An Imprisonment is a significant type of punishment. The punishment by way of imprisonment consists of deprivation of liberty for a certain period. Over the centuries various justifications have been suggested for the legal punishment and the imprisonment as a chief form of punishment is considered as a mean for attaining them. Among the justifications that have been suggested for imprisonment the following are the more important: (i) to deter people from criminal acts - deterrence, (ii) to requite wrong doing retribution, (iii) to incapacitate the offenders-incapacitation, and (iv) to reform offenders formation. The fulfillment of these various tasks may be considered as the objective of imprisonment. But, any attempt to perform the duties necessary for the accomplishment of these various tasks would result in conflict, as they are mutually conflicting and contradictory to each other.³ Thus, the conditions necessary

³ The Politics of the Criminal Justice System, New York: Marcel Dekker, INC 1978 at. 225.

for the reformation of prisoners may be in conflict with the conditions necessary for exacting retribution and for maximum incapacitation and deterrence. On the other hand, retribution and determine by purposive infliction of suffering always necessitate prison conditions which are inconvenient and intolerable. The prison is expected to make life unpleasant for people, who, by their crimes, have made others' lives unpleasant. This dilemma between the demands of punishment and control on the one hand and rehabilitation and reform on the other places the prison system in an "uneasy and irrational equilibrium".⁴ At various times and places one or the other of the above aims) and objectives of imprisonment has been offered as justification^/for the punitive reaction.

III. THE RETRIBUTION

One of the important objectives of punishment is retribution which is based on the belief that the criminal deserves to suffer. The suffering imposed by the state in its corporate capacity is considered as the political counter part of the individual revenge. According to it, criminal punishment is requital for wrongdoing. Justice requires that the same rules apply to every one. If some one violates a rule of the criminal law then that person has an unjust advantage over others and justice requires that this wrong be requited or expiated by punishment.⁵ More specifically, punishment is imposed by the society on criminals in order to obtain revenge or perhaps because it is only fitting and just that one who has caused harm to others should himself suffer for it. Thus, Salmond argues that the administration of justice owes a great part of its strength and effectiveness to the fact that the punishment to wrong doer is at the same time the vengeance of the wronged.⁶ Further he says, that the criminal law would be but feeble instrument if we punish criminals merely from an intellectual appreciation of the expediency of so doing, and not because their crimes arouse in us the emotion of anger and instinct of retribution.

Further, on behalf of the retributive theory it is argued that unless the criminal gets the punishment he deserves, one or both of the following effects will be produced: The victim will seek individual revenge, which may mean lynch-law if his friends co-operate with him, or the victim will refuse to make complaint or offer testimony and the state will therefore be handicapped in dealing with criminals. The retributive theory which insists on satisfaction of vengeance suffers from a basic flaw because 'vengeance is not a rational sentiment, for it is simply a desire to inflict harm on those who have harmed one'. Its practical effect is merely to

⁴ Hozelrigg, Lawrence (ed) *Prison Within Society*, New York, 1968 at 47

⁵ Michael,Phillips, *The Justification of Punishment* 5 Law and Phil 393 (1986)

⁶ Fitzgerald Salmond on Jurisprudence, ed., 11th ed., 1957 London: Stevens and Sons, at 120-121.

increase the amount of harm in society. One surely would not design a legal system that encourages vengeance. Indeed, one reading of the historical development of criminal law is as a gradual substitution of a reasonable public system of punishment for private vengeance. Consequently, one cannot rationally accept criminal laws imposing cruel punishment merely to satisfy / irrational desire for vengeance because they will make a criminal more hardened.⁷

The general notion of the deterrent theory is that the punishment reduces crime and is based on the hedonistic assumption that people regulate their behavior by calculation of pleasures and pains. If the pleasure they can derive from crime is more than the pain they suffer by punishment, they feel less inhibited in committing crime. So, when deterrence is regarded as the principal purpose of punishment penalties are to be made as public and as brutal as possible. But the deterrent effect of punishment is possible only when the criminals consider the penalty. But many criminals may never consider the penalty because they are psychopathic or feeble minded or acting under stress of a great emotion. But it can be said that such cases are only exceptions and by and large, the criminal code with its penal sanctions probably has a long run deterrent effect upon criminalistic ideologies. The existence of the criminal law and the procedures for implementing the criminal law, including the imposition of swift and certain punishment, would emphasize the undesirability of certain types of behaviour. But the deterrent theory of punishment totally overlooks the effect, which a harsh and brutal punishment like solitary confinement may have on the mind and personality of the criminal incarcerated. A criminal subjected to harsh and brutal treatment in a prison may become a hardened criminal. Such a treatment may have deterrent effect on the future potential criminal but the individual criminal subjected to such a dehumanized treatment can never be retrieved back to the mainstream of the society. He may return to society after serving his prison term as a more hardened criminal and may employ more ingenious methods to conceal his crime to avoid detection and such harsh punishment. Thus, deterrent punishment may cause more harm to society than protecting it.

IV. THE DETERRENCE

The second legitimization for criminal punishment is deterrence. Societal punitive reaction to crime is supported by another theory- The deterrent theory According to this theory one of the principal aims of punishment for crime is to deter the individual offender and also others who may be minded to commit similar offences, and hence to prevent further crimes. First, by 'specific deterrence' persons who are punished are deterred by fear of further punishment from

⁷ Hermann Mannheim, *Pioneers in Criminology*, Mont clair Patterson Smith, 1973

performing future criminal acts. Second, by 'general deterrence' punishment deters others from committing criminal acts out of fear of being similarly punished. Third, some forms of punishment 'incapacitate' offenders. While in prison, offenders cannot commit any crime⁸. The theory of general deterrence has been stated by Reverend Sydney.

Smith as follows, when a man has been proved to have committed [sic] a crime, it is expedient that the society should make use of that man for the diminution of crime; he belongs to them for that purpose. Our primary duty, in such a case is to treat the culprit so that many other persons may be rendered better, or prevented from being worse, by dread of the same treatment and making this the principal object, to combine with it as much as possible the improvement of the individual. But punishment on this ground of general deterrence has been criticized by Bittner and Platt who contend that "punishment on the basis of deterrence is inherently unjust. For, if an example is made of a person to induce others to avoid criminal actions then he suffers not for what he has done but on account of other people's tendency to do likewise."⁹ Similarly, Immanuel Kant, opined, "legal punishment... never can be inflicted on a criminal just as an instrument to acquire some other good for the criminal himself or for civil society... for a man may never be used just as a means to the ends of another."¹⁰ Kant believed that man should always be treated as an end in himself, not just as a methods for some opposite end. Regarding the Kantian principle,

Mr. Johannes Andeans said that, the principle had a persuasive ring, but could hardly be treated as a binding rule without closer scrutiny. As with other abstract principles, it lends itself to different interpretations, and it is difficult to evaluate the validity of the principle without examining its practical applications. Realistically, societies often treat people in ways designed to promote the good of society at the expense of the individual concerned. Military conscription might be the prime example of this phenomenon which also finds expression in quarantine regulations, confinement of dangerous mentally ill patients, and detention of enemy citizens in wartime. Thus, the Kantian principle in its practical application, is of doubtful value. Regarding the Kantian opinion, it is also said that the criminals by committing offences have voluntarily forfeited the right not to be used as a means to deter others. Society can use offenders to deter others and thereby to protect itself as it uses policemen.¹¹

⁸ J. Michael D. Bayles at 282

⁹ The Morality of deterrence in Hyman Gross

¹⁰ Ernest Vanden Haag, *Punishing Criminals*, New York.

¹¹ Supra note 10

V. THE REFORMATION

The goals of punishment have been undergoing radical changes along with the growing awareness about the rights of even wrong doer. The trend in modern countries has been towards humanizing punishment and towards the reduction of brutalities.¹² The emphasis is on the diminished utilization of capital punishment, the presentation of conveniences into the cutting edge prison by illuminated penology and the expanding accentuation on non-reformatory and individualized methods of dealing with prisoners, eg: probation, parole, psychotherapy. It is widely believed that the objects of punishment are to bring about reformation of the offender, to prevent him from committing crime again, and to prevent other persons from committing crimes. It is widely perceived that the crime is the outcome of a diseased mind and the prison must have an environment of hospital for treatment and care of mental disease. This approach rejects the deterrent and retributive elements of punishment and strongly advocates reformatory approach.¹³

According to this school of thought, punishment cannot work through repressive methods, for repression does not root out the criminal desire and¹⁴ repression merely checks the wrong doing for some time, but that which is repressed will rebound with as much vigor as it was repressed and produces some unanticipated consequences. Punishment, then with detention involves a re-educating process and not a bare tormenting process.¹⁵ The offender should, while punished by detention, be put to educative and healthy or ameliorative influences. He should be reeducated and his character traits reshaped and put once again in the furnace for being molded.

According to Seth J.:

The deepest warrant for the effectiveness of punishment as a deterrent and reformatory agent is found in its ethical basis as an act of justice. True reformation comes only with the acceptance of the punishment by mind and heart, as the inevitable fruit of the act... The judgment of society upon the man must become the judgment of the man upon himself, if it is to be effective as an agent in his reformation... Punishment is, in its essence, a rectification of the moral order of which crime is the notorious breach. Yet it is not a mere barren vindication of that order; it has an effect on character, and moulds that order. The idea that the punishment is basically for reformation and rehabilitation has found wide acceptance by psychologists and behavioral scientists and many thinkers. Concerned with the future personality and conduct of the

¹² *The Sociology of Punishment and Correction*, 2nd ed. New York.

¹³ *Prisons and Society, A Study of the Indian Legal System.*, New Delhi.

¹⁴ *Supra* note 9

¹⁵ M.J.Sethna, *Society and the Criminal*, Bombay, 1977

offender, the behavioral approach replaces the justice model of punishment with a therapeutic one. Thus Barbara wootten urges that the formal distinction between prison and hospital be eventually obliterated altogether.¹⁶

Similarly, Richard H.Brandt said, "if an accused were adjudged guilty, decisions about his treatment would then be in the hands of the experts, who would determine what treatment was called for and when the individual was ready for return to normal social living it would be criminal centered treatment, not crime centered treatment. For it is doubtful whether threats of punishment have as much deterrent value as is often supposed".¹⁷

Mahatama Gandhi also believed that the criminals should be treated as patients in hospitals and jails should be hospitals admitting such patients for treatment and cure.¹⁸ Similarly Dr.Walter Reckless, a leading American criminologist, made a plea for transforming jails into reformation centers and advocated the establishment of new jails to perform specialized functions. Reformation School of thought found a strong support from Lord Lytton, who said: "The ideal I wish to set before me, stated in the briefest and simplest form, is just this - the substitution of reformation for retribution as the basis of our penal code".¹⁹

Similarly Pandit Nehru observed "Any reform must be based on the idea that a prisoner is not punished but reformer! and made into good citizen. If this objective is once accepted, it would result in a complete overhauling of the prison system."²⁰ The Mulla Committee additionally reverberated comparative conclusion when it said that the primary objective of punishment is reclamation and rehabilitation of the offender.²¹

VI. CONCLUSION

The above analysis of aims and objectives of imprisonment has revealed that there are mainly three different objectives of imprisonment. They are: Retribution, deterrence, Punishment and Protection of Public Obviously, considerable debate and controversy surrounds all the three justifications of punishment. The reformatory theory emphasizes educative and therapeutic value of imprisonment. Deterrent theory emphasizes the effect of punishment on actual and potential offenders Retribution considers punishment as an end in itself. The presence of these conflicting justifications has rendered the prison system confused. According to Salmond a

¹⁶ Justice Seth, A Study of Ethical Principles

¹⁷ R.H. Brandt. Ethical Theory Englewood, 1959

¹⁸ Report of the All India Jail Manual Committee, 1957-59

¹⁹ M.K.Gandhi, in *Young India*, 1926.

²⁰ Jawaharlal Nehru, *Prison Lands* in India and World

²¹ Report of All India Committee on Prison Reforms, 1980-83

single-minded pursuance of any of these particular aims of punishment could lead to disaster. Of these various justifications, the reformatory theory is in conformity with the present day emphasis on human dignity. The idea that the punishment is basically for reformation and rehabilitation has been accepted by majority of thinkers on penal reform. However, many thinkers firmly believe that, it is quite impracticable that the prison can act as a reformatory and the entire idea of imprisonment is wrong. But these very critics admit that there is no suitable alternative to imprisonment as a punishment. It may be stated that the imprisonment for a sufficient time under healthy conditions, under the care of trained, competent, sympathetic prison personnel, is an ideal means of reforming offenders. This reformatory object assumes all the more importance in order that all the prisoners would return to free society, sooner or later. If they return as reformed individuals, it is the society which would be ultimately benefited.
