
THE PARADIGM SHIFT IN PENAL PHILOSOPHY: A SOCIAL-LEGAL ANALYSIS OF REFORMATIVE JUSTICE IN CONTEMPORARY CRIMINAL JURISPRUDENCE

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ABSTRACT

Penal philosophy has gone through so many transformations over the time shifting from a punitive and retributive approach to more reformatory framework or approach. Customary criminal justice systems mainly or majorly focused on punishment deterrence and the revenge toward the society against the offenders. However modern social legal developments have made the need to reform the offenders to make sure to reintegrate them into society as responsible citizens of a society. This article majorly examines the paradigm shift in penal philosophy from retributive to reformatory justice. It explores the evolution of punishment theories, the role of rights of humans, constitutional values, judicial approaches and interpretations in shaping the ongoing penal policies. Further this article analyzes the pros and cons or challenges of reformatory justice and highlights the importance of balancing societal protection with offender rehabilitation. Although from a social legal perspective this article argues that reformatory justice is more approachable with democratic values of a country or a society, human dignity and sustainable social order for social welfare.

Keywords: retributive justice, reformatory justice, criminal interpretation, punishment, criminal justice system, penal philosophy.

INTRODUCTION

It has been seen that punishment has always been an essential element of majorly every legal system. Since the traditional or ancient time we see society has developed many methods to punish the offenders to maintain the law and order in a society and to make sure to decrease the criminal activities. Firstly, the criminal justice system was suppressed by harsh or barbarous and revenge-oriented punishment for example capital punishments, corporal punishment and imprisonment under the conditions which are not supported by the humanity at all. The primary goal of punishment in those times were revenge and reprisal instead of rectification of wrongdoer.

Over the time psychological, philosophical, social and legal developments led into the understanding of punishment and crime. Today's criminology recognize that crime is not majorly and particular individual act of devil or evil but is often so many times it happens that it influenced by economical, social, psychological, philosophical and environmental factors also which affects the person's mentality. According to the societal pressure this realization gives us a result in a paradigm shift in penal philosophy majorly from retributive and deterrence approaches to reformative and rehabilitative approaches for the betterment of our society.

Reformative theory of criminology highlights the changing behavior and the mindset of wrongdoer through some factors such as counseling of a person, literacy or education, vocal training and exchange of thoughts among society. Contemporary democratic societies majorly sees prisoners as humans who have possession of fundamental rights and their dignity. Subsequently today's penal system majorly focuses on rehabilitation rather than granting a punishment to the offender. This article primarily examines the historical evolution of penal philosophy and evaluates the increasing importance of reformative justice in current criminal jurisprudence.

CONTENT OF ARTICLE

EVOLUTION OF PENAL PHILOSOPHY

Historically penal philosophy consider the evolution of civilization of humans and legal awareness. In age old societies punishment was majorly based on revenge and reprisal. The principal of "Tit for Tat" and "eye for an eye" is majorly followed principal for early legal

system. Penalizing were harsh and is of nature to create fear among citizens.

At the time of medieval period penalizing become even more cruel. Public executions, torture and physical harassments these all were commonly used things to maintain authority and discipline among the society. The criminal justice system was more focused and concerned with the fact of protecting the rulers and maintaining social and political control rather than ensuring justice and fairness among the society.

18th century brought some changes in the thought process of punishments. Intellectuals like Jeremy Bentham criticized harsh punishments and supports reasonable and balanced penal system. Another thinker Beccaria says that penal punishment shall be balanced, in proportion and focuses on decreasing the crime rather than making it worse. Bentham's philosophy of utilitarian highlights increasing social welfare and decreasing unnecessary discomfort.

In 20th century the sociological studies states the new philosophy. Thinkers recognizes that the criminal behavior is mostly the result of lack of literacy or education, poverty, background of family, mental illness and inequality among the society. As a result the consideration shifted towards social reintegration and rehabilitation of the wrongdoers.

THEORIES OF PUNISHMENT

Primarily there are 4 theories of punishment:

- ❖ **Retributive Theory:** This theory is made on the idea that the wrong t deserves penalizing because they have committed the offence against the society. It says it's a duty of person to be morally accountable and proportional for punishment. As per this theory punishment is clarified as a form of Revenge towards the person with whom the wrong is done. Although retributive theory satisfy emotions of public and focuses on reinforcement of legal authorities. It fail to focus on the major cause of crime and support the further criminal behavior.
- ❖ **Deterrent theory:** This theory focuses on prevention of crime by making a fear of penalization among the persons. It includes some particular deterrence which prevents the wrongdoer from repeating the same crime or any other crime and public utterance which decreases others from committing the same amount of wrong. However major

rely on deterrence may result in cruel punishments that may violate the fundamental rights or human rights and fail to rehabilitate wrongdoers.

- ❖ **Preventive theory:** this theory seeks to save society by debilitating wrong towards by imprisonment, capital punishment or other restrictions which are helpful for the fundamental rights of a person. The purpose is to prevent the wrong doers from causing harm to others. Taken measures in shorts social safety which is temporary they do not compulsory reform the wrong over or make sure any underline criminal tendencies.
- ❖ **Reformative Theory:** this theory represents the today's approach towards punishment. It sees the crime as a psychological and social issue speed of a moral failing. The primary purpose is to reform the wrong to us by giving them education, training, counselling, rehabilitation programs and social awareness. This theory states that wrongdoers or offenders can become more productive for the society if proper opportunities and support will be given to them by society. Reformative theory supports humanitarian values with constitutional principles of human dignity and equality.

THE PARADIGM SHIFT TOWARD REFORMATIVE JUSTICE

The shift from attributive theory to reformative theory has been manipulated or influenced by many factors like social legal constitutional and psychological developments.

Human Rights - today's human right movement have influenced the manner of penal reform across the world. International declarations like Universal declaration of human rights (udhrc) and the international convent on civil and political rights reserved the dignity and human treatment of prisoners. Inhumane punishments, torture and harsh punishments are now widely condemned.

Constitutional Developments: Countries which follows democracy like India constitutional and fundamental rights plays a very important role in shaping the female policies. Right to life and personal liberty under article 21 of the Indian constitution broadly interprets conclude the rights of prisoners and under trial prisoners also. Constitution of India and Indian codes have so many times says that prisoners are also entitle to human dignity and cannot be subject to in human treatment just because they are offenders of crime.

Judicial Review: judiciary has played a very crucial role in promoting reformative justice

system. Judicial system has encouraged legal- aid system, prisoner reforms, speedy trials, parole systems, open prisons and rehabilitation programs. Judiciary says that judicial decisions have promoted the importance of balancing punishment with reasonable lens and protecting human dignity.

Sociological Effect: today's criminology highlights the poverty, education, social inequalities, unemployment, family instability, societal pressure, substance abuse majorly reflects a person towards criminal behaviour. However, punishing an offender without knowing the factors will not reduce crime effectively.

IMPORTANCE OF REFORMATIVE JUSTICE SYSTEM

Restoration of offenders: Restoration helps the offenders to develop positive behaviour and reintegrate into the society. Counselling, educational programs and vocational programs improves the chances of an offender which leads lawful life after release from prison.

Reducing Reversion: many of studies have shown that reformatory system is more effective it reduces repetitive offences as compared to pure punitive elements. Skill development and counselling may helps the wrong to us to avoid criminal activities in mere future.

Human perspective: reformatory justice system increases the social responsibility, dignity, equality and compassion. This approach says that offenders are capable as individually to change instead of becoming and permanent criminal, but for that society also needs to see that person with normal eyes.

Social Approach: rehabilitation approach benefits the society by making an offender into and protective citizen of a society. It reduces social dis harmony and promotes the long term piece in the society. Social approach affects the rehabilitation majorly because society is the main factors which helps an offender to change their mind set to become an normal person brother then an criminal.

CHALLENGES WHILE IMPLEMENTING REFORMATIVE JUSTICE SYSTEM

Despite of so many advantages reformatory justice system faces so many challenges

❖ **Lackness in Resources:** Rehabilitation programs need professionals who are trained

properly literacy or educational facilities, sociological and psychological, counsellings and financially support which is majorly insufficient. Due to the lack of resources prisoners have to face so many things while living in the prisons.

- ❖ **Overcrowded prisons:** prisoners suffer overcrowding in the prisons which shows their poor infrastructure and inadequate rehabilitation facilities which effects the prisons hygiene and mental state of a prisoner. All these condition hampers the meaning full effort of reformative justice system.
- ❖ **Harsh Punishments:** in cases which are heinous in nature and serious crimes, public opinion frequently favor's Harsh punishment rather than a chance of rehabilitation to the offender.
- ❖ **Habitual or Repeat Offenders:** it has been seen that some of the offenders miss use the reformative approaches and measures instead of reforming their nature the continue the criminal behaviour. That's why the reformative justice system shall be implemented carefully with proper mechanisms and measures.

REFORMATIVE JUSTICE SYSTEM IN INDIA

India has frequently embraced reformative justice system with its criminal justice system so many initiatives demonstrate the shift which are:

- Legal aid
- Parole and probation system
- Journal justice system
- Open prison reforms
- Educational and vocational training for prisoners in prison
- Rehabilitation programs and counselling programs

The supreme court of India constantly emphasize the right of prisoners and measures for prison reforms. Judiciary says that punishment shall not destroy the human dignity of any

offenders. Majorly the challenges such as delay in trials, violence during the custody, overcrowded prisons, lack of awareness, lack of rehabilitation and lack of resources continuous to effect the reformatory justice system in India.

CONCLUSION

The Paradigm shift in penitentiary philosophy effects the historical evolution of society from retribution-based justice to more human approach and reformatory approach. While traditional theories of punishment primary focused on deterrence form and modern criminal justice system increasingly recognize the advantages of social reintegration and rehabilitation.

Reformatory justice system believe that individual have a capacity to change their behaviour and that society will be benefited from rehabilitation approaches rather than punishment approach. It focuses and aligns with constitutional approach, fundamental rights, human rights and today's sociological and psychological understanding of crime and criminal behaviour.

However, for the effective implementation of reformatory justice system requires strong support from institutions there shall be public awareness prison reforms system should be there and proper rehabilitation infrastructure should be there. A balanced and reasonable penitentiary system shall save the society rather than preserving the human dignity and potential which can reform the offenders. Overall, the success of criminal justice system does not lie in punishing the criminals and the wrong towards instead of that it believes in transforming the offenders into responsible and law-abiding citizen of a society.

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