
CRIMINAL JUSTICE SYSTEM AND THE ROLE OF PUNISHMENTS IN SOCIETY- A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT

The concept of crime has been a very predominant trait of the human being itself when his actions infringe the rights of others. Along with defining punishments in the criminal law justice system, the concept of punishment has been an inherent part of the growth of criminal law jurisprudence. However, the aspect of punishments in the criminal law justice system is of great uncertainty when it comes to the output it has yielded to the society i.e the question of whether punishments have deterred crimes or it has made any less evil is a question unanswerable in a single dimension. Thus, this research project will majorly focus on how the concept of crime and punishment evolve eventually in society and will analyze the work of very famous philosophers in this field such as Michel Foucault, H.L.A. Hart etc. The research will further move on to critically analyze the effect of punishments that is tangibly seen in society concerning the rehabilitation of criminals and mitigation of crimes. Concepts like recidivism will also be discussed in the research under the purview of the effect of punishments. Concomitantly, the entire discourse will be a comparative analysis of different theories by different philosophers, Indian and International law and also about capital punishments.

Introduction:

Since the origin of this concept called ‘Crime’ or ‘Offense punishable by law’ in the 14th century, human beings have always been very associated with that phenomenon. And since when the father of criminology, Cesare Lombroso started studying crimes under a discipline known as criminology, it has been a very inherent part of jurisprudential studies.¹

The concept of crime has been a very predominant trait of the human being itself that his actions always tend to infringe the rights of others. Besides the mere definition of different crimes and punishments in the criminal law justice system, the concept of punishment has been an inherent area of debate and discussion and has been a very dynamic portion of criminal law jurisprudence. However, the aspect of punishments in the criminal law justice system is of great uncertainty when it comes to the output it has yielded to the society i.e the question of whether punishments have deterred crimes or it has made any less evil is a question unanswerable in a single dimension. When the debate around punishments is taken up, one idea that strikes the readers is the legitimacy of capital punishment. People who support the death penalty believe that if a person takes away or infringes the right to life of one person, then he has forfeited his right to live according to the law.² In contrast, the abolitionists put forward an argument that the death penalty takes away the person’s fundamental right to live in a very inhumane and degrading manner which they believe no law has the competency to perform.³ Besides, a lot of human rights activists, non-governmental organizations and civil rights advocates have constantly exhibited their disapproval of this entire penitentiary system itself. All of these aspects have become a great discourse and been an inherent part of the curriculum for students of law, criminology etc. Thus, this research project will majorly focus on how the concept of crime and punishment evolve eventually in society and will analyze the work of very famous philosophers in this field such as Michel Foucault, H.L.A. Hart etc. The research will further move on to critically analyze the effect of punishments that is tangibly seen in society concerning the rehabilitation of criminals and mitigation of crimes. Concomitantly, the entire

¹ Becky Little, What Type of Criminal Are You? 19th-Century Doctors Claimed to Know by Your Face HISTORY (2019), <https://www.history.com/news/born-criminal-theory-criminology#:~:text=%E2%80%9CHe%20was%20the%20first%20person,about%20female%20crime%2C%20she%20explains.&text=As%20an%20expert%2C%20Lombroso%20sometimes%20provided%20advice%20in%20criminal%20cases>. (last visited May 13, 2021).

² Robert Hoag, Capital Punishment | Internet Encyclopedia of Philosophy Iep.utm.edu (2021), <https://iep.utm.edu/cap-puni/> (last visited May 13, 2021).

³ Roger Hood, Capital punishment - Arguments for and against capital punishment Encyclopedia Britannica (2021), <https://www.britannica.com/topic/capital-punishment/Arguments-for-and-against-capital-punishment> (last visited May 13, 2021).

research paper will be a comparative analysis of different theories by different philosophers, Indian and International law and also about capital punishments.

2.Origin and Evolution of Crime and Punishment:

In ancient times, crime was highly connected to the concept of religion and property. In those times, the Church was the head of the state and it looked after the social discipline, taught the Christian morals and protect the church property. In such regard, sins, blasphemy and immoral behaviour were all watched by the church and regarded as crimes. The contribution and the influence of the church in the criminal justice system are much realized in several court halls across the globe, especially in the US, which has shown depictions of the ten commandments or that feature a sculpture of Moses bearing the ten commandments in the precinct outside.⁴ Religion in such a manner has much to do with the criminal law justice system and law in general. Many criminologists state that in the study of crimes, the first thing to be considered is the environment in which the crime is committed and how influential was that environment.⁵ When the city of London saw a great plague in the year 1665, it lost around 15 to 20 per cent of its population in a span of one year (1665-1666).⁶ At that time, Daniel Defoe, a boy aged 5 witnesses all the havoc that was occurring including the great fire and other struggles and around 50 years later, he published a book named “A Journal of the Plague Year”.⁷ In this book, the author has given a real circumstantial understanding of crime. During the plague, the city was suffering from medical illness and adding to it, there were a lot of robberies committed even in such a dreadful period. The book noted that people broke into houses of dead and infected people even without the fear of infection and would loot things. These were all carried out by the fearless women who were employed to treat the ill and were looting those victim’s houses.⁸ Here, the crime of robbery is not because they intend to loot but to survive in the pandemic times where people were starving at one end. Such is the historical connection between crime and its environment. Similarly, when the Yellow fever epidemic hit Memphis in 1879, nurses

⁴The history of crime, FutureLearn (2021), <https://www.futurelearn.com/info/courses/crime-justice-society/0/steps/10788> (last visited May 13, 2021).

⁵Richard Dugdale, Origin of Crime in Society (Part I) The Atlantic (2021), <https://www.theatlantic.com/magazine/archive/1881/10/origin-of-crime-in-society-part-i/521400/> (last visited May 13, 2021).

⁶Becky Little, When London Faced a Pandemic—And a Devastating Fire HISTORY (2021), <https://www.history.com/news/plague-pandemic-great-fire> (last visited May 13, 2021).

⁷ Sam Jordison, A Journal of the Plague Year by Daniel Defoe is our reading group book for May the Guardian (2021), <https://www.theguardian.com/books/booksblog/2020/apr/28/a-journal-of-the-plague-year-by-daniel-defoe-is-our-reading-group-book-for-may> (last visited May 13, 2021).

⁸ Daniel Defoe, *A Journal of the Plague Year*, 35 International Journal of Epidemiology (2006), <https://www.gutenberg.org/files/376/376-h/376-h.htm>.

stole clothes and silverware from the patient's house and even the committee has to be organized to prevent the plunder of the closed stores and dwellings.⁹ When there is such distortion in the social order, men tend to commit crime for his benefit without caring that he is infringing someone else's rights. But there are general instances where men of the privileged class tend to exploit the vulnerable which is also a crime against that person.

2.1. Need for Punishment:

When crime happened much and human violated fellow men's rights, there was an absolute need for punishments. When social order was disrupting and man in his pursuit of liberty created chaos and encroached upon another right in the way of crime, creating an acute need of regulation and restriction of his action and that is where the real reason behind law was hidden. Thus the law was established by the sovereign and punishments were imposed on criminals who commit crimes. In the great words of Former Associate Justice of the Supreme Court of the United States, Oliver Wendell Holmes Jr., crime and punishment always go together, "a mystic bond between the two".¹⁰ Some of the human motives reflect a sense of despot or disturber and his act plunges the society into chaos. Such motives were necessary to be restrained through a violent method known as punishment.¹¹ motives, therefore, that strike the senses, were necessary to prevent the despotism of each individual from plunging society into its former chaos. Such motives are the punishment established against the infractors of the laws. MacDougal defines it as "the binary compound of anger and positive self-feeling."¹² A very simple can be a dog biting someone who hurts it and a bee biting any intruder. It is because of some need for protection of defence that they are doing this. Similarly to understand the origin of punishments, it is requisite for someone to realize that the creation of punishments is a result of anger and irritation towards an action done by some individual who is under the watch of a government.¹³ Thus, began the evolution of punishment, but the problem was that in the beginning, the crime and the punishment did not match i.e often the punishments given were

⁹ Thomas H Baker, *YELLOWJACK: The Yellow Fever Epidemic of 1878 in Memphis, Tennessee*, 42 The Johns Hopkins University Press (2021).

¹⁰ OW Holmes, *The Common Law* (1881), (London: Macmillan 1968) p. 37.

¹¹ M. De VOLTAIRE, *Cesare Bonesana di Beccaria, An Essay on Crimes and Punishments [1764]*, Online Library of Liberty (2011).

¹² Deogaonkar Anant R, *Reformation, Rehabilitation and Treatment*, 3 NCRB Journal 43 (2021).

¹³ A. Warren Stearns, *The Evolution of Punishment*, 27 Journal of Criminal Law and Criminology (1931-1951) 219 (1936).

very painful and higher degree when compared to the nature of the crime. This is the reason why a lot of philosophers came up with their argument for balancing the both.

2.2. Chronological Evolution of Punishment

The first set of punishments in history is believed to be given out by King Hammurabi, a Babylonian king who ruled from 1792 to 1750 BC. The punishments set out by him was under the Hammurabi Code which was very harsh including, the chopping of the criminal's tongue, ears and the punishment was also discriminative based on status, gender and class.¹⁴ Later, seeing the gruesome and inhumane manner in which criminals were treated many philosophers including Plato and Socrates gave their thought. They both went on to analyze the reasons for the crimes being committed and Plato said that people for committing crimes and behave in this manner have pathological reasons for the same and one such reason being the lack of education and wealth.¹⁵ Plato's argument towards punishment was that crime and punishment should be of the same degree and the motive needs to be understood. A man stealing bread for himself must comparatively receive higher punishment than a man stealing food for his starving family. Aristotle wanted punishments should be in a manner to reduce the number of crimes in society.¹⁶ Then on in the middle age, when Christianity was at its raise, religion played its stake in the law of the land and revolutionized the shape of the criminal law justice system. Every wrongdoer was considered to be someone committing a crime against God and the punishment was deemed to be coming from god.¹⁷ In those periods, the method of punishment of 'Trial by Ordeal' was performed to find the guilt of the accused in England.¹⁸ Then after centuries, when the state got detached from the church, Cesare Beccaria, a well known Italian criminologist from the 18th century argued that the degree of punishment and the degree of crime must match, else the punishment is too harsh, inhumane and it will never serve its purpose of deterrence i.e such punishments won't help reduce crimes.¹⁹ Then after the 19th and 20th centuries, there changed a lot in the system of punishment with the advent of the human rights movement across various

¹⁴Code of Hammurabi, HISTORY (2021), <https://www.history.com/topics/ancient-history/hammurabi> (last visited May 13, 2021).

¹⁵Lorraine Smith Pangle, *Moral and Criminal Responsibility in Plato's Laws*, 103 American Political Science Review 469-471 (2009).

¹⁶History of Crime & Punishment | How Criminology Has Evolved, Volocars.com (2021), <https://www.volocars.com/blog/history-of-crime-and-punishment> (last visited May 13, 2021).

¹⁷Maria Isabel Caplazi, *The Interconnection Between Law and Christianity in Medieval England*, Young Historians Conference (2017).

¹⁸Duncan Leatherdale, Trial by ordeal: When fire and water determined guilt BBC News (2021), <https://www.bbc.com/news/uk-45799443> (last visited May 13, 2021).

¹⁹Kalyn P. Hoggard, *On Crime, Punishment, and Reform of the Criminal Justice System*, Athene Noctua: Undergraduate Philosophy Journal (2013).

places in the world. This along with the birth of the prison system brought many revolutions and today, in the modern-day justice system, the picture is very different. The 20th century saw most countries becoming independent and forming democracies, creating their constitution and other legislation ultimately bringing an organized legal framework and the criminal law justice system yielded a fair and just array of punishments for the corresponding crimes.

3. Purpose of Punishments and its effect on society:

In a very pivotal form, the concept of punishment could be connected to the family concerning a parent's approach towards his child. For instance, a child does some mistake and the parent wants the child not to repeat it and to attain that goal, she can take various methods broadly two, the first one being a punishment, a rather harsh one wherein she perhaps beats the child and tells her not to repeat and another method is to advise the child not to do without any harsh punishment. But the underlining question here is whether the probability of the child deterring from doing the mistake again is high in the first method or the second. These two methods are coined as the retributive and the utilitarian approach of punishment by our criminologists and philosophers. During the eighteenth century, one of the greatest advocates of the utilitarian perspective of punishment is Jeremy Bentham, who in his y Jeremy Bentham in his *An Introduction to the Principles of Morals and Legislation*.²⁰

3.1. Utilitarian Theory of Punishment:

Bentham says the utilitarian government should focus only on people's happiness and never do anything to dismay the people and it applies to both private individuals and government.²¹ Bentham says, "General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence, which has been, committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all."²² What one could infer from Bentham's words is that the punishment should be imposed only when it is tangibly evident that it is the only way the state

²⁰David W. Carrithers, "MONTESQUIEU'S PHILOSOPHY OF PUNISHMENT." *History of Political Thought*, vol. 19, no. 2, 1998, pp. 213–240. *JSTOR*, www.jstor.org/stable/26217503. Accessed 13 May 2021.

²¹Charles Silver, *An Introduction to the Principles of Morals and Legislation. Jeremy Bentham*, J. H. Burns, H. L. A. Hart *Essays on Bentham: Jurisprudence and Political Theory*. H. L. A. Hart, 94 *Ethics* 355-356 (1984).

²²Anthony J. Draper, *An Introduction to Jeremy Bentham's Theory of Punishment*, 5 *Journal of Bentham Studies* (2002).

can stop him and other such criminals from doing that act otherwise, punishment will be adding evil to the already committed crime ultimately reversing its objective. The theory simply says that both crime and punishment are evil but if the amount of the evil by punishment exceeds the crime, then the punishment would only be creating more evil to the society. This theory by Bentham is the utilitarianism by which he advocates to maximise pleasure and minimize the pain incurred by people. This theory finds its parallel with the deterrence theory of punishment.

3.2. Deterrence Theory of Punishment

Thomas Hobbes, an English philosopher says that human beings by nature are neither bad nor good but or individuals who in the course of attaining their self-centred goals harm others very well knowing that it will happen and lead to inevitable conflict and crime. He now connects the concept of crime and punishment very much with the social contract theory. The Hobbesian view suggests that people mitigate the conflict between them agreed to a social contract by which he authorizes a sovereign to use force on him to maintain peace and order and to reduce conflicts. This power he gave to the sovereign is the authority to punish. Now he states that it is for the reason of deterrence that the sovereign uses force and punishes that the sovereign wants to maintain peace and order to uphold the social contract.²³ This principle is called the deterrence theory of punishment.

Cesare Beccaria, a famous Italian criminologist of the eighteenth century was worried about the quantum of punishment. He said that the main effect of punishment is and must be reducing crimes in society. In such a case, if the punishments are very severe than the crime, then its purpose won't get justified, it will never reduce the crime rather will increase the crime. In his idea, punishment, to be effective and useful, must be swift, proportional and he had a deep connection towards the social contract theory and believed that people know to govern their actions or else it will turn repressive and capricious. Beccaria besides speaking about the proportionality of the punishment also strongly dismisses tortures and barbaric punishments and he feels that making a man resist a pain he is unable to undergo is unjust and inhumane. He also opposes capital punishment "that execution, in general, inures people to violence and in some cases even has the effect of glorifying the criminal by turning him or her into a martyr, thereby encouraging rather than deterring the crime committed."²⁴ In the United States,

²³Celeste Friend, Social Contract Theory | Internet Encyclopedia of Philosophy Iep.utm.edu (2021), <https://iep.utm.edu/soc-cont/> (last visited May 13, 2021).

²⁴Kalyn P. Hoggard, *On Crime, Punishment, and Reform of the Criminal Justice System*, Athene Noctua: Undergraduate Philosophy Journal (2013).

Supreme Court case of *Trop v. Dulles* (1958) 356 US 86, Justice William J. Brennan Jr. said that even though rehabilitation can be considered as one of the many purposes of the criminal law, the fact that the criminal law justice system must deter crimes from happening is also of importance. Deterrence of the crimes by the threat of punishment and insulation of society from dangerous individuals by imprisonment or execution is one of the primary goals.²⁵

3.3. Retributive Theory of Punishment:

Taking a tectonic shift from the deterrence or the utilitarian theory, the retributive perception of punishment reflects an opinion that one who commits a crime deserves punishment. This retributive theory of punishment is based on the idea of “an eye for an eye”.²⁶ This theory promotes or based on the idea of vengeance and revenge but not a society pursuing security and welfare. This can be very much related to the Indian context people feminists and other activists demand the perpetrator in a rape crime to be hanged. Under this theory, the underlining purpose is that it gives a kind of mental satisfaction to the family of the victim. Even though the legislation necessitates it, in most cases it is for the vengeful pleasure of the victim in a crime that a criminal is imprisoned according to this theory. John Mitchell Finnis, an Australian legal philosopher and jurist favours this retributive theory saying that retribution is the best method to balance the fairness and equity in the distribution of good and bad of a person by restraint (by way of punishments). This theory hits the core of the crime and thus advocates harsh punishments without mercy towards criminals. On the merits of this approach, the criminal law justice system creates a high degree of anger and feeling of revenge against the criminal. Walter Hamilton Moberly, a British Jurist was also a favourer of the retributive theory that he said punishment is something which is given to a man who deserves it. In his opinion, it is a manifestation of society’s indignation towards a person who commits a crime.²⁷ According to these philosophers, the punishment was not something about the output of effect it created in the society rather it is a due that the person who commits it must receive.

Even the Indian judiciary has spoken about the retributive system of punishment in several cases. In the case of *Bachan Singh vs the State Of Punjab*, the Supreme Court opined that even though the retributive system can be harsh at times when the circumstance of the case shows that the crime is so grievous that it impacted the victim’s life so much, the retributive

²⁵ *Trop v. Dulles*, (1958) 356 US 86

²⁶ Matthew (5:38-42), The Holy Bible.

²⁷ A. H. Lesser, *The Ethics of Punishment*. Walter Moberly, 79 Ethics 242-243 (1969).

punishments can't be deemed as old school or rather not outmoded.²⁸ Another German philosopher named Immanuel Kant justifies the retributive system in his style. In his opinion, crime and punishment should be fulfilling the proportionality of morality and justice and in the process of justification of punishment, guilt should be a requisite determinant (adequate element). For him, all human beings ought to enjoy all legal rights and freedom and if any person tries to interfere with the rights of another, he eventually forfeits his right by which he attracts punishment.²⁹ This is Kant's viewpoint towards the retributive system.

3.4. Preventive Theory of Punishment:

Another important theory of punishment is the preventive theory which takes a retrospective approach towards the crime that prevents crime from happening by disabling the criminal rather than by punishing after the crime happens. In this theory, the law is said to create a sense of fear in the mind of the criminal that he refrains from committing it. It involves the instillation of fear, disabling the criminals, reforming the criminal or educating them. Many may by now wonder which theory is ideal and which is not fit for this era, however, the truth is that every theory has its own merits and demerits and the judiciary applies it according to the circumstance of the case. In the case of *Dr Jacob George vs the State Of Kerala*, the Supreme Court opined that the four theories of punishment are different and beneficial to the society in their way, but the judiciary is the one that should look into the merits of the case and decide accordingly. In this case, the accused has already undergone 2 months of incarceration and also considering his profession, (medical practitioner) the court said that his prior imprisonment would have already been an eye-opener for the accused and that he will never commit the crime again i.e. the punishment already received will prevent him from committing further crimes.³⁰ Thus, the court took the preventive theory in this case. In the infamous case of *Mukesh & Anr vs State For Nct Of Delhi*, the Supreme Court gave a death sentence to four of the accused and 1 juvenile was sent to the juvenile home.³¹ So if one could observe this case, the 4 accused were treated in the retributive theory of punishment whereas the juvenile was subject to the preventive theory of punishment considering his age and other factors. Thus, the application of the theory of punishment and the effect it has on society is according to the circumstances of each case.

²⁸ *Bachan Singh vs State Of Punjab*, AIR 1980 SC 898

²⁹ Mary Gregor, *Immanuel Kant: Groundwork of the Metaphysics of Morals*, 36 Cambridge University Press, (1997).

³⁰ *Dr Jacob George vs State Of Kerala*, 1994 SCC (3) 430

³¹ *Mukesh & Anr. v. State for NCT of Delhi & Ors*, Criminal Appeal Nos. 609-610 OF 2017

3.5. Reformatory Theory of Punishment:

The last and the theory used in India is the reformatory theory of punishment. This is an approach wherein the criminal are given a chance and the opportunity to reform themselves and is a widely accepted theory of punishment in the modern-day justice system. This theory focuses on reforming and rehabilitating the criminal or the offender to convert him a=into a law-abiding citizen. The very best relatable system of this theory is the way the law treats juveniles. In the Indian context, the Reformatory Schools Act, 1860 is a classic example of this theory of punishment. Other Indian laws like the children Act, 1960 and The Probation of Offenders Act, 1958 which aim directly to give offenders a chance to rehabilitate themselves are pieces of evidence that India follows the retributive system of punishment. The Supreme Court case of *Rattan Lal vs the State Of Punjab* is important in the Indian penal system because in this case the probation offenders act was applied and the modern liberal reformatory method was established.³² The same was reiterated in the case of *Musa Khan v. State of Maharashtra* that juvenile offenders can be prevented from doing the mistake again using probation.³³ This theory of punishment is in the present-day system supported and appreciated by many criminologists, psychologists and activists as it shows the effect and purpose of punishment very clear. The purpose is to reform offenders and make them realize their wrong act so that they never repeat it. Its aim is neither to create a sense of terror or fear in the mind of a criminal like the deterrence theory and preventive theory nor to express the anger towards the criminal by harsh punishments like the retributive theory.

4. Punishment vs Human Rights:

Whatever the aim of punishment is, it is for sure infringing an individual's rights in some form but concerning some contingencies. As it is so, the origin of the human rights movement all across the globe has been a huge confrontation to the concept of punishment itself. From an international perspective, the US Declaration of Independence adopted in 1776, the US Bill of Rights drafted in 1791, and the French Declaration of the Rights of the Man and the Citizen in 1789 are the major documents of the human rights movement in an international arena to stand opposite to harsh punishments.³⁴ However, the foundation for all of these was laid far back in

³² *Rattan Lal vs State Of Punjab*, 1964 SCR (7) 676

³³ *Musa Khan v. State of Maharashtra*, AIR 1976 SC 2566

³⁴ The Background of Human Rights, Youthforhumanrights.org (2021), <https://www.youthforhumanrights.org/course/lesson/background-of-human-rights/the-background-of-human-rights.html> (last visited May 13, 2021).

the English soil including the Magna Carta of 1215, the petition of rights in 1628 and only then, the US constitution and all come to existence.³⁵ After all, these happened these human rights movements altogether took an unravelled classical jump from the 17th century to the 20th century i.e to the San Francisco Conference of 1945 where the promotion of human rights was included among the purposes of the United Nations.³⁶ The doctrine of Habeus Corpus also played a major role in the human rights movement against punishments and it still finds it relevant much in constitutional courts against arbitrary arrests.

4.1. 20th Century Human Rights Movement:

The Human Rights movement found its pace highest in the 20th century after the two deadliest wars that history has ever witnessed. During these two wars, the kind of devastation that has occurred to the human race is immeasurable. Almost the entire world participated in the war and human lives were easily sparred with bloodshed all over. The interesting fact about the human rights movement during the 20th century is that it almost seems like a paradox. The manifestation of the human rights movement both opposed and advocated punishments. To understand this narrative, one must analyze wartime and nation politics closely. First, why did people favoured punishments if they were fighting for human rights? It is a fact that the war had killed millions and this happened because of several politicians across the globe. People and the world legal system didn't want to spare these criminals and thus, the people responsible for war were charged with crimes of war, crimes of aggression and crimes against humanity. One of the very famous trials to punish these war criminals, specifically those who committed crimes in Germany during Hitler's regime. These defendants included Nazi party leaders, government officials, military generals and lawyers.³⁷ Besides, another important trial took place in 1946-1948 to try the Japanese war criminals and the International Military Tribunal for the Far East held all the defendants guilty and were subject to rigorous punishments including the death sentence.³⁸ In this scenario, it was for upholding human rights that these war criminals were punished concerning the retributive system of punishment. These criminals

³⁵ Christopher Warwick, The Strange Case of the Law, episode 2 of 3, The Pursuit of Liberty, <https://www.youtube.com/watch?v=rK1P6CPT4bg>, December 16, 2013.

³⁶ Jan Herman Burges, 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century' (1992) 14 Human Rights Quarterly, p.447, 448..

³⁷ Nuremberg Trials, HISTORY (2021), <https://www.history.com/topics/world-war-ii/nuremberg-trials> (last visited May 13, 2021).

³⁸ Milestones: 1945–1952 - Office of the Historian, History.state.gov (2021), <https://history.state.gov/milestones/1945-1952/nuremberg#:~:text=The%20Tokyo%20War%20Crimes%20Trials%20took%20place%20from%20May%201946,defendants%20died%20during%20the%20trial.> (last visited May 13, 2021).

must be upheld to uphold human rights. After this, the birth of the United Nations was a great benchmark in the journey of international human rights.

The second aspect of the 20th-century human rights movement is the disapproval of harsh punishments. This can also be traced towards people's disagreement towards Hitler's way of punishing people and putting them under grievous torture. An important aspect to be realized in this period is the birth of the United Nations. Along with its birth were born the United Nations Declaration of Human Rights in 1948, International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights in 1966 etc ensured people's human rights from all kinds of inhumane treatments. In addition, the independence of individual nations and their constitution has established their human rights in their respective nations. For instance, article 14, 20, 21, 22 of the Indian constitution ensures the human rights of a citizen from being subject to unfair rigorous punishment and unarbitrary arrests.

4.2. Capital Punishment vs Human Rights:

When one thinks of the human rights movement concerning punishments, capital punishment is one controversial idea that strikes the mind. In the 20th century, several activists have stood against capital punishment and some countries abolished them too. The report produced by Amnesty International says that by 2013, two-thirds of the world's population have abolished the death penalty. 98 of the world countries have completely abolished the death penalty, seven countries have abolished it for ordinary crimes i.e it can only be applied in exceptional cases and another 35 are considered as abolitionist and only 58 countries still retain capital punishment.³⁹ In the 19th century, many thinkers and philosophers were in favour of the death penalty and John Stuart Mill was very familiar with one of them. In one of his speeches, he said that punishment will always have a deterrent effect on the criminal behaviour of an individual and to deter by inflicting punishments is not just a possible element but the very purpose of penal justice. Courts have also spoken in favour of the death penalty that in the case of *William Henry Furman v. the State of Georgia*, Justice Stewart opined the death penalty as retributive as well as a deterrent that if criminal conduct is so atrocious, society's interest in deterrence and retribution wholly outweighs any considerations of reform or rehabilitation of the perpetrator. He also said that he doesn't believe in the inconclusive empirical evidence that the death penalty

³⁹Death penalty: How many countries still have it?, BBC News (2021), <https://www.bbc.com/news/world-45835584> (last visited May 13, 2021).

never deters crimes.⁴⁰ However today as mentioned above, many countries have unanimously agreed that capital punishment is inhumane and against human rights that most of them had abolished it. People who are against the death penalty feel that it may affect vulnerable people who are not able to get a strong legal representation. For this argument, they rely on the empirical data that people who are subject to the death penalty are mostly people from marginalized communities (especially and economically backwards) and death penalties have either no effect on the crime rates. Thus, the death penalty in general also has lost its scope much in this human rights era.

5. Conclusion:

At the end of this research, the author could ponder on the concept of punishment in a multi-dimensional approach that it has to prevent the crimes, it needs to reform the offenders, it has a purpose of satisfying the victims and ultimately a peaceful society. Several philosophers view on it has been different in their way but they all have their justifications for the same. But, in the modern-day, the reformatory theory of punishment is the most familiar and widely accepted one in the age of human rights and freedom. However, one can never stick to a single theory of punishment at all times as the merits of the case is peculiar and may attract severe punishments in some case. Some criminals have scope for rehabilitation and some don't have. Thus it is very subjective and according to the facts and circumstance of the case wherein the decisive authority is completely upon the judiciary. Thus, at the end of this research, the author claims to the judiciary to carefully analyze the merits of the case and give punishments if necessary in the necessary proportion keeping in mind the purpose of the criminal law justice system i.e to prevail peace and harmony in the society.

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