

INNOVATIVE FORMS OF PUNISHMENT

Shreya Banerjee*

ABSTRACT

The main purpose of punishment is rectify the offender to bring him back to the main course of society. Through punishment it is proved that whatever he has done is wrong. That is through his actions he has harmed an individual or the society at large. Generally imprisonment, fine and capital punishment are the most common type of punishment. This is totally upon the discretion of the judge. But as we all know capital punishment is only awarded in the rearrests of the rear cases, thus, imprisonment is awarded to most. Due to this prisons suffer from over population and overcrowding. At this point of time when the world is battling with Covid-19, we all are advices to maintain social distancing and over population in prison can be life threatening for every prisoner. So this paper focuses on punishments which are creative in nature. These punishments are far away from imprisonment. These are very effective because through this the offenders will get rectified and prisons shall not be over populated. Examples are written in this paper that Learned Judges from many countries have also adopted these creative form of punishment.

Keywords: Punishment, Rectify, and Imprisonment.

*BA LLB, FOURTH YEAR, ADAMAS UNIVERSITY.

INTRODUCTION

“Law is a command of sovereign backed by sanction”

- John Austin

According to the definition of Austin, law is command of sovereign and violation of which may lead to grave consequences. Here, consequences means sanctions. In simple words, if a person willfully does the contrary of what is prescribed in law he must face punishments. Every person who resides in a civilized society, must abide himself by the prescribed laws and if he does not do so he become harmful for the society as a whole. The Indian Penal Code, 1860 provides us with lots of punishments. Each offence has its own kind of punishments. It mainly focuses on allotting punishments like imprisonment, fines and capital punishments. The best example of which can be section 302 of the IPC. It states “whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

But are crime rates really decreasing due to such punishments? That is the main question. It is high time we take a look at the creative and innovative punishments. The main purpose of punishment is rectifying the criminal and bringing him back to the main stream society. In the recent times we often hear punishments which is far away from imprisonment, fine or capital punishment. There are many such examples through which creative and innovative punishments were very much effective. One of such example is a lady who have hit a school bus was punished to hold a cardboard daily in the school time written, “ Only an idiot would drive on the sidewalk to avoid a school bus”. Through this public shaming she got her punishment.

THEORIES OF PUNISHMENT

Punishment is awarded to every criminal according to the gravity of his offence. Mostly there can be four forms of punishment. Let us see what they are:

Retributive Theory:

This is the most ancient form of punishment. According to this theory, the person who have committed an offence must be punished. We have often heard about “An Eye for an Eye, A

Tooth for a tooth". This phrase is completely based on this theory. The punishment according to this theory is of the exact same kind of the offence he has done.

Deterrent Theory:

In simple words deterrence means an action of discouraging an action by creating a fear about its consequences. In deterrence, punishment is designed such that it can educate the criminals. According to this theory, a fear must be put into the offender's head about what will be the last result for the crime he is going to commit. If the offender is already afraid he will restrict himself from committing the crime.

Preventive Theory:

According to this theory of punishment, society must be separated from criminals. This theory believes in disablement of the criminals by awarding them death penalty or putting them into prisons.

Reformative Theory:

This is the most newly developing form of punishment. According to this, every offender must be given a chance to be back to the main course of the society. According to this theory, crime is like a deadly disease, and we must try to treat it with medicines rather than killing the person.

OVER CROWDING IN PRISON

Overcrowding of prisons is one of the major problem faced by India now. The main agenda behind sending a person to prison is correction of himself. To stay away from the society at large. The reason behind it is to keep the offender in isolation so that he cannot commit any further crime or influence any other person to commit crime. But due to overcrowding what is happening is just the opposite. In India prisons of Delhi were the most over populated. Near about seventeen thousand five hundred people were in the prison where the capacity of the prison is only ten thousand. 2019 marked the most highly over populated year in terms of prison. The prisons have a capacity of four lakhs but it was reported at the end of the year that near about five lakh people were registered in prison, which caused this immense overcrowding.

The main reason of this over population in prison is due to the rapid increase of crime rates. Now the question arises why are people so much into crimes? I think the answer is very clear. There are several factors which leads them to commit crime. They are:

- Lack of education
- Drugs
- Lack of employment
- Lack of money
- Poverty
- And of course offenders at times commits crimes with a sole intention to harm others.

But in this time of pandemic, caused due to COVID-19, overcrowding of prison can be very much harmful for every prisoners. At this point of time when we all are always instructed and advised to maintain social distancing over population in prison can be very much threatening to all the prison's life. Virus can be easily transmitted from one prisoner to the other. The government should at least make proper precautions for all the prisoners so that they can at least maintain a social distancing.

LOOKING FORWARD TO INNOVATIVE FORM OF PUNISHMENT

As mentioned earlier the main purpose of punishment is to rectify the offender to bring him back to the main course of the society. Punishment is awarded to make the offender understand that what he has done is wrong. But moving one step ahead from the main stream punishment such as imprisonment and fine and capital punishment the judges these days are focusing on the innovative form of punishment. Unusual sentences are being given by many judges throughout past few years. It must be quite unbelievable but sentences like ordering a man to buy his wife flowers and taking her to dinner to forcing a man who stole wear a signboard written "I am a thief".

The latest case in this growing trend comes from Judge Scott Johansen, who allowed a mother to cut off her daughter's ponytail in his courtroom in exchange for a lighter community service sentence for the thirteen year old. The incident began when the daughter and a friend met a three year old toddler at a local McDonalds in Utah. The older girls then went out, purchased some scissors and then returned to forcibly cut the toddler's ponytail off. The toddler's mother,

Mindy Moss, brought suit against the girls, who each received a sentence of thirty days in juvenile detention and two-hundred and seventy-six hours of community service. Judge Johansen then offered to lower the community service to one-hundred and fifty hours if Valerie Bruno, the thirteen year old's mother, would use a court scissor to cut off her daughter's ponytail in an "eye for eye" style of justice. A few days later Bruno filed a complaint over Johansen's offer.

It is very evident from the above mentioned incident that these kind of punishments can be equally revengeful as retributive theory of punishment is been used. Some countries along with India face a problem of overcrowding of prison. That is the prisoners are exceeding in number than the total capacity of the prison cells. The main motive behind putting the prisoner in jail is keeping them in isolation. That is, to separate them from the entire society to make them realize their action was against the society. It was wrong. Here, due to the overpopulation the main motive is not being fulfilled. Inside the prison they come in contact with more prisoner which serves no purpose of putting a person in jail. Rather than that, if he would have been given some innovative punishment which would have server the society at large and also be hard for him to do at the same time. For example if the accused would have been sent to the mountains to break the rocks and build roads there. It would serve the public at large and also it is very hard to do at the same time.

EXAMPLES OF CREATIVE AND INNOVATIVE PUNISHMENTS

1) In 2012 a man in Florida forgot to wish his wife on her birthday. In the course of that argument the man pushed his wife and the wife charged the husband on domestic violence. The judge after hearing the case said he was not going to jail but after leaving the courtroom he must dress up, buy his wife some flowers and take her bawling.

2) A women was arrested for rash driving. She was going to hit a school bus but luckily no one was hurt. The judge suspended her license and took a fine from her. But her main punishment was to stand in place where she committed the crime during the rush hour for two days holding a cardboard written, "Only an idiot would drive on the sidewalk to avoid a school bus".

3) In 2008 a student in Ohio, USA was riding his car with loud rock music. He has disrupted the public peace. The judge noticing that he was a student took only a minimum amount of

fine. But gave him a strange punishment that he had to spend twenty hours listening only to classical music.

4) In 2007 in Thailand two rogue cops were given the punishment of wearing a hello kitty band with their uniform form escaping from their duty.

5) In 2013 just before Christmas, District Judge G. Todd Baugh ordered a man convicted of punching his girlfriend to write “Boys do not hit girls” 5000 times.

6) One Judge Michael Cicconetti in August 2015, as a punishment of an eighteen year old lady two choice. Her offence was she did not pay a cab driver after a thirty miles trip. Her choices were either she has to be in jail for thirty days or or walk for thirty miles.

CONCLUSION

Take a look forward from the main stream punishments like imprisonment, fine and capital punishment innovative and creative form of punishments can also be allotted. Also overcrowding of prisons have been one of a burning issue in course of prison administration. In this time when both crime rate is increasing rapidly and also we are fighting with pandemic innovative forms of punishments and be a very efficient alternative to imprisonment. Many judges of other countries have already adopted to it. Through this the major problem of overpopulation can be taken care of and also the offenders would get the punishment what they deserve. But of course punishing the offenders depends upon the sole discretion of the Learned Judge.

REFERENCES

1. open.lib.umn.edu/criminallaw/chapter/1-5-the-purposes-of-punishment/
2. toppr.com/guides/legal-aptitude/indian-penal-code/theories-and-kinds-of-punishment/
3. eccanherald.com/national/indian-jails-continue-to-remain-overcrowded-770751.html
4. versustexas.com/blog/creative-sentencing/
5. esemag.com/archives/creative-environmental-sentencing-making-the-punishment-fit-the-crime/
6. cliffsnotes.com/study-guides/criminal-justice/sentencing/theories-of-punishment
7. jsslawcollege.in/wp-content/uploads/2013/05/CRITICAL-ANALYSIS-OF-THEORIES-OF-PUNISHMENT1.pdf

