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Difference between Punishment and Reformation

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Punishment is the compulsion employed to uphold the law of the nation, making it one of the cornerstones of contemporary civilisation. A peaceful society and manner of life are the responsibility of the state. Without punishment, laws become ineffective, which ultimately prevents society from maintaining law and order and renders the government unable to protect its inhabitants. However, to safeguard the fundamental rights that every person has a right to, the reformative method to reducing crimes like these and reforming the offenders has emerged. Developed by sociologists, physiologists, and psychologists to create a framework that would allow inmates to receive rehabilitation and be reintegrated into society as regular citizens. The author notes that the technique has been applied to cases involving young offenders and that it has been upheld in several Supreme Court rulings. Rehabilitation aims to fundamentally alter the way criminals behave and think. Similar to how rehabilitation often reduces the chance of future crime via counselling and education. The researcher has used case laws wherever appropriate and supplemented them with reviews of other literature, which is crucial for aiding in their comprehension of all the concepts. An overview of the findings and recommendations rounds out the paper's last section.

Keywords: *punishment, reformation, rehabilitation, sociologists, physiologists, framework.*

INTRODUCTION

It is an outdated assumption that punishing criminals can result in their ethical reconstruction and that, as a result, legal foundations should be built, if at all possible, to a limited extent to

achieve this goal. It is common knowledge that Plato is credited with founding this tradition, and his arguments regarding discipline are astounding. He informs us that anyone acting unfairly should knowingly approach a judge to be rejected, viewing her as a specialist who can prevent "the infection of foul play from being ceaseless and making his spirit rotting and incurable." Another founding father is credited as being G. W. F. Hegel, who widely attested that criminals retain the right to be reformed and are acknowledged as rational beings when the professionals provide it to them. Some modern academics, like R. A. Duff, seem to fit into this change norm, as we may call it, even though they frequently ignore the more reckless situations of the founding fathers.[1]

I examine the idea that punishment should alter the guilty parties in the current presentation. Some notable thinkers, like Duff, can be appropriately portrayed as seeing the substitution of guilty people as one of the true goals of punishment. I then go into depth about how their efforts led to the transformation that we can now see. This is an admonished origination that emphasises regret for poor action and a promise to uphold the law for legitimate causes. In the last section, I claim that consequentialism provides a better account of the role that moral inspiration should play in the legalisation of the substitution of criminal persons. This truth supports an approach to punishment that is consequentialist.

Why does crime occur?

Mental Reasons: Some might be due to human inclination, while others could be a result of an illness. For instance, Mental and Enthusiastic Ailments statistics show that 90% of children in jail suffer from psychological well-being concerns.

Natural Causes: The location of a home's foundation will generally affect crime. Crime has been linked to hardship, terrible training, and destitution. Counting Adolescent Horrific Encounters.

[1] B.N. Mani Tripathi, *Jurisprudence: Legal Theory* (17th edn, Allahabad Law Agency 2006)

Social Reasons: They break the law to blend in with a "pack" or because their friends are shackling them. To brag about other individuals, they break the law. For instance, social factors contribute to long-term drug usage or alcoholism.

Use of illegal drugs: The most significant single factor in crime since it impairs judgement. Individual addicts are frequently involved in crimes; nevertheless, authorities only occasionally find them.

The penal law is a tool for bringing about social change. A strong criminal justice system is essential to the successful operation of the holy democracy. The recovery of the guilty person must be effectively pursued by the criminal equity framework. The goal of punishment in the modern social safety net is a modification of the miscreant, who frequently may be a little sign of severe psychological maladjustment that the broader public itself may be capable of in numerous ways. While keeping in mind globally suggested practices, the current research project intends to build contemporary restorative practices. What part would corrective and rehabilitative measures play in re-establishing the criminal justice system's framework and, more importantly, in re-integrating the offender in India?

PUNISHMENT: A PARADIGM SHIFT

The Indian Penal Code[2] does not define the word "punishment." However, according to an Oxford Word reference, punishment is intended to make a criminal endure their crime. Punishment is the willful infliction of unpleasant experiences upon a person who is otherwise satisfied entirely out of a sincere concern for his welfare. Punishment has been proposed elsewhere as a means of social control. According to Ihering, punishment serves a societal purpose. In Moral Instruction, Durkheim vehemently said that punishment is simply a significant exhibition since, for instance, punishment has no deliberate objective at its core but is developed out of an impassioned and mental response to an infraction that has happened. According to legend, the Code of Hammurabi, which was written around 1780 BC, refers to punishment as “lextalionis”. In Mosaic Code, "A tit for a tat, a tooth for a tooth, a life for a life"

[2] Indian Penal Code 1860

is how the equivalent is defined. In addition, Kant believed that people should be aware of their actions and accept the consequences of them since they are free agents.

According to Jeremy Bentham of the Neo-Traditional School, the primary justification for punishment should be its deterrent effects. The positivism that was influenced by science was considered to have its heyday in the nineteenth century. It eliminated both the ideas of the old-style and the new-traditional schools. It invalidated both the effectiveness of punishment as a deterrent and the proportionality criteria used to determine punishment severity. The focus of punishment shifted from crime to criminal. The punishment is what the guilty party needs, not the fault.

What is currently a well-known piece "What Works?" by Robert Martinson (1974) issued in Public Interest, is directly related to the alteration in restorative administrations. Following an examination of current prison reform initiatives, he determined that, except for a few fragmented rare cases, attempts to reduce recidivism had not been successful up to this moment. This led to the creation of "Nothing Works." Also on the researchers' minds right now: What has to be completed? Additionally, it promoted "toughness" and an outlook that prioritised overcoming obstacles, which increased the number of individuals in jail. It completely altered how people think about remedies. The topic is currently being revisited by analysts, lawmakers, and strategy developers to develop such rehabilitation techniques that would aid the guilty individual in his recovery and reintegration into society.

CONCEPTUAL UNDERPINNINGS OF REHABILITATION METHODS

The recovery of the offender makes the word "Correction" even more appropriate. It is a common phrase that means to "right, rectify, or make right" unlawful behaviour. It is based on the concept of a "self-designing chain," in which the viewer is only a reactor who contributes to the character's progress. According to some, rehabilitation is based on a consequentialist view of punishment. The consequentialism method assumes the sentence's outcome. The third option

is recovery, after prevention and weakening. It also has one notable restriction, which is that people tend to use it only after going through the whole criminal justice system process.[3]

Recovery reveals a false job under the excuse that the offender's dangerous social circumstances led them to commit a crime. As a result, the public must step in, and the offender has a right to accept their help. Another justification is based on utilitarianism, which was developed by Bentham. It is important to follow the path that results in the greatest number of people being happy. The concept of therapeutic equality is also advanced by the recovery theory. In this context, questions concerning the problem can be shortened.

In his book "Principles of Morals and Legislation," Jeremy Bentham stated that a criminal system shouldn't be viewed as barbaric since it has a wide range of penalties[4]. The range and diversity of penalties show the work and thoughts of the legislative body. We will feel the need to use a variety of methods to investigate them as we study a wide range of personalities and situations, as well as the idea of crimes and cognitive processes. The range of penalties offered by a criminal justice system is one of its finest features.

The idea that a weight shared is a weight lessened underlies the restoration of the guilty party in the network. Burglarize White went into great depth in his work regarding the practical establishment of recovery. He also discussed several restorative and rehabilitative techniques. According to him, restoration requires the use of two techniques, such as the equity approach and the welfare approach. When it comes to punishment, the majority of nations in the world base their beliefs on both of these two approaches. Near these two is the third recovery strategy, which emphasises remedial equality.

The two different ways of thinking about network change are integrated into the fundamental way of thinking, where the ideas of network security and responsible party control are mostly the emphasis. This necessitates more oversight of and controls over at-fault parties in network settings. This viewpoint holds that the objective of network improvements is to maintain guilty

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[3] Jeremy Bentham, *The Theory of Legislation* (Lexis Nexis 2007)

[4] *Ibid*

people under tight supervision and by doing so prevent them from reoffending. Community rehabilitation is the process of using persistent, participatory approaches to strengthen network ties and change offender behaviour. From this point forward, the purpose of network alterations is to reduce recidivism by altering behaviour through some kind of reparative or aptitudes-based intervention. The emphasis is on developing skills and self-awareness. The Hazard Need-Responsivity (RNR) Model was designed by D.A. Andrews and J. Bonta and originated in Canada in the 1980s.

The procedure utilised in the criminal equity process to ascertain a person's tendency for detrimental behaviour toward oneself or others is called hazard assessment. They separated risks into groups for static and moving dangers. In the sense that people whose needs are not met may be thought to be in danger of experiencing injury or anything similar, the idea of "need" is linked to risk. Demands are divided into two categories: criminal demands and non-criminal demands. The responsiveness standard also defines how the offender reacts to the interventions made for him. Additionally, it adds that a treatment or remedial plan should be employed after assessing the needs and dangers related to the individual who is being charged with the crime to maximise the success of a restorative approach. The use of restorative systems based on evidence is emphasised as a core aspect of remedial and rehabilitative techniques. Additionally, they created an assessment instrument for this.

INDIAN CORRECTIVE AND REHABILITATIVE METHODS

In India, the concept of punishment is not new. The Manusmriti, or Code of Manu, governs the concept of punishment generally. According to Muslim law, the Sacred Quran supposedly specifies penalties for a wide range of transgressions. The penalty is harsh. The 1860s saw the introduction of the English standard in India, which coincided with the approval of the Indian Penal Code, which still sets sentencing guidelines today. India imposes limitations on the choice of punishment. Section 53 of the Indian Penal Code, 1860 only recommends five different

methods of punishment[5], including approval, detention, detention with minimum or complete work, surrender, and fine. In all of them, detention has been a frequent form of punishment.

Detainment facilities have been considered the most effective tool for carrying out punishment goals. In any event, detention doesn't seem to produce the necessary results for achieving the punishment's objectives on several checks. Only if detention motivates and prepares the offender for a respectable and self-sufficient life after release can such goals be achieved. Instruction and employment are the two major areas that detention institutions ignore[6].

The Indian Penal Code, written by acclaimed writers Ratanlal and Dhirajlal, has punishment clauses that have evolved toward being somewhat out of date and need to be revised. Any pardon should be intended to persuade the offender that a normal, free life is better than a free life in prison[7]. The rehabilitation viewpoint needs to fit within the criminal equity paradigm. The reformatory school of criminology maintains that punishment is "just" appropriate if it takes the future rather than the past into account. They contend that punishment should be viewed as opening a new chapter in history rather than ending an existing one.[8]

ISSUES THAT THE EXISTING REFORMATION AND REHABILITATION SYSTEM MUST ADDRESS AS A RESPONSE TO PUNISHMENT

The institutional component of enforcing the detention sentence is dangerously near to disintegrating, and issues with housing, boarding, food, clothes, bedding, discipline, healthcare services, understaffing, entertainment, recuperation, and reintegration are all readily apparent. The jail facilities are overcrowded as a result of a rise in the number of detainees. The expense of keeping the inmates is rising at the same time, and the jail system has consistently been neglected in the financial department. The character of jail life has been greatly altered as a result. The Indian government managed to implement significant modifications in jail management during the post-freedom era. The two main areas that detention institutions ignore

[5] Indian Penal Code 1860, s 53
[6] Chris Hale et al., *Criminology* (Oxford University Press 2005) 563
[7] K.D. Gaur, *Commentary on the Indian Penal Code, 1860* (Universal Law Publishers 2016)
[8] Dr. Krishna Pal Malik, *Penology, Victimology & Correctional Administration in India* (Allahabad Law Agency 2012) 42

are jobs and training. In its main recommendations, the "Prison Assessment and Proposed Rehabilitation and Reintegration of Offenders Report" have recommended the framework of a beneficial equitable programme to reduce the number of wrongdoers who are imprisoned for infractions that are not felonies.

1. Prisons being Overcrowded

According to the World Prison Populace Rundown, more than 10.2 million people are incarcerated in prisons and jails throughout the globe, largely as pre-trial prisoners or condemned inmates. In the US (2.24 million), Russia (0.68 million), or China, over half of these live (1.64m condemned prisoners). According to India's National Crime Records Bureau's Prison Statistics, 2012, as of December 31, 2013, there were around 3, 85,135 inmates being held in jail or prison, compared to a maximum of approximately 3, 43,169. The occupancy rate was 115.1% in 2010, 112.1% in 2011, and 112.2% in 2012. Overcrowding compromises the capacity of prison systems to provide prisoners with fundamental needs, including social insurance, nourishment, and convenience. Additionally, this jeopardises the prisoners' basic rights, including their right to sufficient housing and their access to the best possible physical and mental health standards."

2. Violation of Human Rights

According to the framework for criminal equity in India, those who have been convicted are not automatically deprived of all the fundamental rights that they ordinarily enjoy.[9] The perpetrator loses their independence and self-assurance in prison. The denial of an inmate's human rights occurs both covertly and overtly in prison. The restoration of the guilty person is shown in a variety of ways, according to the National Human Rights Commission's analysis of prison visiting data from a few states. The prisons are overcrowded in several places. Numerous prisons in the UP have a foundation that is more than 100 years old. There are no-nonsense criminals with political confidence who oppose a strike against the jail staff. A medical and

[9] Universal Declaration of Human Rights 1948, art. 5; Universal Declaration of Human Rights 1948, art. 6; International Covenant on Civil and Political Rights 1966, art. 10(1)

nutritional office is also inadequate. Skillful but dated professional preparation is the most crucial component of repair.

It affects the offender's post-discharge combination in the outdated jail system as well as in the public without competitiveness. The Delhi Ladies Prison, however, provides a more appetising account. The subject of jail torture has recently come up under the watchful eye of Delhi's Extra Sessions Judge, who took serious notice of the incident and asked for an investigation. From April 1, 2012, to February 15, 2013, 318 incidents of custody torture were reported from various states, according to the Service of Home Undertakings' response to Parliament in August. The organisation also said that during the same period, the states had reported 126 cases of fatalities in custody.

3. Inequitable Sentencing

India does not have any laws that condemn this. Infractions and penalties for the equivalent were suggested by the Indian Penal Code. Only the most severe penalty is advised for certain crimes, while the minimum punishment may be suggested for others. The judge uses tremendous caution when imposing the penalty, making it as internal as possible. The judge is currently without instructions on how to choose the most fitting punishment in light of the circumstances of the case. As a result, each judge employs tact when it is necessary for his particular judgment. This prevents uniformity from existing. In *Bachan Singh v State of Punjab*[10], the ruling in *Jagmohan v State of U.P.*[11] was upheld by the Supreme Court. It is almost impossible to imagine that sanctions would be institutionalised, and the council has the power to reject arrangements that the court is unable to implement.

The Supreme Court avoided intervening in the issue of imposing the death penalty in the Bachan Singh case. Later, in the Macchi Singh case, it provided an opening for the defence of the rarest of unusual rules, which had not been "consistently used" in determining whether to sentence

[10] *Bachan Singh v State of Punjab* (1980) 2 SCC 684
[11] *Jagmohan v State of U.P.* (1973) 1 SCC 20

someone to death or indefinite detention. The Apex Court in *Swamy Shraddananda v State of Karnataka*[12] noticed the lack of equality in the condemnation process.

In *Sangeet v State of Haryana*[13], The Supreme Court acknowledged that it was impossible to compare the two using a prepared accounting report. The ideas of each party are separate and fragmented. The Condemnation has shifted away from ethical punishment and toward judge-driven condemning. In the case of *Sangeet v State of Haryana*, certainly, the Supreme Court will soon outline a damning arrangement that has not yet materialised.

Similar justifications may be found for the Supreme Court's decision to limit governmental authority to ensure total equality between the parties. According to the Supreme Court, it has the authority to condemn someone to live in prison with a particular time limit, such as life for a very long time. This limits the legislature's ability to punish before 25 years. This condition results in varying judgements and inhibits the preliminary court from deciding on the penalty since there are only a limited number of penalties and they are often ambiguous under the Indian Penal Code.

ALTERNATIVES TO INCARCERATION

International Scenario

It is wiser to try the endeavours for the recovery of the wrongdoers with the help of the network where the general public may assume a crucial and valuable role in the restoration and reintegration of the guilty party because the advanced penology emphasises that the guilty party is a social being who commits a crime in the general public and needs to return to the general public after serving the punishment.

"The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Principles)" state that detention will only be used as a last resort after all other options have failed and provide a list of alternatives to pre-trial or post-conviction detention. The part states

[12] *Swamy Shraddananda v State of Karnataka* (2008) 13 SCC 767
[13] *Sangeet v State of Haryana* (2013) 2 SCC 452

are also required to develop alternatives to prison that are increasingly reasonable for recovering the guilty party within the community. Additionally, other penalties have been developed in the global network with the aforementioned constraints in mind. These penalties are mentioned as alternatives to detention. The emphasis of these sanctions gradually shifts to the general public's task.

Indian Scenario

The Law Commission made no recommendations for changing the concept of punishment in its 42nd Report. Expulsion and externment were not supported. No proposals for compensation for the harmed party or a duty to make adequate repairs were made. It recommended including rehabilitative work but through a different dramatisation, drawing influence from the Soviet experience. It was decided to include an open reprimand for certain transgressions under Section 76A. Regarding the basic sentence, it was advised that it should only be used in exceptional circumstances. It also mandated amendments to Sections 64 to 69, and Sections 71 to 75 of the Indian Penal Code, 1860, as well as the creation of a new Section 55, to make it clear that prisoners held without release must do hard labour.[14]

By introducing The Indian Penal Code (Change) Bill, of 1978, which included network administration, open reprimand, removal from holding office, and payment of compensation, an effort was made in India to adopt contemporary corrective processes. The Law Commission didn't find any justification for these penalties. The Bill failed to pass because the Lower House fell apart, and since then there hasn't been any effort to make Section 53's penalties more severe.[15]

Despite this, it is improbable that reformative methods are absent from the Indian criminal equity system. There are appropriate designs that demonstrate that. Bail arrangements, dealing with supplications, serious offences, and other preliminary issues. Sections 360 and 361 of the Code of Criminal Procedure, 1973 provide for reprobation to first-time offenders for crimes

[14] Law Commission, *Indian Penal Code* (Law Com 42, 1971)
[15] Law Commission, *Indian Penal Code* (Law Com 156, 1992) p 15-41

punished by less than two years in jail. Furthermore, the dependent release is allowed. Sections 357–359 of the 1973 Code of Criminal Procedure provide payment to crime victims. The post-condemnation phase comprises parole, sentence replacement, and reduction in term (Articles 72 and 161 of the Constitution of India, 1950). The Juvenile Justice (Care and Protection of Children) Act, of 2015, sets the greatest example of the restorative and rehabilitative technique, which is last but not least.

The criminal law governing the severity of punishment underwent an exceptional transformation with the passage of the Probation of Offenders Act, of 1958, a turning point in the spread of the cutting-edge liberal pattern of change in the area of criminology. It is a consequence of the notion being accepted that says that the main objective of criminal law is to affect the offender personally rather than to punish him.

However, there are several instances when the courts have authorised network administration as a form of punishment. For instance, the Supreme Court approved BMW's effort to prove manslaughter. A legal executive from Delhi also did it. Additionally, the Sanitation and Model Act of 2006 and the Narcotics, Drugs, and Psychotropic Substances Act of 1985 both see public reformation as a kind of punishment. The development of teenagers is a different problem. *Nirbhaya rape case* pursued by *Salil Bali v Union of India*[16] and *Dr. Subramanian Swamy v Raju*[17], Several concerns mentioned by the Adolescent Equity Board should be looked upon."

"The All-India Council on Prison Changes (1980–1983)" emphasised that, despite the ones that are currently in place, detainment isn't always the best way to achieve the goals of punishment. The administration will work to enact new alternatives to detainment, such as network administrations, property forfeiture, the payment of compensation to unfortunate victims, open reprimand, and so forth. Different treatment approaches are necessary since individualised therapy can't be equally applicable to a variety of wrongdoers, and treatment methods shouldn't be uniform for all of the wrongdoers in all geographical regions and circumstances.[18]

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[16] *Salil Bali v Union of India* (2013) 7 SCC 705
[17] *Dr. Subramanian Swamy v Raju* (2010) 10 SCC 465
[18] Donald T. Shanahan, *The Administration of Justice: An Introduction* (Holbrook Press Inc) 317-318

The Malimath Board of Trustees Report, commonly known as the Advisory Group on Changes of Criminal Justice, 2003, urged that the judge use great caution while imposing the penalty, keeping it as internal as feasible. As of right now, the judge is left to determine the best sentencing based on the circumstances of the case. Our country needs a law like that to reduce vulnerability to sentence-giving decisions. The necessity for various punishments is quite important.

Additionally, The National Criminal Justice Strategy (2006) suggested that the system should be set up such that diverse system actors (such as probation administration and remedial organisations) have a voice in the structure and management of the condemnation process. Detention isn't always the best way to achieve the goals of the sanctions the legislature will want to impose; new choices other than detention are now legal, according to the National Arrangement on Prison Changes and Reformative Organization of 2007.

In its main recommendations, the Prison Appraisal and Proposed Recovery and Reintegration of Offenders Report have recommended the establishment of a therapeutic equity programme to reduce the number of offenders who are imprisoned for infractions that are not felonies. Different treatment approaches are required since tailored therapy can't be equally applicable to a large variety of wrongdoers, and treatment methods shouldn't be uniform for all of the wrongdoers in all geographical regions and circumstances.

CONCLUSION AND SUGGESTIONS

Consequentialism recognises that change is an important sub-objective of legal discipline, and some of its ideas may be used to highlight the flaws in the MCLR, a semi-change origination. We have shown that this foundation for legal reform is just too flimsy to be reliable in any sense. Although I have not outlined or protected a consequentialist genesis of change, I believe it is really obvious that it will resemble Hart's vision. 77 The consequentialist will likely agree that "the organisation of education in a broad sense, professional preparation, and mental therapy" should now play a prominent role in the formation of legal discipline.

It is reasonable to conclude that the Indian prison system is ineffective, and it seems that the rehabilitative component of punishment has also been disregarded. Currently, it no longer tends to adhere to Gandhi's philosophy of punishment and the way that prisons are expected to transform offenders. Under preliminary sentences is mostly to blame for jail overcrowding. In this situation, the courts and the legislature may rely more on plea bargaining, aggravating crimes, effective legal assistance to the poor, bail arrangements, and Section 436-An of the Code of Criminal System, 1973. For this reason, unusual Fast Track Courts, extraordinary Courts, Lok Adalats, and video conferencing may also be used. Therefore, the ability of probation, parole, and leave of absence should be employed as much as possible.

Even though jail and rehabilitation are state issues, targeted enactment is crucial to ensure consistency in implementing these alternatives according to the resolution. Judges are not required to simply implement things beyond the bounds of the law. Because after introducing legislation for this purpose, each partner must meet up to use these options. The combination of the above-mentioned options will fundamentally alter the criminal equity framework. These options will help the judges make decisions about how severe to make the penalty and how long to make the sentence. These alternatives to detention will aid in upholding and reestablishing the rule of law in prisons where depraved behaviour and human rights violations are rampant.

The options would also help ensure the guilty parties' release and would help correct any human rights abuses. Despite the appearance of a flawless world, society is ultimately responsible for an individual's decision to become a criminal. As such, society must take responsibility for rehabilitating criminals. By relying on alternatives, the horrifying effects of detention might be reduced since a person who is incarcerated or on trial won't be denied his freedom, will have the opportunity to find a job, will be in a better position to set up his guard, and their social relationships won't be strained. Therefore, to justify the present punishment system, it becomes important to construct and provide valid acknowledgement of the current types of penalties.