

The punishment or reformation criminology essay

[Law](#), [Criminology](#)



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Abstract

" Punishment governs all mankind; punishment alone preserves them; punishment awakes while their guards are asleep; the wise considers the punishment as the perfection of justice".[1]Punishment is the authoritative imposition of something unpleasant on an individual, entity or organisation because of their behaviour or a certain act done by them, which is not acceptable in the society. During the past hundred years, our views on punishment have undergone a change. Earlier, punishment was mostly retributive. It followed the principle of ‘ a nail for a nail’, ‘ a tooth for a tooth’, ‘ a limb for a limb’ etc. which was the main basis for any criminal administration. These kinds of punishment were mostly done in order to bring fear, set example and satisfy the feelings of revenge of the victim. While on the other hand, in today’s time the principle object of punishment is mainly for the protection of society, which is partly achieved by reforming the criminals and by deterrence in order to stop them from committing more crimes in near future. As it’s mostly agreed that by reforming the criminals by way of rehabilitative measures, the principle aim of criminal law can be achieved. Therefore, in today’s time punishment is no longer retributive. This

paper's main focus is to determine various methods of punishment which effectively and positively contributes in the rehabilitation and reformation of the victim as well as the offender. The research paper further explores the means of reconciliation of reformatory ideals for the common improvement of the society, victim and offender. One such means is Restorative Justice, which is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, "to repair the harm they've done—by apologizing, returning stolen money, or community service".[2]

Introduction

When an individual convicted of crime, is punished by the state, it imposes a kind of deprivation, suffering etc. on that individual: imprisonment, fines or even death. So punishment is kind of a process in order to achieve social control. Therefore, the offenders are given punishment in order to keep a check on them and to prevent them from committing crimes again. Thus, it acts as deterrence and stops other people from doing the same act again in near future. While on the other hand, if the offender is punished, then it acts as a "soothing cream" to the victim and his family members and also prevents other people from indulging in criminal activity, thus, serving as a social purpose. In H. L. A Hart's words "the standard or central case of 'punishment'" is defined in terms of five elements:[3]It must involve pain or other consequences normally considered unpleasant. It must be for an offence against legal rules. It must be for an actual or supposed offender for

his offense. It must be intentionally administered by human beings other than the offender. It must be imposed and administered by an authority constituted by a legal system against which the offense is committed. From the above definition, I understand that the concept of punishment is that of inflicting some kind of pain (whether physical or mental) on the person who has done a criminal activity i. e. by violating the law. Therefore, Hart's definition is more towards the retributive sense. But the motive of giving punishment which results in suffering and pain has now been transformed because of upcoming reformatory method, recently being used to deal with offenders. Therefore, in today's time, the basic motive in prison is to teach the offender's the techniques and methods, which includes technical training in order to make the offender a citizen who abides the law rather than inflicting suffering or pain for the criminal act that the offender has done. For example in Tihar Jail (prison), India, all the prisoners living there are made to work in shoe, soap etc. factories, where the offenders are taught, how to make shoes and soaps and other technical things so that once their time is over in prison, they can go back and earn a living for themselves.

The better option between Reformation and Punishment

It's very difficult to opt between reformation and punishment, because it requires a mind of a person who can use judicious application while dealing with such criminals. And the main aim while giving the decision should be of giving proper justice to the society, the offender and the victim. And as the best characteristic of law is its adaptability and flexibility, it can be changed from time to time in order to help the society, its people in any need of the hour. Therefore, for this law courts exist, to satisfy the requirements of the

society and boldly rise up to situations and do the needful in the matter. There are many theories by philosophers relating to reformation, and one such theory, which says that if one person has taken the life of another person, then it does not mean that the life of that person should be taken as well i. e. it does not support the " a tooth for a tooth and a nail for a nail" theory. But if it transpires that the manner and the methods of the work or the activities which has resulted in the loss of a person's life from the world, then there should not be any laxity from the law courts side, because if there is some laxity then the society will be trapped in the whirlpool of false sense of security, even though the most heinous crimes are happening in the society. While another theory is, that if the harshest of the harsh punishment is not given to criminals, then the time is not far when the society would be perished. In *State of M. P v G. Singh*[4] the Supreme Court observed: " The law regulates the social interests, arbitrates conflicting claims and demands security of persons and property of the people and is an essential function of the state. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of the law, which must be achieved by imposing appropriate sentence. Therefore, law as a corner stone of the edifice of " order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. The sentencing

process should be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for the commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the arena of consideration. The undue sympathy to impose inadequate sentence would do more harm to the justice system. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. The imposition of sentence without considering its effects on the social order may be in reality a futile exercise. The social impact of the crime, e. g. where it relates to offences against women, dacoity, kidnapping and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment." Similarly in T. K. Gopal v State of Karnataka[3] the Supreme Court observed: " In the matter of punishment for offence committed by a person, there are many approaches to the problem. On the commission of the crime, three types of reactions may generate. The traditional reaction of universal nature is known as punitive approach. The other approach is the therapeutic approach; the third is the preventive approach. Under the punitive approach, the rationalization of punishment is based retributive and utilitarian theories. Deterrent theory which also part of the punitive approach proceeds on the basis that the punishment should act as a deterrent not only to the offender but also to others in the community. The therapeutic approach aims at curing the criminal tendencies, which were

the product of a diseased psychology. The therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that inspite of having committed a crime, may be a heinous crime, he should be treated as a human being entitled to al the basic human rights, human dignity and human sympathy."