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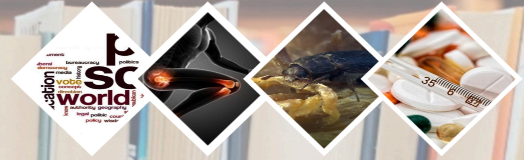

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Study of Penology from Ancient to Modern Era: A Critical Evaluation

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Abstract
Punishment is inevitable for controlling society or in other words to reduce crime. Punishment is historically the primary tool to keep the nation under control. There are some traditional theories relating to punishment of the offender e.g., retributive theory, deterrent theory and preventive theory, reformative theory, utilitarian theory. Though initially the purpose was either to give severe punishment so that there might be creating a frightful environment as a result of which no one would be dared to do any crime, or to keep the criminals away from the society to put them into the jail. But with the growth of science and technology the rate of crime was increasing rapidly. It was felt that the punishment is not the only way to reduce crime rather to make the society free from crimes, treatment of the criminal or offender is needed to make them capable citizen of the country. In short, the main objective of all these theories is to keep the society free from crimes. In this article the researcher is also trying to evaluate the different forms of punishment chronologically, some of which were very heinous, have already been abolished. The researcher concluded this article with the judicial trends as regards the punishment.

Keywords: Punishment, crime, control, society, retributive, preventive, heinous, judicial trends.

1. Introduction

The concept of punishment is directly related to criminal justice and objectionable behavior. Because they are not permitted in a society that values civility and because they can result in punishment; some actions are regarded as crimes. Therefore, it can be claimed that punishment was created solely to reduce crime. Punishment wouldn't be necessary if crime didn't exist.

Human psychology has always been evaluated by the co-existence of two entities, one good and the other bad. A person only develops a propensity for offensive behavior and requires intentional punishment when the excess of this evil entity undermines the good entity. In many instances, human behavior has grown to be so immoral and vicious that it cannot be stopped without punishment.

Punishment has historically been the primary tool used to keep the nation under perpetual rule. Since the beginning of time, all kings have achieved victory over their adversaries and declared justice by implementing an effective criminal system. Punishment has occasionally been employed on purpose to insult. The primary intent of the penalty has changed over time in various ways.

The ideology on which the policy of punishment was based in ancient times has changed drastically with the development of modern thinking. The initial concept of punishment inflicted on the chastise ofa young child by his parents for the purpose of correcting his character and finally in broader sense imposition of penalties by the state towards an offender incidentally with same purpose. Now with the comparative view, we will observe the development and evolutionary change of the penal policy with some traditional theoretical approaches.

2. Theories of Punishment

i). Retributive Theory of Punishment

The theory of reprisal is another name for the Retributive theory of punishment. Its roots are in a fairly minor doctrine specifically "Lex Talionis," or "an eye for an eye." Revenge on evil is one of the natural tendencies of all creature and human beings are not exception of such. This theory was developed by Hegel, a German jurist. According to this conception an offender should be treated with same sufferings and pain as he has inflicted on the victim through his criminal activity. This theory believes that the main objective of punishment lays on the restoration of social balance and providing the sense of satisfaction to the victim and that can only be achieved through the process of retribution which is needed to be taken against the offender.

According to the view of the German jurist Emmanuel Kant, the objective behind this theory was that it would be better that one man should die than the whole people should perish. The Punishment must convey to the offender that, what he has done is wrong and that he will have to suffer the same consequences as a result of this injustice. According to this doctrine, similar punishment must be given for similar crime. Revenge is a social rationale, because in this society bad people have always been punished for their evil deeds and good people have been recognized for their good conducts.

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Retribution, in the opinion of Sir Walter Moberly, is founded on the idea that punishment is a specific application of the concept of general justice that men should get what is due to them. According to this doctrine, if the offender suffers the consequences of his crime in the same way, only then his guilt will be alleviated.

Retributive justice was the only method of obtaining justice in pre-historic systems of justice, where Kings or Judges were regarded as ultimate entities with the authority to carry out the process of retribution against the offender as a result of their wrongdoings. In modern age, if the statute providing punishment for each crime, can be analyzed in depth, it will be seen that through all the punishments, the policy of retaliation against the crime has been adopted. So in a word, it can be said that the punishment itself is naturally vindictive. The essence of support for this retributive policy under penal system can be seen in two modern doctrines. They are

- Doctrine of Societal Personification
- Doctrine of Correctional Vengeance

- **Doctrine of Societal Personification can be Stated as-**

"The society is said to be personified" when a member of the community is the victim of a particularly horrific crime, which causes the community as a whole to believe that it has been victimized by the act and defends the victim by either calling for justice or enforcing it independently. The society will be recognized as a natural person and act in a collective manner to obtain justice if an extreme kind of crime is perpetrated against any member of the society. The country-wide protests for the Delhi gang rape case is an example of this. The whole society has made a fight for the punishment of the criminals as revenge for the injustice done to one individual.

- **Doctrine of Correctional Vengeance May be Stated as-**

Correctional vengeance is defined as "when the society, in a fit to obtain justice, urges the involved authorities to impose vengeful (as severe as the initial act, or even more) punishments against the criminal for generating a deterrent." This denotes the demand of the society for execution of vengeful penalty against offender by the concerned authority with a view to deterrence of crime.

Retributive approach against crime have a keen connection with the spirit of morality that means any person who commit certain kinds of wrongful acts, which is crucially serious in nature, morally deserve to suffer a proportionate punishment. The determination of retributive sanctions is based on the inter-section of moral and criminal law.

The Hindu epics, specifically in Ramayana, Mahabharata and the Durga Saptashati, there are an essence of retributive approach which can observe with eventual flow. Retributive theory has lost its practical significance especially in the modern times, as that there are many crimes that cannot be alleviated only through retribution, for an instance, a rapist cannot be raped as retaliation for his crime or a robber cannot be robbed.

ii). Deterrent Theory of Punishment

The word "DETER" refers to preventing someone from engaging in an offensive act and is used in the deterrent theory of punishment. This theory's primary goal is not just to stop offenders from committing crimes, but also restrain them from repeating the same crime in future. It also have the intention to create an example for the individuals as well as the whole society by punishing the criminal. That simply denotes the punishment must be such kind of against any severe offences, which establish an exemplary gesture and aware the whole society, so that they refrain themselves from such ill activities.

Punishment is very much essential for the construction of a disciplined and orderly society. This theory is applied with a view to create the fear in the mind of others whenever they will attempt to commit any crime. The main objective of this theory is to terrorize future criminals, so that they cannot repeat the commission of offence. As far as the theoretical view is concerned, deterrent the proclaimed two categories of thought the first one is general category which mainly concerned with the prevention of future crimes and the second one is specific category where the reformation are also a part of it.

The penological thought of punishment under deterrent theory has a connection with the ancient visualization of crime which believed that crime was a production of the evil spirit or free will of an individual and this voluntary propensity can only be suppressed by the application of swift, certain and severe punishment. If a heinous crime is not punished with a specific punishment, it not only harms a particular person but also encourages other criminals to commit the crime and removes the fear of punishment from their minds, which will be very frightening factor for the future society also.

Jurisprudential School of Thought

The sociological school of law can be connected to the deterrent hypothesis. The sociological school of thinking emphasizes how society and law are intert-wined. According to the sociological doctrine, the system of law and governance is one of the main factors in the management of society. In the same way, deterrent theory does not only refer to the punishment of the offender, but also to the setting of precedents in the society by penalizing them.

The deterrent theory of punishment is believed to take a utilitarian stance. According to this theory the man is punished not only for the offence he committed, but also to ensure that the crime may not be committed. The easiest way to put it is in what Burnett, J., said to a prisoner that not because you stole a horse, but to prevent additional horses from being stolen, you will be hanged. Cesare Beccaria asserts that in order for punishments to be effective as deterrents or to have a deterrent effect, the percentage of the crime and the punishments should be equal. Apparently, being the creator of this idea, J. Bentham implies a hedonistic view of man and claims that if punishment were meted out swiftly, certain, and brutally, man as such would be discouraged from crime. However, he acknowledges that punishment is a bad thing and that it will be ineffective if it causes more harm than the offence did.

According to deterrence theorists, a person with logical thinking will weigh the achievement or loss before committing any crime and will be discouraged from breaking the law if the loss is higher than the gain if punishment is harsh, certain, and rapid in nature. In modern times, however, this belief is by no means valid. For an example it can say that in Nirvaya case in Delhi, after such horrific atrocities and murder, Supreme Court sentenced four criminals to death in order to create an exemplary image in society. According to the beliefs under deterrence theory, after this exemplary punishment, it was intended that such kind of heinous offences would not be repeated in the future, but in reality it has been seen that such crimes have increased even after this incident.

iii). Preventive Theory of Punishment
The preventive theory of punishment based on the doctrine that "Not to avenge crime, but to prevent it". In words of Fichte, "the end of all penal laws should be that they are not to be applied", that means penal laws are working as a preventive measures to suppress the crime.

According to this doctrine the criminal activities can be prevented only through disabling the criminals. People intent to survive into a civilized society, with the instrument of punishment the community protects themselves from anti-social act which is unacceptable for social order and also for its members. The main objective of this theory is prevention of the propensity of criminal activities by transforming the criminals. The main purpose of the penal law is to prevent crime by creating threat, giving warning to the individuals for refraining from offence and enforcing punishment if necessary, it gives this theory a realistic touch.

This theory was appreciated by Utilitarian's such as Bentham, Mill and Austin of England as because this theory has a humanizing approach. This theory believes that punishment must be used as an instrument of effective deterrent with the quality of promptness. The proponents of this idea contend that the primary goal of punishment is to deter future crimes, which can only be done by actively limiting the criminals' antisocial behavior. The ability to check is produced by inability. It could come in a variety of forms. A transitory form of restricted disablement is imprisonment. According to this argument, incarceration is the most effective way to reduce crime since it allows offenders to be removed from society and prevents them from committing the same crime again. This notion also forms the basis of the death sentence, which is used to stop objectionable behavior. According to preventive theory, there are three ways to avoid committing crimes:

- By creating the fear of punishment.
- By incapacitating the offenders
- By way of reformation or making them as capable citizen of the society.

iv). Reformative Theory of Punishment
Reformative form of punishment is a product of positive School of thoughts. The invention of the scientific approach in the modern age has enabled people to analyze matters in a skillful way. According to the old image of crime and criminal, any criminal becomes a harrowing aliment to the society through his crime and the main duty of punishment is to eradicate him, but in the modern perspective, the search for its source has become one of the necessities to stop the harassment of crime. In primitive era, all the theories relating punishment as aforesaid focused on disabling the offender rather than determining the cause of the crime.

According to the old way of thinking, the principle of punishment was mainly used as a weapon against social degradation through crime. The main purpose of the punishment of that era was to keep the society orderly and safe by suppressing the criminals. In other words, at that time much emphasis was laid on the protection of collective interests. With the prosperity of ages of criminological thinking has also changed dramatically through the advancement of criminal science, which insists the emergence of a new doctrine relating crimes and criminals. In those days, there was more hatred towards criminals than crime, and it was believed that the elimination of the individual could keep the whole society free from criminal activity.

But according to the thinking of modern community, it is the duty of the society not only to punish the criminal but also to find out the motive behind his offensive gesture and to change his mentality accordingly through the essence of that doctrine the reformative theory of punishment started to progress. The general idea is that if a person commits a crime he is considered a criminal and is punished accordingly so that the society can be free from crime, but the most of the time the status of situation and mentality behind that crime is not invented. According to this theory, crime can only be eradicated if the main source of crime can analyzed. This theory proclaims that hatred towards crime is credible, not towards criminals. According to this line of thinking, criminals are not creatures from outside the society; they are part of it and have been misled by certain circumstances.

One of the main duties of civilization is to show the right path through their proper transformation. Criminalization and social degradation cannot be prevented only by curtail off the criminals in order to protect the normal flow of society, but also to bring them back into the mainstream of society by teaching them proper evaluation of life. Through this motion of through the concept of reformative treatment towards offender evolved.

In many cases, it has been observed that some offenders, even if they have been involved in a crime under certain circumstances, are not mentally prone to crime and with the right opportunities and assistance they want to return in the mainstream of life. In that case the use of this theory is especially applicable to them. This theory of punishment proposes individualized treatment of offenders who are undergoing punishment with a view to reform or rehabilitate them. It also approaches for a change in the attitude of an offender so as they can facilitate to become a law abiding citizen of the society. A criminal is hated by the society because of his misdeeds and the society does not want to accept him as a part of it so it becomes impossible for him to get out of the dark world of crime and live a healthy life. keeping this situation in mind, imprisonment in the present age means not only keeping the offender confined within four walls but also improving his mental health by engaging him in various constructive activities. This way offender's criminal propensity has been reformed and he has attracted to a harmonious life.

Reformative theory discourages all kinds of corporal punishment because this doctrine believes that corporal punishment can only inflict physical or mental torture on the offender but does not eliminate the actual offense. The essential idea of law isn't to be static, but to be dynamic in nature, only then it will be possible to reach the right conclusion in a particular situation. According to reformatory thought, punishment serves a greater therapeutic purpose than a deterrent. This notion holds that crime is like a disease that can only be treated with medicine in the form of reformation, not by causing physical pain. But on other side reformation can work out on those individuals who can be improved, there are hardcore criminals, the transformation of whom are not possible. So, this theory of punishment will not be applicable for them. In the same way, the infrastructure needed to transform a prisons into a correctional home cannot be constructed in many countries.

v). Utilitarian Theory of Punishment
The term "utility" means "Purposefulness". Under utilitarian theory of punishment it has been stated that a punishment should have proper utilization towards its objectives that

means whenever punishment is meted out by a particular authority it is directed towards the achievement of an organized purpose. Because if the punishment is not useful then it fails in all its forms. According to Plato, a Greek philosopher, "to suffer for justice is beautiful. Punishment does not give pleasure and therefore it must be useful."

In general, the principle of punishment as a reflection of any crime is universally accepted, but if the crime is not alleviated as a result of such punishment, then there is no greatness of that penalty. Punishment of any kind loses its usefulness when it became unsatisfactory or became needless or involve more evil than solution. Thus if any punishment is more or less than its requirement, it loses its utility. Utilitarian theory is consequential in nature. According to this theory, through the application of punishment both society and the offender experience some positive consequences and the benefit of such punishment must be greater than the total sufferings occurs due to the crime. Only then that penalty will become useful to society. Punishment can never be unlimited based on a specific crime. According to the utilitarian philosophy, this is founded on morality and ethics, good and wrong are established by emphasizing results. It embodies consequentialism in some way. According to utilitarianism, the decision that will result in the greatest good for the greatest number of people then it will be more effective and it is morally right. People are punished not only for disobedience of law but because it is somehow bringing beneficial effects to the society. For example, punishment restrains people from committing further offence that insist the development of society. In reality, the primary goal of utilitarian punishment is to deter crime, but it should also emphasize reformation or eliminating offensive tendencies in order to help criminals change into sensible beings who contribute positively to society.

3. Different Forms of Punishment

Proclamation of punishment against any crime is a characteristic feature of human civilization. Since the power of proper judgment was created, such acts have been identified as crimes that are harmful to society and civilization. Attempts to eradicate this crime have been observed in civilized society since its inception. This effort has led to the emergence of the policy of punishment. From the earliest times of civilization, the main purpose of punishment was to make the perpetrator realize the evil of his deeds by expressing hatred and inflicting physical and mental pain on him because according to human tradition, the reflection of a bad deed can never be a good outcome.

According to the old view, personal interest must get more emphasis against any crime, as a result, the victim of any crime has the responsibility to punish the offender by taking revenge, from which the concept of retributive theory had emerged. Gradually, punishment became the main weapon in crime prevention. Depending on the circumstances and the nature of the crime, different methods of punishment may be observed. The cruelty of the old-fashioned punishment diminishes with age, and the penalty becomes more and more plausible connecting to crimes. Punishment for any crime depends mainly on three factors.

- The reason and certainty to consider that act as crime.
- The gravity of the crime and the brutality of its application.
- The severity of the injury caused by a crime.

With the evolution of ages and development of modern rationality, the concept and attitude towards crime and criminals has changed. Earlier brutality of the personified penal application gradually diminished and scientific analysis of criminal tendency has become much more acceptable in society. For example, the frequent application of corporal punishment for prevention of offence has lost its importance in modern time and now it has become one of the main goals of the penal policy to analyze the cause of the offender's guilt and guide him to the right path. In this article we will discuss the different types of punishment introduced in various period.

i). Flogging: Flogging is categorized as a form of corporal punishment which was a usual technique for punishing offenders in previous era. It is also known as whipping. Flogging is a very old form of punishment which used to apply almost all civilized countries although this practice is mostly abolished now a days. The main purpose of this punishment was to inflict physical pain on the offender, by using corporal force with the help of a whip. In some Middle East countries, the practice of this punishment is still prevailed. This punishment was not much more effective for hard core criminals. The elements and method of this punishment differs from country to country. In some countries the offender was released with one or two blows of the whip and in some places the it was ruthlessly whipped so that the scars on the offender's body remained visible. According to penologist researcher the effectiveness of this punishment was not remarkable, compared to its barbarism.

ii). Branding: Applying branding as punishment means engraving marks on a visible part of a criminal's body with a sharp weapon or hot iron sticks, this was usually done on his forehead. The offender was publicly identified by providing these specific and visible wounds. The main purpose of this identification was to warn society about the specific offender and to ensure that the offender does not commit the same crime again. The Roman penal code endorsed this punishment, and it has long been practiced in many parts of England, until its abolition in1829. People in the United States who were involved in crime like bangles had the letter "T" engraved on their hands and the word "R" was engraved on their foreheads when they repeat the offence. The use of this punishment was observed in India during the Mughal period, although it is now completely abolished.

iii). Mutilation: Mutilation is also a form of corporal punishment. This punishment is usually given by cutting off a particular part of human body. The main feature of this punishment was that the offender was punished by the specific mutilation of the body part which the offender uses to accomplish his crime. For example, a thief was punished by cutting off the hands used for theft, and for any sexual offense, the personal body part of the offender was cut off. This type of punishment was practiced mainly in European countries such as England and Denmark. Such punishment was significant in retaliation and preventive approach, although it is no longer used as a punishment for its barbaric nature.

iv). Bilboes: It is a form of corporal punishment the practice of which was mainly seen in the colonies of ancient England and America. In this form of punishment, the offender's legs were tied with the two ends of an iron rod and he was hanged from the roof so that he could

not move. This punishment was mainly used for the purpose of causing physical discomfort to the offender and public humiliation.

v). **Ducking Stool:** In this method of punishment, a criminal was tied with a chair or stool at the edge of a large pole and lowered into a river or pool. Such corporal punishment was mainly observed in the colonies of England and North America. Women who were accused of being stubborn, witches and prostitutes were given such punishments.

vi). **Rack:** This penalty is also an example of ancient corporal punishment. In this method of punishment, both the hands and the feet of the offender were tied and the elephant or the horse was dragged him with that position either in the same direction or sometimes in the opposite direction. In the process, the perpetrator suffered severe physical pain and various parts of his body were cut off.

vii). **Tieing on Roaming Wheel:** In this method of corporal punishment, the offender was tied to a rotating wheel and that was roaming with extreme speed. This method was usually used to inflict severe physical pain on the offender.

viii). **Pressing by Iron Rods:** It is one of the examples of inhuman and cruel punishment during primitive era. In this method the body of the offender was brutally crushed by two iron rods, which puts him within barbaric and inhuman physical torture.

ix). **Stoning:** Stoning was one of the most widely used forms of corporal punishment in mediaeval regimes. Even in present days this kind of punishments are prevails in various Muslim-ruled countries, such as Pakistan and Saudi Arabia. In this method the offender was forced to stand in a little hole built in the ground while he was surrounded by others who threw stones at him until he dies. This punishment was mainly given for any crime committed against women.

x). **Pillory:** In this method of punishment, the offender is made to stand in a crowded place and his head and hands are locked in an iron armor. In this position the offender was whipped or stoned depending on the gravity of the offense he has committed. Sometimes the ears of the offenders are also nailed to the beams of pillory. This type of punishment was common in many parts of the world until the middle of the 20th century. Similar punishments were also introduced in India during the Mughal period.

All of the above types of punishment carry the identity of the cruel and inhumane treatment meted out to the criminals in the society of ancient time. In those days the criminal was not recognized as a human being in any way but was considered as an unwanted and unnecessary object of the society. Prisoners were even traded at the behest of the king and they were deprived of all rights. Brutality could be noticed in all kinds of corporal punishment of that era. But later, towards the end of the eighteenth century, such inhumane punishments were gradually on the verge of extinction, although in some countries this barbarism of punishment was seen in some cases. For example, flogging was practiced in India till 1995, but after the Universal Declaration of Human Rights was implemented, all forms of inhumane corporal punishment were abolished. The effect of which is to be observed inthe subsequent punishment policy.

xi). **Social Boycotts:** Social boycott means expelling a certain person and his family from all kinds of social conventional hospitalities such as drawing water from a public well or participating in any kind of social or family event, In return for his wrong doing, this provision was introduced mainly as a punishment for religious offenses. In ancient India, before the British rule, such punishments were prevalent through Nyaya Panchayats.

xii). **Amercement:** Such punishments are mainly imposed on the offenders by imposing financial penalties through the court. This type of punishment is mentioned in the English Penal policy. In this case, the amount of financial compensation largely depended on the decision of the specific appointee authority and such punishments were mainly imposed on minor offences.

xiii). **Forfeiture:** This penalty is applied when an offender illegally occupies a property and fails to pay any compensation imposed on him. The victim is compensated mainly through the money quoted from the confiscated property of the offender. Section 53 of the Indian Penal Code deals with the forfeiture of property of the offenders.

xiv). **Fines:** Penalties are usually set for minor offenses, such as traffic offenses, property offenses or motor accident, frauds, gambling related crimes. The offender alleviates his crime by paying compensation to the victim. According to Indian penal code, compensation is sometimes used as a means of punishment instead of short term imprisonment. If the offender fails to pay compensation in any way, the property of the offender is confiscated for the purpose of enforcing this punishment. It is important to pay close attention to the financial status of the offender when determining compensation, although this is often not followed properly.

4. Penalties or Collateral Sanctions

As a means of this punishment, the offender is deprived of all basic public benefits, such as the right to vote, federally founded housing, and even to live with his or her own children. In this case, the offender is also prevented from receiving all kinds of social measures such as employment and educational benefits. In the United States, such punishments were proclaimed for sex offenders and released drug addicts.

i). **Security Bond:** Security bond is basically a undertaking furnished by an offender regarding his good conduct and also applied as a note of some restrictions imposed on him against his disposal. In strict sense it is not an punishment but used as an instrument of correctional justice system. Through this the wrongdoer gets a chance to establish himself as a law abiding member of the society.

ii). **Ostracism:** Such punishment means the complete exclusion of the offender from the society and to sever all social ties with him. The main purpose of this punishment is to deprive the offender from all communication. This kinds of punishment were practiced mainly in the ancient Greek cities and in various parts of Athens. In ancient India, the application of this punishment can be seen in the process of out casting of a person in rural areas. This penalty can be seen as a part of the social boycott system.

iii). **Exile:** This type of punishment deports the offender far away from the country or city and threatens to imprison or execute him if he returns unauthorized. Such punishments were prevailed among the masses, mainly inspired by Christian churches during mediaeval period. Even in present days this punishment is still proclaimed in different countries as a form of banishment.

iv). **House-Arrest:** This punishment means keeping the offender in his own house under the control and supervision of the police and stopping all his outside movements. It is an alternative of prison sentence and usually imposes on political dissidents by the Govt. In this way, the detainee cannot establish contact with the outside world using the telephone or any other means of communication.

v). **Custodial Sentence:** In this method the offender is mainly involved in the necessary supervision or custody either within prison or in other closed therapeutic institutions. Imprisonment is a prime example of such punishment. This punishment usually lasts for a certain period of time until the offender is released in bail or some other way.

vi). **Banishment:** Banishment is a punishment by which an unwanted criminal is sent to a depopulated area so that he can never return to the society. Some societies punish certain criminals or political and religious revolutionaries with this method of punishment as unwanted individuals. In ancient times such punishments were quite common and were often compared to the maximum punishment as the authorities would not provide any kind of food or shelter to the offender within a certain distance. Similar punishments were practiced in various Chinese colonies in the eighteenth and nineteenth centuries and were considered the second most severe punishment after the death penalty.

The process of deportation of criminals was also arbitrarily practiced in India during the British rule and it was termed as Kalapani. The most heinous criminals were sent to an uninhabited island, mainly the Andaman and Nicobar. This type of punishment was finally abolished in 1955 and as an alternative of this penalty imprisonment for life was included in the Indian Penal Code.

vii). **Solitary Confinement:** In this system of punishment, the offender was cut off from all forms of social communication through incarceration and he could not communicate with any one inside the prison except the prison guards. It was a kind of mental torture on the offender which often resulted in the mental distortion of him and even death in prison. The main purpose of this punishment was to keep harmful and horrible criminals out of contact with people so that in this loneliness they would repent of their crime. In the middle Ages, hardened criminals were usually punished in this way because it was believed that if they were released from prison and returned to society, it would be terrible for society. Section 73 and 74 of the Indian Penal Code mentions this solitary confinement even though it is enforced for a fixed period.

viii). **Detention:** Detention is defined as a type of punishment in which an offender is arrested by the authorities and taken into custody as a punishment for his misdeeds or in order to prevent him to escape during investigation. Through this procedure the movements of detained person is monitored for a period of time or any suspected individual is placed under surveillance during the investigation.

ix). **Imprisonment:** Imprisonment means keeping a criminal in prison. It can be divided into two main parts one is life imprisonment and the other is imprisonment for a certain period of time. The main purpose of this punishment is to keep the criminal away from criminal activity through detention so that the society can maintain a secure lifestyle. It is a very effective way of punishments which is commonly used in various countries.

Life imprisonment refers to the imprisonment of a person until his or her normal death in order to completely restrain him or her from committing a crime. Imprisonment for a fixed term means that the term of imprisonment for an offense shall be determined by the decision taken by the judiciary and the provisions of law. Regarding its form of application, imprisonment can be divided into two main types, one is general or simple imprisonment and the other one is rigorous imprisonment. In many cases, life imprisonment is used as an alternative to the death penalty as a punishment for serious crimes.

x). **Capital Punishment:** This punishment is also known as death penalty. This is the highest form of punishment prevails even in present days. It is imposed mainly on rarest of rare cases. In fact, this cruel punishment has been used in various forms all over the world since ancient times. This is one of the main examples of retaliatory punishment. This punishment is given only when a criminal kills another person through his crime. According to the philosophy of this punishment, a murderer can never survive as a part of society and murder can always be avenged by the death of the murderer. Although the death penalty was first introduced mainly in England and other European countries, it is now abolished in almost all European countries. The death penalty is still practiced in India as the highest form of punishment by hanging the offender till death.

5. Reformative Form of Penal System

"Every saint has a past and every sinner has a future"

This beautiful observation was made by Justice Krishna Iyer in the case of Mohd. Giasuddin v. State of A.P. This means that just as there is a history behind the attainment of sainthood by every pious person, there is also an opportunity for a sinner or criminal to lead a life in the right way. Through this approach the policy of formulating corrective punishment has emerged, which is known as reformative or rehabilitative forms of penal system. According to this theory, the main goal of punishment is not only to take the offender through adverse situation but also to transform him into a law abiding member of society through reformative measures. One of the duties of a state is to establish a wrongdoer as a contributor to society at the end of the punishment process. The application of reformative or restorative approach depends largely on individualism. That is, according to this doctrine, when a judge punishes an offender, he must pay special attention to the circumstances under which the offense was committed which will included the age of the offender, his or her natural characteristics and the method of commissioning the crime. Only through this process it will be possible to analyze the root causes of crime and prevent it. Because according to the

reformative idea, showing hatred towards crime is appropriate but not towards the criminal. In other words, it is necessary to use the punishment as the end of the criminal activities but not as the obstacle of returning a wrongdoer to a healthy life. The process of reformative punishment based on the following activities.

- **Education:** Often due to lack of proper education a person doesn't get the ability to judge right and wrong and they engage themselves in criminal activities. They are imparted proper moral education through the reformative process.
- **Therapy:** In many cases, people who are involved in criminal activities are mostly suffers from mental disorders. They are given appropriate psychiatric treatment in the correctional process.
- **Training:** In some cases, due to unemployment, many people are involved in criminal activities. In this process, the prisoners are given necessary training so that they can involve themselves in productive works.

Mahatma Gandhi once stated that "an eye for an eye will make the whole world blind." That is, it is never possible to solve a problem with violent or vindictive attitude. In order to eradicate crime from the society, the main goal should be to guide the offender towards morality so that he will feel remorse for the crime he has committed. This doctrine has also been incorporated in recent legal system of India. Reformatory approaches is primarily applied to the first criminal, Juvenile Delinquents and women offenders. The following methods are used in Indian judiciary as an essence of reformative process.

i). Parole

Under parole an offender is either temporarily or permanently released from prison due to his good behavior while in captivity, although he is subjected to some restrictions and conditions imposed by the authorities. According to the ruling in the case of Budhi v. State of Rajasthan, parole fulfils the following three purposes:

- It encourages offenders to change their behaviour in order to receive early release.
- It makes sure that the offender's familial relationships are not damaged.
- It aids the offender in assimilating into and fitting into society. The Prison Act of 1894 and the Prisoner Act of 1900 establish parole. Each State, however, has its own requirements for the granting of parole.

ii). Probation

Probation means allowing a person, who was involved in any minor offense, to enter the world at large under the supervision of a probation officer who will be in charge of his/her reformation and employment relating matters. The Probation of Offenders Act, 1958 established probation in India. First-time offenders who commit crimes like stealing (Section 379 of the Indian Penal Code) or cheating, which carry sentences of less than two years in prison, are allowed to be released under this Act (Section 420 of Indian Penal Code).

In the case of Satish v. State of U.P., during discussion with the question of probation, the Supreme Court observed that although it is undeniably true that society has a right to live in peace and safety, without roving criminals wreaking havoc in the lives of regular, law-abiding residents, A civilized society cannot be attained solely by punitive attitudes and vindictiveness; rather, public harmony, brotherhood, and mutual acceptance should be developed. This is the cornerstone of reformative theory, which is just as strong. Therefore, first-time offenders should be generously given the opportunity to atone for their transgressions and look forward to a promising future.

iii). Pardon

The Constitution of India, 1950 empowers the President of India under Article 72 to grant pardon to an offender and Similar power has also been given to the Governor under Article 161.Article 72 of the Indian Constitution not only gives the President the power to pardon the offender but also to reprieve, respite or remit sentence, which was granted to him by the judiciary. Such petitions are made to the President mainly after passing the death sentence by Supreme Court of India.

iv). Commutation

Sections 54 and 55 are the two main sections under I. P. C. take care of sentence commuting. When it comes to the death penalty, Section 54 allows for the sentence to be commuted in order to be replaced with any other punishment, and Section 55 allows for the sentence to be commuted from life in prison to 14 years. The Governor of the State, who is the appropriate authority, has the power to commute sentences without the offender's permission.

6. Judicial Trends in India

Soman v. Kerala-

In this case, the Supreme Court of India has mentioned a number of decisions in applying the Court's discretion power. They are considered as proportionality deterrence and rehabilitation approach. Both aggravating and mitigating factors should be considered. Mitigating circumstances are related to the offenders and aggravating circumstances are connected to the offences. In para 12 of this case, the Supreme Court pronounced that "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges."

State of Punjab v. Prem Sagar-

In this case Supreme Court observed that "In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender have not issued any guidelines."

Sibbu Munnilal v. State of Madhya Pradesh-

In this case the bench of three judges of the Madhya Pradesh High Court had denoted some guidelines of punishment as follows:

- The maximum punishment relating to each offence with the classification of offences must be made with reference to which, the offender is liable to punish.
- Where both death penalty and imprisonment for life is provided as a punishment under a specific penal section. Imprisonment for life shall be considered as an alternative penalty and death penalty shall only be given if the case comes under the jurisdiction of 'rarest of rare case'.

Whenever a death penalty is given asa punishment the nature and degree of the circumstances subject to be concerned by the court.

- Imprisonment can be divided into two categories-simple and rigorous. Imprisonment for life denotes rigorous imprisonment for twenty years.
- The difference between imprisonment for life and imprisonment is the former can be rigorous and the duration of this imprisonment can be till his last breath, however, the duration of a normal imprisonment can vary from24 hours to 14 years.
- Lastly, offences punishable with fine mean the offences for which the maximum penalty can be compensation only.

Bachan Singh v. State of Punjab-

In this case the Supreme Court observed that capital punishment shall exclusively be given in the “rarest of the rare” case. However, the exact categories of the “rarest of the rare cases” is not mentioned by the Supreme Court or by the legislature, it is totally depends on the discretion of the presiding judges.

Jagmohan Singh v. State of Uttar Pradesh-

In this case Supreme Court observed that, mitigation and aggravation, these two factors mainly balance the imposition of capital punishment, But after the case of Bachan Singh, this approach firstly was called into question because of the amendments in the Cr.P.C. where it is mentioned that in the offence of murder the offender will be punished with the sentence of life imprisonment. After taking due consideration of the amendment, the court came to the conclusion that capital punishment shall give in rarest of the rare cases only.

Sangeet & Anr. v. State of Haryana-

In this case the court observed that the approach which was denoted in Bachan Singh’s case is not fully adopted. The courts still give emphasis to the crime and not to the circumstantial status of the criminal. The balancing factor of the mitigation and aggravation has taken a bit of a back seat in ordering punishment.

Renuka Shinde and Seema Gavit : [Child Killers-1990-1996, case where children were the victim]

A woman in Maharashtra continues to educate and encourage her family to raise money through child abuse and murder. When the whole incident came to light, her two daughters, one 29-year-old and the other 25-year-old, and her husband were arrested in 1996. The three, including the woman, are accused of kidnapping and killing children under the age of five, although they kidnapped 13 children between 1990 and 1996 and killed nine of them, but were charged for killing only five children. Their mercy petition was rejected by the President on 31 July 2014, although the Bombay High Court in January 2022 commuted their sentence from death to life imprisonment. On account of the delay in giving decision on their Mercy petition after rejection of appeal in Supreme Court on 2006.

The Nirbhaya gang-rape (2012)-

It was an event that spread like wildfire across the country, demanding a change in the rape law across the nation. Jyoti Singh, also known as Nirbhaya was subjected to a barbaric gang rape and the entire Indian youth community came to the streets to protest the mass rape. And finally, after a long legal battle, the accused were hanged in Tihar Jail in March 2020.The changes made in the rape law were substantial. A committee was set up under a former judge of the Supreme Court, J.S. Verma to suggest amendments in the criminal law. The report found that crimes against women were directly linked to failures of the government and the police. The major suggestions of the report were to make rape punishable by life sentence instead of death as it had been seen that the death sentence did not act as a deterrent and cleared ambiguity over the control of the Delhi police in such cases. The committee, however, did not favour setting the official age of a juvenile at sixteen rather than eighteen.

To begin with through the Criminal Law Amendment Act, 2013 the definition of rape was changed in Section 375 to include the insertion of any object in the vagina or rectum of a woman. Further, the punishment for rape is seven years at the least and may extend up to life imprisonment (Section 376). Any man, be it a police officer, medical officer, army personnel, jail officer, public officer or public servant, who commits rape may be imprisoned for at least ten years (Section 376). A punishment of life imprisonment, extending to death, was prescribed for situations wherein the rape concludes with the death of the victim, or the victim being in a vegetative state (Section 376-A). Gang rape has been prescribed punishment of at least twenty years under the newly amended sections (Section 376-D).The new amendment also defined ‘consent’ to mean an unequivocal agreement to engage in a particular sexual act; clarifying further that the absence of resistance will not imply consent.

7. Conclusion

Generally it can be concluded that the usefulness of a punishment policy depends on its impact on society and its response to the perpetrators. Necessarily applying severe punishment to criminals protects the overall interest of a nation. Every civilized country should follow a certain system of punishment.

From the above review of the punishment formulation method it is understood that Crime and criminals can never be excluded from society based on a single doctrine among deterrent, preventive, retributive or reformative. This will be possible only when the policy of formulation of punishment is implemented using two or more of these doctrines in a deliberate manner. Some socialist countries in their criminal legal code, have clearly stated the purpose and reasons for punishing offenders.

British and American jurists have focused on the plight of the victims, which has given rise to a new trend called victimology. This includes not only the victims of personal criminality but also those who have been the victims of misjudgments through the criminal justice process. This is why law enforcement agencies, especially like the police and prison authorities, need to be vigilant about human rights. The establishment of the National Human Rights Commission of India in 1993 is undoubtedly a landmark step in this regard.

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