International Journal of Multidisciplinary Research and Development
www.allsubjectjournal.com
Online ISSN: 2349-4182, Print ISSN: 2349-5979
Received: 03-01-2022, Accepted: 18-01-2022, Published: 03-02-2022
Volume 9, Issue 2, 2022, Page No. 1-3

Role of theories of punishment in the administration of criminal justice system

Vanita
Department of Law, Chaudhary Devi Lal University, Sirsa, Haryana, India

Abstract
The Administration of Criminal Justice System is not a new concept. Administration of justice is a very wide subject. It is not only the judiciary which is responsible for the administration of justice but the legislature and the executive also play an equally important role. The Courts of law come into picture at a later stage to decide the right or wrong of a dispute whether civil or criminal. Administration of justice becomes the most important job of the state which implies the support of right within a political society by means of the physical strength of the state. Justice is administered through the judicial organ of the government. Justice is administered according to law and the Courts of Justice plays the vital role in the administration of justice. Theories of punishments plays an important role in achieving the goal of the administration of Criminal Justice System. There is a deep relationship between the theories of punishment and criminal justice system. To proper maintenance of criminal justice system, such theories give new thoughts to the courts to proper administration of justice.

Keywords: administration of criminal justice system, deterrent theory, preventive theory, reformative theory, retributive theory, expiatory theory, theory of compensation

Introduction
The Administration of Criminal Justice System is based on the principles of fairness, transparency and human rights. But these principles underlying criminal law, criminal justice system in India has failed in attaining of these objectives in reality. The reason in failing to fulfill the basic principles of justice system does not lie in its objects, but in proper handling and managing. The main problem before criminal justice system is delayed disposal of cases. 'Justice delayed is denial of justice' is the cardinal principle of criminal law and based on concept of fairness in criminal trial. Apart from this interest of society, the question of life and death of accused lies in the rights and interests of aggrieved person. For proper administration of justice and solving the problem of criminality in the society, speedy disposal of cases is very important. In India, the right to speedy trial has now been recognized as fundamental right enshrined in Article 21 of Constitution of India. Speedy trial is also important in order to gain public confidence in criminal justice system. It also plays very crucial role in prevention and control of crime [1].
Administration of criminal justice is a part of administration of justice that is a necessary ingredient of any civilized government to maintain peace and order in the society. To end the crime and society and maintain law and order, here is a dire need of punishment. A number of theories have been propounded to answer the question out of which the following have been given more importance:

Relation between criminal justice system and public wrong
A criminal proceeding as one designed for the punishment of a wrong done by the defendant, and a civil proceeding as one designed for the enforcement of a right vested in the plaintiff. We have now to consider a very different explanation which has been widely accepted. By many persons the distinction between crimes and civil injuries is identified with that between public and private wrongs [2]. By a public wrong is meant an offence committed against the state or the community at large, and dealt with in a proceeding to which the state is itself a party. A private wrong is one committed against a private person, and dealt with at the suit of the individual so injured. The thief is criminally prosecuted by the Crown, but the trespasser is civilly sued by him whose right he has violated. Criminal libel, it is said, is a public wrong, and is dealt with as such at the suit of the Crown; civil libel is a private wrong and is dealt with accordingly by way of an action for damages by the person libeled [3].
Blackstone's statement of this view may be taken as representative: Wrongs that he says are divisible into the two sorts or species, private wrongs and public wrongs. The firstly are infringement or privation of the private and civil rights belonging to individuals considered as individuals or there are upon quickly termed civil injuries the second is a breach or violation of public rights and duties that affects the whole community considered as a community and distinguished by harsher appellation of crimes and misdemeanors" [4]. Conversely, and in the second place, all crimes are not public wrongs. Most of the very numerous offences that are now punishable on summary conviction may be prosecuted at the suit of a private person; yet the proceedings are undoubtedly criminal none the less. the divisions between public and private wrongs and between crimes and civil injuries are not coincident but cross divisions. Public rights are often enforced, and private wrongs are often punished. The

difference between the criminals and civil wrongs are based not only on any difference in the nature of the rights infringed but also on a difference in the nature of the remedies applied [5].

The credible of this theory in question is chiefly attributable to a certain peculiarity in the historical development of the administration of justice. Where the criminal remedy of punishment is left in the hands of the individuals injured, to be claimed or not as they think fit, it invariably tends to degenerate into the civil remedy of pecuniary compensation. Men barter their barren right of vengeance for the more substantial solation of coin of the realm. Offenders find no difficulty in buying off the vengeance of those they have offended, and a system of money payments by way of composition takes the place of a system of true punishments [6].

At the present day, for the protection of the law of crime, it is necessary to prohibit as itself a crime the compounding of a felony, and to prevent in Courts of summary jurisdiction the settlement of criminal proceedings by the parties without the leave of the Court itself. Such is the historical justification of the doctrine which identifies the distinction between civil injuries and crimes with that between public and private wrongs. The considerations already adduced should be sufficient to satisfy us that the justification is inadequate [7].

Deterrent Theory

The deterrent theory of punishment gives importance to the notion of deterrence in the mind of the criminal as well as in others. The offender knows that if he violates the law, he would be punished with penalty, and this fear causes him to behave as a normal human being. Like this, by punishing the criminal, a deterrent effect is created in the mind of others that if they thought of violating the law they too would be punished with penalty, and this fear in them keeps them away from breaking the law. In other words, the notion of fear is the basis of this theory by which civilized behavior by all is expected to be ensured. Thus, emotion of a man plays an important role. It is clear that more serious the offenses more severe the penalty. Our ancient sages had suggested the level of punishment in the forms of gentle admonition, harsh censure, deprivation of property and corporal pain in that order, and even then if an offender could not be restrained then all modes should be applied with hardness [8].

There is a lot of criticism by the critics of this theory of the deterrent theory of punishment in modern times. It is contended that this theory has proved ineffective in checking crime. Even when there is a provision for very severe punishments in the penal law of the country the also people continue to commit crimes [9].

Preventive Theory

Preventive theory means the imposition of penalty with a view to prevent or disable the offender from committing the offence again. Repetition of the crime is prevented by disabling the criminal. Prevention of a wrongful conduct is ensued. It is based on the principle that prevention is better than cure. The offender is rendered incapable of committing the crime again. This can be done by imposing capital punishment, or by imprisonment, or by disqualification orders like suspending driving license in cases of motor vehicle offences, or by preventive detention, or by security for keeping the peace and for good behavior, and so on. Preventive detention and security for keeping the peace and for good behavior are some of the preventive measures and must be distinguished from the penal aspect of the preventive theory [10].

Reformative Theory

The reformative theory as comparison to other theories is a recent concept that lays emphasis on the reformation of the criminal. It treats criminals as primarily sick people that needing corrective measures with a view to restore them to the society as good citizens. Victor Hugo had quoted that as to open a school is to close a prison. This theory follows this quote. It believes in educating the offenders in such a way as to make them better citizens of tomorrow. It treats a criminal's mind as a diseased mind which requires careful treatment and proper attention to cure him. It does not take punishment as an end in itself but as a means to an end. It treats crime as a pathological way which can ordinarily be corrected by skilful treatment [11].

A therapeutic approach is the motto of this theory. The emphasis is on reform and rehabilitation of the offender. Prisons are correctional centres under this approach where the criminal is given adequate training so that after his release he could easily become a part of the society once again without being a burden on it. The harsh and savage punishment is ruled out by this theory. Basic human dignity is always kept in mind deprave treatment to a criminal is looked down upon. Reformation seeks to bring about a change in the character of the offender. It believes in causes of crime to be explored more vigorously in a personalised manner, and then a personalised treatment is recommended. The growing emphasis on probation, parole and suspended sentences by the modern penology is a sign of the acceptance of this theory in the present day [12].

In *Raju Jagdish v. the State of Maharashtra [13]*, the Hon'ble Supreme Court has directed the States to think about implementing the reformative and rehabilitation programmes contained in the Model Prison Manual of 2016. The manual which has been approved by the Ministry of Home Affairs refers to the education of prisoners which is vital for the overall development of prisoners. It also suggests physical education such as Yoga, health or hygiene education, moral and spiritual education among others.

In *Manga v. State of Punjab & ors*. [14], it was held by the Punjab and Haryana High Court that parole is a reformative process and it cannot be denied on apprehension of absconding. The release on parole for the purpose that the prisoner can meet with his family members.

Retributive Theory

This theory is based on retribution that an eye for an eye and a tooth for a tooth. Such notion is the motto of this theory. The offender must be made to suffer in proportion to the injury he has caused to the victim is the principle behind this theory. The thinking of revenge gets an upper hand. Retaliation becomes overbearing. The theory proceeds on ethical grounds and moral culpability of the culprit. This theory was developed more prominently in the olden days when the injured person was given a right to take revenge on the person causing the injury [15].

Expiatory Theory

The expiatory theory is considered to have a link with the retributive theory, and even hold the opinion that it is a part of the retributive theory. This theory propounds that the punishment should be in order to adjust the suffering to the sin. The offender by suffering pays the debt that is demanded by justice and owed to authority inflicting the suffering and so becomes reconciled once more with that authority. The punishment should be in proportion to the quantum of wrong, and after the wrongdoer undergoes the punishment. It is presumed that he gets purified, and therefore, he once again becomes an accepted member of the society [16].

Theory of Compensation

The main object of this theory is not only to prevent further crimes but it also to compensate the victim of the crime that suffers a lot. The logic is that the motive of criminality is greed and if the offender is made to return the deceitful benefits by acting the crime, the intention of punishment would dry up [16].

In certain cases, the Supreme Court has awarded compensation to persons who have suffered at the hands of government servants. In *Bhim Singh v. State of Jammu and Kashmir* [17], Bhim Singh was a member of the Legislative Assembly. He was arrested while on his way to attend a meeting of the Assembly. The result was that he was deprived of his Constitutional right to attend the Assembly session. The Supreme Court awarded a sum of Rs.50,000 as compensation and ordered the same to be paid within two months.

In *Kara v. State NCT of Delhi* [18], the Delhi High Court while hearing an appeal to determine compensation amount mentioned under Section 357 of the Code of Criminal Procedure issued certain directions to the trial Court to take necessary steps to implement the order relating to compensation.

Conclusion

It can be concluded that the Administration of Criminal Justice System is based on the principles of fairness, transparency and human rights. But these principles underlying criminal law, criminal justice system in India has failed in attaining of these objectives in reality. The object of criminal justice is to punish the offender. A number of theories have been given from the ancient period for concerning the very object of punishment. The view of the other class of theories is that the purpose of punishment is retribution. There are many theories of punishment i.e., preventive theory, deterrent theory, expiatory, reformative theory, retributive theory, and theory of compensation.

References

1. Pradeep Singh, Delayed Investigation and Criminal Justice, Civil & Military Law Journal, 41.
2. John W. Salmond, Jurisprudence or the theory of Law, Stevenes and Haynes London, 1st Ed, 1902, 82.
3. Id at P.83.
4. Ibid.
5. Id at P.84.
6. Ibid.
7. Id at P.85.
8. Bhattacharya T. The Indian Penal Code, Central Law Agency, Allahabad, 8th Ed. 2014, P.90.
9. Dr. Mahajan VD. Jurisprudence and Legal Theory, Eastern Book Company, Lucknow, 5th Ed. Reprint, 1993, 137.
10. Ibid.
11. Bhattacharya T. The Indian Penal Code, Central Law Agency, Allahabad, 8th Ed, 2014, 91.
12. Ibid.
13. Criminal Appeal Nos. 88-89 of 2019.
14. CRWP No. 4593 of 2020.
15. Bhattacharya T. The Indian Penal Code, Central Law Agency, Allahabad, 8th Ed, 2014, 88.
16. Id a P.89.
17. Mahajan VD. Jurisprudence and Legal Theory, Eastern Book Company, Lucknow, 5th Ed. Reprint, 1993, 147.
18. Cr. LJ 192, 1986.
19. Criminal Appeal No. 352 of 2020.