



ORIGINAL RESEARCH PAPER

Law

BASIC JUSTIFICATIONS IN ADMINISTRATION OF CRIMINAL JUSTICE FROM PUNISHMENT TO REFORMATION

KEY WORDS: 5 Pillar in criminal justice system - Punishment reformation treatment

Dr.Sarang d. dave B.COM.,LL.M . PH.D

ABSTRACT

The India penal policy is in a state of flux. Where as so much seem to have been said as well as put in place to make the system effective, sadly, the practice represents a farcry from a perfect situation. This paper seeks to address this concern and more importantly the methods which have been put in place to accomplish same. This work has taken account of various researches done in this area; however it also recognizes that these works tend to address only limited and narrow aspect of the myriad of problems. The purpose of this paper therefore is to take a panoramic view of the subject and attempt an overview of India criminal justice administration. Chiefly to be examined is the question of the nature and impact of criminality in Indian criminal policy, criminal prosecution and personal responsibility, and sentence and punishment, to mention a few. Finally, suggestions are made on how to get a better penal system.

Introduction:

Judges could choose from a wide range of punishments in this period, though their options were often limited by choices made at an earlier stage in the judicial process.

Felonies defined by common law were originally punishable by hanging. Increasingly from the middle of the eighteenth century, statute law curtailed the use of the death penalty. Misdemeanor's were punishable by a range of non-capital punishments. Normally, offences defined by statute could only be punished as prescribed by the relevant legislation. The punishments available in any particular case were thus circumscribed by the legal status of the offence with which the defendant was charged (which in some cases was influenced in turn by the choices made by the victim or the grand jury). Juries frequently manipulated the punishment through the use of partial verdicts).

Many defendants were given more than one punishment. This is particularly common for those sentenced to the pillory, imprisonment, whipping, fines and providing sureties for good behavior.

Because the actual punishment a convict received often differed from that specified at their trial, it is worth searching later sessions by the name of the defendant using the Personal Details search page to see if the sentence was mitigated. It is also possible to search separately for information about pardons or executions. Although this information was not consistently reported in the Proceedings, there are regular reports of pardons from 1739 until 1796 and of executions from 1743 until 1792. Additional evidence about whether (and how) punishments were carried out can be found within the Associated Records. Than the we have said under

DEFINATION:

philosophy

Various philosophers have presented definitions of punishment. Conditions commonly considered necessary properly to describe an action as punishment are that:

1. it is imposed by an authority,
2. it involves some loss to the supposed offender,
3. it is in response to an offence and
4. the person (or animal) to whom the loss is imposed should be deemed at least somewhat responsible for the offence.

olopsychgy:

Introduced by B.F. Skinner, punishment has a more restrictive and technical definition. Along with reinforcement it belongs under the operant conditioning category. Operant conditioning refers to learning with either punishment or reinforcement. In psychology, punishment is the reduction of a behavior via application of an unpleasant stimulus ("positive punishment") or removal of a pleasant stimulus ("negative punishment"). Extra chores or spanking are examples of positive punishment, while removing an offending student's recess or play privileges are examples of negative punishment. The definition requires that punishment is

only determined after the fact by the reduction in behavior; if the offending behavior of the subject does not decrease, it is not considered punishment. There is some conflation of punishment and aversives, though an aversion that does not decrease behavior is not considered punishment in psychology. Additionally, "aversive stimulus" is a label behaviorists generally apply to negative reinforcers (as in avoidance learning), rather than punishers

FIVE PILLAR IN CRIMINAL JUSTICE SYSTEM:

1. The Community
2. The Law Enforcement
3. The Prosecution
4. The Courts
5. Corrections

Our criminal justice system is composed of five pillars that function like a chain of links. Any weakness in any of these links breaks the chain, resulting to a breakdown of the system: inordinate delays in the proceedings, acquittal of the guilty and conviction of the innocent.

Hugo, Adam Bedau (February 19, 2010).
 McAnany, Patrick D. (August 2010)
 Hugo, Adam Bedau (February 19, 2010).
 (1966). *Ethics and Education*. pp. 267–268.

Such weakness can be caused by lack of concern on the part of people in the community, or inefficiency and corruption on the part of the public officials composing the four (4) other pillars.

The Community:

The filipino community produces our law enforcers (policemen, traffic enforcers, nbi agents, pdea agents, coa auditors, ombudsman fact-finding investigators, etc.); prosecutors (doj and ombudsman prosecutors/investigators); judges (municipal trial courts, regional trial courts and sharia courts); justices (sandiganbayan, court of tax appeals and the supreme court); and correction officials and personnel (municipal jails, provincial jails, city jails, the bureau of corrections [muntinlupa] and other correctional facilities).A rotten community will always produce rotten law enforcers, prosecutors, judges, justices and correction officials. The spring cannot rise above its source.

Members of the community are also the victims of crimes, direct or indirect. They are also the beneficiaries of an efficient and effective criminal justice system in the form of a peaceful and fear-free environment.

The community is also the greatest source of information about the commission of a crime. It is from the community that most witnesses come, including victims and whistleblowers.

Most crimes against property (theft, robbery, etc.) are dismissed because the victim does not testify in court, especially when the stolen property is recovered. Hence, thieves and robbers are set free, free again to steal and rob!

The Law Enforcement:

To this group belong policemen, national bureau of investigation agents, philippine drugs enforcement agency agents, the military, bureau of customs police, bureau of immigration officers, bureau of internal revenue examiners, commission on audit auditors, ombudsman fact-finding investigators, commission on human rights investigators, land transportation office and traffic enforcers, etc.

They enforce the law by ensuring compliance therewith, conduct investigations to uncover commissions of crimes and violations of laws, file criminal cases before the prosecutor's (fiscal's) office (if the offender is not a government employee/official) or the office of the ombudsman (if the offender is a government employee/official), and testify in court if a criminal charge is lodged in court by the prosecutor's office or the office of the ombudsman.

The Prosecution:

To this group belong the city, provincial and regional state prosecutors of the department of justice, and the investigators and prosecutors of the office of the ombudsman.

They conduct preliminary investigations (if the respondent was not caught in the act of committing the crime) or inquest proceedings (if the respondent was caught in the act of committing the crime) to determine whether or not there is probable cause (reasonable ground) to prosecute the respondent in court. If they found probable cause, they lodge a criminal charge against the respondent before the court. Otherwise, they dismiss the case.

Once the criminal case is filed in court, the court issues a warrant of arrest against the accused (if he was not caught in the act of committing the crime) or commitment order (if the accused was caught in the act of committing the crime and he has not yet posted bail or the offense is non-bailable because the crime is punishable by life imprisonment, reclusion perpetua or death).

The prosecutor ([fiscal] from the doj for crimes committed by non-government people, or from the ombudsman for crimes committed by government people, although the fiscals can prosecute criminal cases against government people under the continuing authority of the office of the ombudsman) now stands as the lawyer for the state (people of the philippines) and prosecute the case. The victim, the law enforcer (who investigated the crime) and other witnesses will now testify in court. The defense counsel will defend the accused. After the trial, the court will now decide whether or not the accused is guilty. If he is, then he shall be penalized (fine, or imprisonment, or both). If he is not, he shall be acquitted (set free).

The Courts:

To this group belongs the municipal trial courts (for crimes punishable by imprisonment not exceeding six (6) years), the shari'a circuit courts in the armm (for criminal violations of the muslim code), the regional trial courts (for crimes punishable by imprisonment of more than six years, and appeals from the decisions of the municipal trial courts), the sandiganbayan (for crimes committed by government officials with salary grade 27 and above regardless of the penalty prescribed for the offense charged, and appeals from the decisions of the regional trial court in criminal cases against government employees below salary grade 27), the court of appeals (for appeals from the decisions of the regional trial courts in criminal cases against non-government people), and the supreme court (for appeals from the decisions of the court of appeals, sandiganbayan and automatic review of decisions of the regional trial courts and the sandiganbayan where the penalty imposed is reclusion perpetua or death).

Corrections:

To this group belong the various jails (municipal, city and provincial jails), the bureau of corrections (in muntinlupa) and other correctional facilities. While the criminal case is pending in court, the accused shall be detained at the municipal, city or provincial jail unless he posts a bail bond for his provisional liberty and if the offense is bailable. After conviction, the convict will be sent to the

bureau of corrections to serve his sentence.

Our criminal justice being also a corrective one, the correction officials are mandated to see to it that the convict is reformed and is able to re-integrate himself into the community after serving his sentence.

Punishment reformation treatment:

A Punishment is a consequence of an offense. Punishments are imposed on the wrong doers with the object to deter them to repeat the same wrong doing and reform them into law-abiding citizens. The kind of punishment to be imposed on the criminal depends or is influenced by the kind of society one lives in. The aim of the different theories of punishments is to transform the law-breakers into law-abiders.

Theories Of Punishment:

The different theories of Punishment are as follows –

- Deterrent Theory
- Retributive Theory
- Preventive Theory
- Reformatory Theory
- Expiatory Theory

A) DETERRENT THEORY:

The term "Deter" means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

B) RETRIBUTIVE THEORY:

five-pillars...criminal-justice-system/101501055306615.

This theory of punishment is based on the principle- "An eye for an eye, a tooth for a tooth". Retribute means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and transformation. This theory has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and barbaric.

C) PREVENTIVE THEORY:

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. This criminal under this theory is punished with death, life imprisonment etc. This theory has been criticized by some jurists.

D) REFORMATORY THEORY:

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is a born Criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

E) EXPIATORY THEORY:

Under this theory, it is believed that if the offender expiates or repents and realizes his mistake, he must be forgiven.

Conclusion:

The mood and temper of public concerning the treatment of crimes and criminals is one of the unfailing tests of the civilization of any country.—Sir Winston Churchill said while addressing the House of Commons. The justification of punishment possesses one of the most difficult jurisprudential issues. There are different theories of punishment prevalent in various ages and different justifications are offered among different countries according to variations in culture and civilizations. It is cruel to expose the guilty to useless sufferings when the punishment is too severe; on the other hand, is it not cruel still to leave the innocent to suffer? When

the result of such punishment is too mild to be efficient punishment must be severe enough to act as deterrent but not too severe to beThere are critics of punishment who argue that punishment aimed at intentional actions forces people to suppress their ability to act on intent. Advocates of this viewpoint argue that such suppression of intention causes the harmful behaviors to remain, making punishment counterproductive. These people suggest that the ability to make intentional choices should instead be treasured as a source of possibilities of betterment, citing that complex cognition would have been an evolutionarily useless waste of energy if it led to justifications of fixed actions and no change as simple inability to understand arguments would have been the most thrifty protection from being misled by them if arguments were for social manipulation, and reject condemnation of people who intentionally did bad things.

REFERENCE:

1. <https://indiankanon.org/search/>
2. https://en.wikipedia.org/wiki/Punishment#Destructiveness_to_thinking_and_betterment
3. Hugo, Adam Bedau (February 19, 2010).
4. McAnany, Patrick D. (August 2010)
5. Hugo, Adam Bedau (February 19, 2010).
6. (1966). *Ethics and Education*. pp. 267–268.
7. [five-pillars...criminal-justice-system/101501055306615](#).