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PUNISHMENT VS. REHABILITATION – THE BETTER OPTION

AUTHORED BY- ARCHI AGARWAL¹

‘If he has a conscience he will suffer for his mistake; that will be punishment — as well as the prison.’²

INTRODUCTION

The battle between good and evil has been fought for ages. Humankind has suffered at the hands of injustice and has become the prisoner of its own mind. People act due to their instincts or their need to get revenge or simply because they think it is their only option. Resorting to the last resort they commit crimes, aid in wrongful doings, and then are left to the mercy of the judicial system that prevails above all. The question that now arises is -do all the prisoners deserve the hostility they are met with or do some of them have a chance at redemption?

PUNISHMENT

The convict needs to repent and punishment is the right way of doing it – the thought of the masses. Every offender must pay for his crimes because no matter what he did, the law prevails. Rehabilitation was the traditional approach, people believed that the offenders could be cured and it was a mental sickness that led to the crime that was committed. He or she could ask for forgiveness and God would show them the path. So, the guilty got away with ease and more heinous crimes took place that made everyone believe humanity was lost and pure evil had taken place thus imprisonment and the death penalty became the newfound approach. The history of punishment is adorned with four theories – deterrent theory, retributive theory, preventive theory, and reformative theory. The first three are concerned with punishment for crime and as the name suggests the fourth theory is concerned with rehabilitation.

¹ The author is a student at Galgotias University, Greater Noida

² Esther Lombardi, ‘Crime and Punishment ‘ (Thought CO., 08 May,2017) < <https://www.thoughtco.com/crime-and-punishment-quotes-2-739396>> accessed 06 August 2023

The motive behind punishment –

The motive behind punishment is simple – to set an example for all the people in society as to what fate they will be met with if they commit a similar offense. That might be the primary reason however the secondary reason is that the victim is given the justice he was seeking for. As time passed people started getting tough on crime it was the only way they could reduce the crime rate they worked with one single mindset – the crueler the punishment the more fear is instilled in people.

Contrary to what the law thinks the statistics show a different story - A comparison on a global scale reveals some intriguing patterns. Norway changed its emphasis 20 years ago from punishment to rehabilitation (including for people who were in prison). Large decreases in reoffending rates followed this. Norway's reoffending rate is about 25% after five years, compared to the UK's rate of about 50% after a year.²

REHABILITATION

To describe rehabilitation it means the offenders are put in a facility where diving into their minds through the help of professional psychologists they form an understanding of the crime they committed and how it affected the society at large. The main thing that the law looks for when charging someone for an offense is – ‘mens rea’ meaning the intention of doing something or the intention of refraining from an act. Now what if all the guilty did not have any intention of committing the crime what if they were suffering from a mental illness or were a victim of substance use that clouded their thinking? Do they reserve a life behind bars?

Rehabilitation eases a person to their surroundings, so once they complete the process they know how to go about their normal life whereas compared to people in prison when they are let out they have a hard time being back in reality. Although not everyone can change their fate through rehabilitation, some people know they are wrong and continue to live their lives that way and those are the people who deserve a kind of life that is spent behind bars,

The reformatory theory of punishment which was talked about earlier is the theory of rehabilitation that only works when one acknowledges the crime he/she committed and feels remorseful for it. Rehabilitation is a proper mechanism that functions only when the offender

³Siddhartha Bandyopadhyay, ‘Why Rehabilitation -not harsher prison sentences-makes economic sense’ (The Conversation, 24 March 2020) < <https://theconversation.com/why-rehabilitation-not-harsher-prison-sentences-makes-economic-sense-132213>> accessed 06 August 2023

accepts the crime committed and puts effort into becoming a better person and at the same time proving themselves worthy of being sent back to the society to which they are not a threat anymore.

COMPARISON

In modern times the focus of law on how to deal with convicts is turning again toward rehabilitation as it seems to make major changes in the reoffending rates. The current trends, logistics, and statistics – in short, the economy related to crime all advocate rehabilitation. The question that now begs our attention is – should punishment be eliminated? the answer to this question is -no as there have been fair arguments that have been made in favor of punishment. the purpose of law is to provide justice but most of the time the focus shifts to the law being effective. We can consider whether a sentence is likely to discourage future offenders or help the offender, but these are efficacy considerations and have nothing to do with fairness. A doctor only inquires about an "effective cure," never about a "just cure" or "fair cure." We give up on justice when we opt for effectiveness. Prisons are not hospitals, and the State is not a physician.⁴

Thomas Szasz advocating punishment said, 'If he who breaks the law is not punished, he who obeys it is cheated. This, and this alone, is why lawbreakers ought to be punished: to authenticate as good, and to encourage as useful, law-abiding behavior. The aim of criminal law cannot be correction or deterrence; it can only be the maintenance of the legal order'.⁵

CONCLUSION

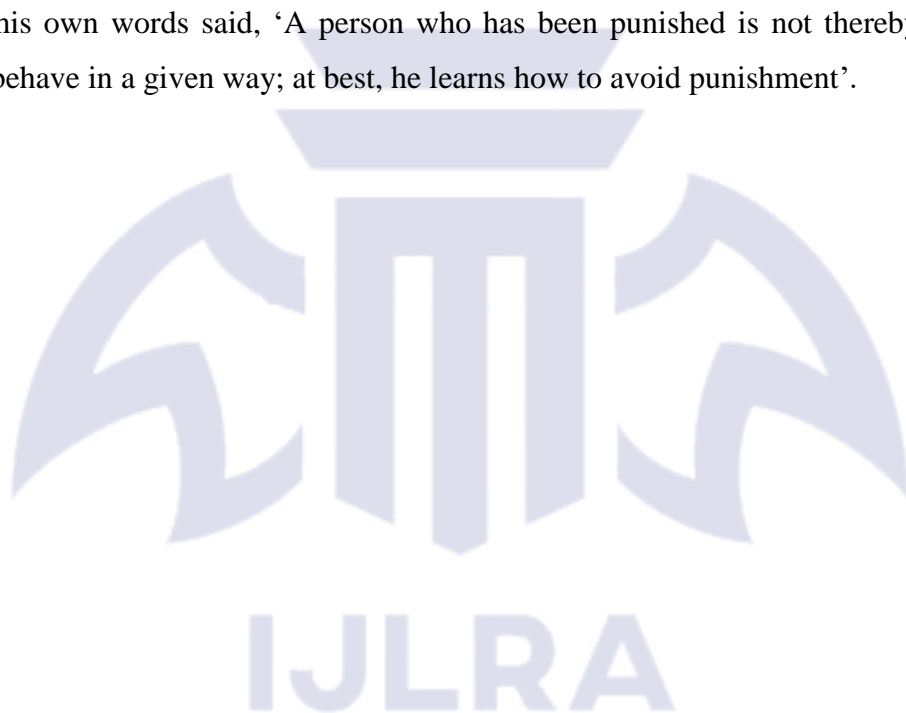
To find a way to what can be done the best way is to strike a balance between the two, they are like the opposite sides of a beam balance. Only one of the two things is not an option both methods need to work in unison and thus bring a change in the society. Leaning towards the statistics rehabilitation may be the most effective approach between the two. The debate continues on a larger scale to seek the right path, however- Durham Constabulary is in charge of Operation Checkpoint, one of the biggest rehabilitation programs. This "deferred prosecution scheme" enables offenders for some categories of relatively low-harm offenses (such as theft or criminal

⁴ Ryan Hamill, 'Why Punishing Criminals Can Be More Merciful Than Rehabilitation' (The Federalist, 21 November 2016) <https://thefederalist.com/2016/11/21/punishing-criminals-can-merciful-rehabilitation/> accessed 07 August 2023

⁵ Thomas Stephen Szasz, The Meaning of Mind: Language, Morality and Neuroscience (Syracuse University Press) 36

damage) to escape prosecution provided they take part in a program that addresses their causes of offending, such as mental health conditions or substance misuse. When compared to similar offenders who did not participate, the initial set of data from this program, which was just published, shows a 15% reduction in reoffending rates.⁶

There are and will always remain infinite arguments that will support one opinion or the other with changing times the perspectives will differ and there will always be more disagreements than agreements. Something that seems just in 2023 might not be just in 2050 and thus we need to decide what is more operative for the present. Retribution and reformation both fall in the same league they both seek to serve the purpose of the law which is – an egalitarian society. B.F. Skinner in his own words said, ‘A person who has been punished is not thereby simply less inclined to behave in a given way; at best, he learns how to avoid punishment’.



⁶Siddhartha Bandyopadhyay, ‘Why Rehabilitation -not harsher prison sentences-makes economic sense’ (The Conversation, 24 March 2020) < <https://theconversation.com/why-rehabilitation-not-harsher-prison-sentences-makes-economic-sense-132213>> accessed 06 August 2023