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Punishment, Implications, in 21st Century India

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Abstract
With constant changes in society since August 15, 1947 in India and the advancement of science and globalization, we are just a click away from each other. India as a sovereign socialist secular democratic republic has developed in its social, political, cultural, educational, judicial and legislative sectors. In India, most of the laws are from the pre-independence period i.e. Indian Penal Code 1860, Civil Procedure Code 1908 etc. In the Indian Penal Code 1860 we find the influence of all theories of punishment and changes in society and with a better understanding of the Psychological Quotient of Offenders, the concept plea bargaining incorporated into the Criminal Code 1973 vide amendment dated 11 January 2006 under chapter XXIA as sections 265A to 265L. Due to the changes in society and the psychological factors behind crime, the "reformative theory" of punishment gained a greater place in Indian law, but in the Indian Penal Code of 1860, the concept of "capital punishment" prevails respecting certain offences.

Keywords: Code of Civil Procedure, Indian Penal Code

Introduction
Law is defined as a system of rules created and enforced through social or governmental institutions to regulate behavior [1] and punishment is an integral part of it. 'Punishment' a word we know well from our childhood years. When we did something wrong in childhood, we were punished by our elders or our teachers to correct ourselves, rather to direct our behavior in the right direction and not to repeat the same mistake in the near or distant future. Following the same concept, punishment plays a very important role in building a safe, secure and progressive society by controlling human behavior through retribution, prevention or reformation.

Origin of Punishment in India
'Daṇḍa' (Sanskrit: literally 'stick', 'stick' or 'rod', an ancient symbol of authority)[2] is a Hindu term for punishment. In ancient India, punishments were generally sanctioned by the ruler, but other legal officials could also play a role. The punishments given were a reaction to criminal activity. In the tradition of Hindu law, there is a counterpart to 'daṇḍa', which is 'prāyaścitta' (similar expiation), or propitiation. While 'daṇḍa' is primarily sanctioned by the king, 'prāyaścitta' (similar to atonement) is undertaken by a person of his own free will.[3] Furthermore, the 'daṇḍa' provides the offender with a way to remedy any dharma violation he may have committed. Essentially, the 'daṇḍa' functions as a ruler's tool to protect the life stages and caste system. [3] The 'Daṇḍa' forms part of the 'vyavahāra' or legal procedure, which was also a responsibility given to the king. [3].

Theory of Punishment:
There are various theories of punishment, but among them the most important are the theories of punishment
1. Retribution theory.
2. Deterrence theory.
3. Preventive theory.
4. Reformative theory.

Apart from this, there are various other theories of punishment which are as follows:
5. Theory of Incapacity.
6. Compensation theory.

1. Retribution theory
It is a theory of punishment where the offender suffers in return for his crime, which is proportionate to the crime committed by the offender.
For example: an eye for an eye and a tooth for a tooth.[4]

2. Deterrence Theory
It is a theory of punishment where the offender is punished in front of other people in order to create fear among other people of the consequences of the crime.
For example: The offender is punished/executed in front of other people in the market.

3. Preventive theory
It is a theory of punishment where the offender is prevented from committing the crime.

History of Codification of Criminal Law in India
In primitive times, law in India primarily evolved from customary practices and religious precepts to modern well-codified acts and constitution-based laws. Although the recorded history of law begins only in the Vedic period, it is widely believed that ancient India had some legal system in place even during the Bronze Age and the Indus Valley Civilization. The various stages of the evolution of Indian law are classified as those during the Vedic period, the Islamic period, the British period and the post-independence period to the 21st century. In primitive times, laws in India were unwritten and we remember this by hearing the elder members of the family/group/clan generation after generation which was commonly known as "Sruti". Due to the change in the society and the ambiguity in the representation of "sruti" the compulsion was felt to write laws and it was named as "Smritis" and one of the famous "Smritis" was "Manu Smriti" which is a rich source of law even in the present world. During Mughal rule, the codification of criminal law became more sophisticated. Muslim criminal law fell into three broad categories: crimes against God, crimes against sovereignty, and crimes against individuals. After the British arrived in India, they initially chose not to interfere too much with the existing Muslim criminal laws. They introduced the changes gradually so as not to upset the local residents. When Warren Hastings introduced his Judicial Plan of 1772, he made no major changes to substantive criminal law. In 1773, he slowly began to change the procedural and evidentiary rules in the existing criminal laws. For example, he abolished the practice of allowing male relatives of victims to pardon their killers. During this time, serious crimes such as murder became crimes against the state, not private. This laid the foundation for the modern practice of state prosecution of persons who commit public offences. From 1790 Lord Cornwallis expanded the process of codifying the criminal laws. There have been fundamental changes in the subject of imposing punishments. As a result, the process of imposing punishments for physically harming and dismembering convicts slowly began to disappear. Lord Wellesley made even more changes to the offenses of murder and manslaughter in the early 19th century. For example, the law now distinguished between intentional and unintentional killing. In addition, the rules of evidence have been tightened and the threshold of proof for establishing guilt has been significantly increased. In the Presidency cities like Madras, Bombay and Calcutta, the British made many changes keeping in view the local conditions. Under the Charter Act of 1833, the first Indian Law Commission recommended the drafting of the Indian Penal Code in 1834. Lord Macaulay, who was the Chairman of this Law Commission, was at the head of its proposal. The Code was essentially a comprehensive piece of legislation describing all serious crimes existing at the time. Despite several revisions over almost thirty years, the law did not come into force until 1860. It was only after the rebellion of 1857 that the British decided to implement it.

Methodology:
When we talk about the methodological framework of sentencing analysis, we should keep in mind the fact that methodology is a basic multiple-response procedure that serves two purposes. First, it raises new questions about the properties and characteristics of punishment, and second, it allows us to examine certain untested assumptions found in traditional punishment theory. Evidence obtained using multiple response methodology challenges the validity of traditional theoretical assumptions and suggests two simple rules for predicting the properties of various punishments. When an aversive stimulus is dependent on the occurrence of a particular response, a reduction in response probability is usually observed. This procedure is usually called punishment, and reducing the probability of a response is called suppression of punishment. [5] The basic aim of this paper is to point out the impact of theories of punishment on criminal justice in 21st century India. Historically, two basic assumptions have been used to explain the phenomenon of punitive suppression. The first of these assumptions was a strong version of the negative Law of Effect proposed by Thorndike (1913). Thorndike hypothesized that any painful or unpleasant event would weaken the response (or putative S-R binding) that preceded the event. Thorndike (1932) subsequently rejected this notion, and it has not received any serious attention since. A second basic assumption proposed to explain the phenomenon of suppression of punishment has been referred to as the alternative response assumption (cf. Dunham, Mariner, & Adams, 1969). In its simplest form, the assumption states that a reduction in the punished response is due to an increase in some alternative behavior. All current explanations of punishment suppression are specific elaborations of this alternative response assumption. These specific treatments, which have been the most formalized, fall into two main categories. These categories are referred to as single-process and dual-process theories of punishment (cf. Solomon, 1964). A hallmark of single-process theory is the assumption that only one type of learning mechanism is involved in the development and maintenance of an alternative response during punishment training. Two types of single-process theory have been proposed, which differ in terms of proposing either a classical or an instrumental conditioning mechanism, Estes and Skinner (1941), for example, proposed that emotional responses elicited by a punishing event are classically conditioned by stimuli that precede the punishing event. Classically conditioned behavior is thought to compete with the punished response and cause suppression. Miller and Dollard (1941) exemplify the instrumental conditioning version of single process theory. They proposed that any response that is associated with the termination of the punishing stimulus will be instrumentally conditioned as a response that escapes pain and directly competes with the punished response. Dual-process theories of punishment specify two different learning

mechanisms that are sequentially involved in the development and maintenance of the anticipated alternative response.

Observation

From the above discussion, India as a 'SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC' supports the reformation of offenders by following the footsteps of Mahatma Gandhi "you cannot solve violence with violence". In 21st century India, it is always accepted that killing the offenders will not stop the crime, it can only be stopped by making the offender correct by repenting of what he has done. Although 'Capital Punishment' plays a role in the Indian criminal justice system with the essence of retributive and deterrent theory of punishment and is applicable only in the rarest of rare cases as directed by the Hon'ble Court of India. In short, theories of punishment have the greatest impact on the criminal justice system in India.

Conclusion

Finally, the most important thing to mention is that the word "Punishment" has a greater impact on society. First, it protects human rights, second, it reforms society and makes it a better place to live. In 21st century India, 'punishment', which has its importance in building society, helps to build the overall character development of human beings recognizing the difference between good and bad. Punishment theories have a greater impact on Indian society because they guide human behavior so that it does not go in the wrong direction.

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