

CHAPTER II

AIMS OF PUNISHMENT¹

Since the beginning of civilised society, men who have wronged society in some way are sent away to penal institutions of the country. This is because, by imprisonment, several aims are hoped to be achieved. The aims of punishment are many, depending upon community interests and different periods of social evolution. While punishment in earlier periods meant physical torture and whipping, now it means a chance for rehabilitation.

A. Protection of Society

Society does not want to live together with persons convicted of criminal offences. The law-abiding citizen fears that he will be the next victim of the offender's next anti-social, violent activity. He therefore wants to be protected from such criminals and one way to do this is by imprisoning convicted offenders in institutions with little chances of any escape.

¹'Punishment' in this Chapter means imprisonment.

Taggan, however dissents from the above argument and questions, "Wherein lies the fullest public welfare and how is it to be achieved?"² He argues that three groups of people require special consideration when advocating this aim of punishment. Firstly, the taxpayer has to be considered. He has to bear the costs of administration of penal institutions and therefore wants them to be administered as cheaply and with as little 'visibility' or disturbance as possible. But once, the crime rate increases rapidly, he would pester for more punitive measures since he is in danger and may be on the criminals' victims list.

Secondly, the views of the actual or potential victim of the criminals need to be considered. The actual victim is out for vengeance, he wants to see the criminal put in prison for as long as possible for what he has done to him. The potential victim may feel the same. This attitude, the writer submits, cannot be put under the aim of protection of society but rather under vengeance or retribution.

Thirdly, the innocent suspect who may be unjustly convicted or punished must also be considered. Just because society wants to be protected from criminals does not mean that

²Paul W. Taggan, Contemporary Correction, McGraw-Hill Book Co. Inc., 1951, p. 5.

innocent suspects are liable to be imprisoned also. They too are part of society and have to be protected from any misjudgements of society by provisions of the law.

Thus we can see that in this aim of punishment, there are diversities of interests and it is difficult to protect all these interests at the same time.

B. Retribution

Society wants to have its revenge on convicted criminals by making them suffer the harsh and extreme conditions of prison life. This aim is reflected in capital and corporal punishment, hard labour, solitary confinement and punitive detention. In the eighteenth century, this was the main aim of punishment. In the modern times, retribution can be classified into three headings: The first is retaliatory retribution. Suffering is intentionally inflicted on the offender but this is commensurate with the crime and degree of crime set out in the Penal Code. The second is distributive retribution which is a restriction in the methods of punishment. Probation is an example whereby a convicted offender is not sent to prison but continues to live in society though restricted in his movements for a particular period of time. The third is quantitative retribution whereby there should be a limit to the nature and extent of punishment inflicted and that punishment for retributive purposes should fit the crime committed.

Thus, this impulse for vengeance, though it may satisfy the public's sense of justice, has to be administered with care lest convicted offenders are punished more than they deserve.

C. Deterrence

By imprisoning convicted offenders, it is hoped that potential ones will be deterred. No doubt social good can be achieved through this aim, but, by itself, deterrence cannot justify the sentencing of an offender to prison. Deterrent punishment knows no limit, its only purpose is to punish present criminals to effect fear in potentially dangerous ones. If such an argument is upheld, punishing the innocent will serve the same purpose as punishing the guilty. But it can also be argued that the Penal Code in our country provides the limits of terms of imprisonment in accordance to the nature of crime committed and that our Courts of law are there to ensure that no innocent person is being punished. This would refute the argument that the innocent may be unjustly punished to deter potential criminals. But still the problem, that a person even though a criminal one will have to be used to benefit society at large will not be solved. To deter potential offenders, sentencers may pass maximum limits of sentence which may be unsuitable for a particular offender, taking into consideration the individual circumstances of the case. That offender therefore is being used to protect society from potential criminals.

D. Rehabilitation

The objective of rehabilitation is to reform offenders so that they no longer threaten society but become useful units of it. This, the writer submits, is the most important aim of punishment today. Through an effective rehabilitation programme the aggressive-stabs and self-destructive lurches of our less well-managing fellow-men can be corrected.

A rehabilitated offender should emerge from his treatment an entirely different person, well-equipped to cope with any future troubles. Like a sick-patient who has been to the doctor's, he recovers and prepares himself against any future relapse. Not all criminals will change, but some will. Taking the same analogy of doctor-patient again, the fact that some patients will be cured enhances the public's faith in doctors and their treatment programme. Likewise, the public should support the rehabilitation programme being entered in the prisons.

It is not true to say that most prisoners are "fully aware" of their treatment, but it will not also be truthful to say that they want no help from anyone, although some may say so. "Prisoners are individuals: some want treatment, some do not. Some do not even know what treatment is."³ Therefore

³Karl Menninger, "The Crime of Punishment", in Contemporary Punishment: Views, Explanations and Justifications, edited by Rudolph J. Gerber and Patrick D. McAnany, University of Notre Dame Press London, 1972, p. 178.

every prisoner should be given a chance to reform, the final choice is his, but everything must be done to help him make the correct choice.

There are some however who dissent that rehabilitation is the most important and the most effective aim of punishment. Lewis questions: "What degree of free choice remains open to the individual who has been successfully 'treated and cured'?"⁴ From the moment a person breaks the law and is convicted for it, he is subject to treatment. "The things done to the criminals even if they are called cures, will be just as compulsory as they were in the old days when we called them punishments."⁵

Another argument against rehabilitation is that rehabilitation can be a cover for neglect. Offenders can be put in prisons in the name of social reform and are left there interminably because they are "being cured". But this argument can be refuted by the fact that in our penal system, the term of sentence is fixed and there can be no question of an offender being left interminably in prison under the guise of reform.

Thus though the protection of society, deterrence and retribution are sound reasons for punishment, yet the effect will

⁴C.S. Lewis, "The Humanitarian Theory of Punishment", God In The Dock, Wm. B. Eerdmans Publishing Co., 1954.

⁵Ibid.

only be temporarily in nature if nothing is done to rehabilitate offenders. The validity of this argument is enshrined in Rule 3(1)(c) Prison Rules 1953 which provides that

"3(1)(c) At all times the treatment of convicted prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, so as to rebuild their morale, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so."