

Philosophy of Punishment in Criminology: A Historical Review

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Abstract: *From the dawn of human civilization, the existence of crime and punishment are acutely noticeable. Paradoxically, crime and punishment are interrelated termed with each other in contemporary criminology. The prime objective of the study is to identify the changing nature and forms of the philosophy of punishment from historical perspectives. Moreover, the study also tried to find out the associated factors, which contribute to the philosophical change from ancient period to modern age. The review paper is based on secondary sources as well as historical documents like journal articles, authentic books. There are three basic eras perceptible in accordance with the historical viewpoint which are pre classical, classical and modern having retributive, deterrent, rehabilitative and re-integrative philosophies of punishment respectively. The nature of punishment changed due to the impact of political movement especially the French Revolution, industrialization, advancement of science and technology, advent of law enforcing agencies viz., police, courts, and correction systems. Although, the modern philosophy of punishment is re-integrative and rehabilitative, but still punishment itself is a debatable issues from different points of view such as existentialism and postmodernism.*

Key words: *Punishment; Philosophy of Punishment; Factors of Punishment; Deterrence.*

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INTRODUCTION

Punishment is a fundamental and essential component of our daily life. Social behavior is shaped by the use of punishment as well as the societal reaction to it (Carlsmith, 2006: 437). As a method of social control or social obedience, punishment is a kind of institutionalized cruelty. More specifically, punishment means any of a series of impositions (such as fine, probation, work service, incarceration and so on) imposed upon a person by authority of law after that individual has been determined to be a criminal offender (Reid, 1997: 79). Eminent penologist Hudson (1996:01) said "Penalties which are authorized by the state and inflicted by the state officials in response to crime are normally termed as punishment." Moreover, actually it is the belief or intention of the person who orders something to be done, and not the belief or intention of the person to whom it is done, that settles the question whether it is punishment (Walker, 1991: 03). In this regard, Flew, Benn and Peters (1959) have suggested a set of six criteria related to punishment which are: involvement of an evil and an unpleasantness to the victim; applicable for an offence, actual or supposed; applicable for an offender, actual or supposed; the work of personal agencies; imposed by authority conferred through or by institutions against the rules of which the offence has been committed; and lastly the pain and unpleasantness which is an essential part and intended and not merely a coincidental or accidental outcome (Hudson, 1996: 01-02). In addition, Sir Walter Moberly has suggested different criteria of punishment: (a) What is inflicted is an ill, that is something unpleasant; (b) It is a sequel to some act, which is disapproved by authority; (c) There is some correspondence between the punishment and the act which has evoked it; (d) Punishment is inflicted, that it is imposed by someone's voluntary act; (e) Punishment is inflicted upon the criminal, or upon someone who is supposed to be answerable for him and for his wrong doings (Paranjape, 2005: 204). On the other hand, philosophy deals with the basic problems of life and the world (Nuruzzaman, 2000: 65). According to Encyclopedia Britannica, philosophy means the way of ordering of the history or an effort to codify the rules of human thought in order to promote rationality and the extension of clear thinking.

Philosophy means an examination of truth, goodness and beauty (Britannica: 2000: 733- 734).

The 'Philosophy of Punishment' refers to the rigorous examination of the origin, extent and validity of the punishment in different dimension. Philosophy of punishment involves defining the concept of punishment and the values, attitudes, and beliefs contained in that definition, as well as justifying the imposition of a painful burden on someone. In terms of understanding the historical overview of the philosophy of punishment there are three basic schools of punishment

in criminology: pre-classical, classical and positive school (Paranjape, 2001). From the philosophical discussions two questions have been raised: what is punishment and what is the justification of that punishment (Mcpherson, 1967)?

There are numerous academic works in relation to the philosophy of punishment in criminology as well as penology. First of all, Durkheim, the founding father of sociology, linked between forms of society and forms of punishment. On the basis of Durkheimian thought, Speirernberg and Garland focus on the 'constituency' between 'the methods of treatment of riminal'c and other aspects of culture (Sutherland, 1939: 348). On the other hand, Karl Marx, great philosopher and political economist, developed an idea in relations to nature of punishment, which was based on his central thesis on capitalist social structures. In his view, institutions like law are shaped to parallel the relations of production and the maintenance of the capitalist system. Additionally, Marxist penologists have argued that punishment regulates the supply of labor; this view was put forward in 1939 by Rusche and Kirchheimer in *Punishment and Social Structure* (Howe 1994: 12). In discussing the history of punishment in Europe from the 13th century until the development of capitalism, the authors perceive the severity of punishment as being tied directly to the value of labor. Thus, the severity of punishment, they argue, is relatively lenient when labor is scarce and its value high, whereas when labor is abundant, punishments becomes more intense (Hudson, 1996). Moreover, Marxist tradition was concerned with the basic question 'why prison?' In contrast to this, Michel Foucault's *Discipline and Punish: The Birth of the Prison* (1977) offered a deeper analysis of the relationship between forms of punishment and the society in which they are found. He identified an emergent 'penal rationality'; he described not a simple phenomenon of punishment but penalty, a complex of theories, institutions, practices, laws and professional positions which have as their object the sanctioning of offenders. Renowned criminologist and scholar Hudson (1996) introduces the core debates in the field of 'penology' or the study of theories of punishment. The author provides clear analysis and critique of Durkheimian, Marxist and Foucauldian explanations. She also tried to link between social and economic nature of societies and forms of punishment. Additionally, she opined that 'there are social and economic reasons for the emergence of particular forms of penalty at particular periods of history' (Hudson, 1996: vii). She identified that French Revolution, industrialization, development of science and technology and biographic factors alongside sociological factors were potentially noticeable for changing the nature of punishment system from early to modern ages. In this regard, the most important work is done by the prominent scholars Rudolph J. Gerber and Patrick D. Mcanany (1970) who have studied the philosophy of punishment in terms

of the existentialist philosophy of life. Other eminent scholars Barnes and Teeters (1943) have studied the philosophy of punishment of the early era. Alexander (1922) has just studied about the philosophy of punishment but not in terms of historical views of punishment system. Although the philosophy of punishment is an important concept like crime, criminality and punishment in contemporary penology but the discussion on philosophy of punishment has been ignored in academic arena. So the main purpose of the study was to review the philosophy of punishment from the historical point of view and find out the associated factors which contribute to the philosophical changes of punishment from one era to another. Besides, the present debates of the philosophy of punishment are also reviewed in reference to post modern philosophy.

METHODOLOGY

As the research is qualitative in nature, data and information have been collected from secondary sources such as journal articles, research papers, books and government documents. Data has been analyzed through descriptive method.

DISCUSSION

COMPARATIVE DISCUSSION ON PHILOSOPHY OF PUNISHMENT IN HISTORICAL ERA

Philosophy of Punishment in Pre-classical Age

In the early era barbaric system of law, punishment and justice existed specially before the French Revolution (1789). Until that time, there was no real system of criminal justice in the whole world. For punishing a criminal, the retributive principle on the lines of 'an eye for an eye, a tooth for a tooth' was prevalent.

During the pre classical age, it was believed that man by nature is simple and his actions are controlled by supernatural power and people commit crime due to influence of some evil forces manifest in the form of vampires, demons or devils. Worships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit. Trial by battle was common mode of deciding the fate of criminal. At the time with the theory of diabolical possession, the conventional notion of punishment was either to exercise the devil or to exile or execute the wrongdoer (Barnes and Teeters, 1943: 391-395).

The supernatural and religious belief was remarkably so strong in this era that punishment of all kinds of offences against religion was cruel and barbaric. In an actual sense, there was no distinction between sin and crime. In this regard three major forms of crimes can be found which were crimes against the State, against the church and against the crown having such forms of punishment likely as branding, burning, flogging, mutilating, drowning, banishing, and beheading (Adler, 2004:62). Professor Heinrich Oppenheimer summarizes the mystical and religious background of primitive punishment in these words: 'Primitive Punishment is inflicted either to remove the stain of impurity from society or to prevent a supernatural being from taking revenge on the tribe. Its' object is in either case expiation- expiation, however, not for its own sake but expiation with a utilitarian background' (Barnes and Teeters, 1943:395).

Although most of the criminal laws of that time were unwritten, there were few which were written likely as the Code of Hammurabi (1780 BC), the earliest known written code of punishment (the origin of the Hebrew code "an eye for an eye, a tooth for a tooth"). These laws codified the natural inclination of individuals harmed by another to seek revenge, but they also recognized that personal revenge must be restrained if society is not to be fractured by a cycle of tit-for-tat blood feuds. Such blood feuds perpetuated the injustice that "righteous" revenge was supposed to diminish. The law sought to contain uncontrolled vengeance by substituting controlled vengeance (Hudson, 1996). Natural punishment was treated as "God's Anger". Plagues, earthquakes or other natural disasters were treated as the punishment of God. Personal revenge where the victim or victims' kin retaliated for the injury suffered which is the prime thought of the retributive philosophy (the dominating philosophy of the early era). At that time there was no real system of criminal justice, no specification of crimes and no amount of specific punishment. For example, in England a person might receive the death penalty for any of more than 200 offences, including what we call today petty theft (Adler, 2004). Moreover, judges had unbounded discretionary power with which they convicted a person for an act not even legally defined as criminal. So punishments were arbitrary, barbaric and cruel.

Actually, the early era was completely based on the demonological thinking whereas the religion and the custom that is the supernatural belief of the theological and metaphysical stage of society was the dominated basis for the justice system. In many primitive societies, the members were constantly in fear of the ravages of the unknown and the supernatural, and nothing stands between them and the power of darkness except the well beaten path of custom. Philosopher Montesquieu's *Persian Letters* and *Spirit of Laws* made a special impression that severity and cruelty in punishment do not necessarily decrease the number of crimes. Also, Voltaire (1694-

1778) has drawn his attention to the notorious abuses and cruelties in the body of criminal law and in the methods of treating criminals (Barnes and Teeters, 1943: 395, 459). Besides, after the French revolution the classical and rational thinking against the arbitrary punishment philosophy of the early had emerged in classical era. Concrete expressions were given in the French revolutionary penal code of September 29, 1791 which declared that "penalties should be proportionate to the crimes which they are inflicted and that they are intended not merely to punish but to reform the culprits. All of these developments were done towards securing a new and more rational and human criminal jurisprudence (Barnes, 1943).

The practice of brutal punishment and arbitrary legal codes began to decrease in the mid 18th century with the beginning of a period historians call the Age of Enlightenment (Incomplete project of modernity which always asks for rational reasons), which was essentially a major shift in the way people began to view the world and their place in it. Moreover, instead of thinking that crime is the consequence of demon or devil power, it was thought that man commits crime on his free will and rational thinking. In case of inflicting punishment barbaric methods of punishment were almost abolished and equal punishment was imposed for all committing the similar crimes. Besides in classical period the proponents emphasized on reforming the penal system and administering appropriate laws and regulations for inflicting punishment.

Philosophy of Punishment in Classical Age

From the criminological aspect the dominating philosophical approach of punishment of the classical era was deterrence, culminated in the mid 18th century in the classical thinking. The ignorance, crudities, and barbarism of the 'old regime' in Europe were effectively attacked in the writings of the classical writers such as Montesquieu, Voltaire, Diderot, Turgot and Condorcet and of their English sympathizers and associates like David Hume, Adam Smith, Tom Paine and Jeremy Bentham. Specifically powerful and successful attacks were made upon the barbarism and irrational criminal jurisprudence and penal institutions by a group of able and influential European writers. The French publicist, Montesquieu (1689-1755), in his *Persian Letters* and his *The Spirit of the Laws*, condemned the barbarous injustice of the French penal code and advocated reforms which would make punishment less severe and more nearly adapted to the specific crimes for which they are imposed (Barnes, 1943).

In accordance with the classicists, individuals have free will. They can choose legal or illegal means to get what they want and the fear of punishment can deter them from committing

crime. Here, society can control behavior by making the pain of punishment greater than the pleasure of the criminal gains. The main assumption of the period was individuals chose to commit crimes after weighing the consequences of their actions and the philosophy of punishment was just, reasonable and exemplary and will act as deterrence. The philosophy of deterrence which consists of two purposes: (i) to restrain the wrong doer from repeatedly indulging in crime (specific deterrence) and (ii) to set an example for others to deter and prevent them from committing crimes or violating laws (Akers, 1943). Basically the period was being evolved for explaining the rational and logical relation between crime and punishment in the mid 18th century due to the rise of the Age of Enlightenment, political cleansing of the judicial and penal system and mostly for rising conscious through protesting the arbitrary and barbarous punishment. At that time, social contract doctrine and utilitarianism thinking produced philosophical understanding of classicism. Cesare Beccaria, marchese di Beccaria (1738-1794), an Italian nobleman and professor of law, was the leader of this period who in his writing 'On Crimes and Punishment, 1764' did not question the need for punishment, but he believed that laws should be designed to preserve public safety and order, not to avenge crime. He also took issue with the common practice of secret accusations, arguing that such practices led to general deceit and alienation in society. He argued powerfully for the abolition of torture, the need of a more just and accurate method of trial, the necessity for a reduction in the severity of the penalties imposed a large use of imprisonment in the punishment of crime and improvement in the administration of prisons (Barnes, 1943)

According to Beccaria, the crime problem could be traced not to bad people but to bad laws. He proposed some basic principles in this regard: Laws should be used to maintain the social contract; only legislators should create laws; Judges should impose punishment only in accordance with the law; Judges should not interpret the laws; Punishment should be based on pleasure pain principle; Punishment should be based on the act, not on the actor; Punishment should be determined by the crime; punishment should be prompt and effective etc (Adler, 2004: 63-64).

Jeremy Bentham (1748-1832) another thinker likely as Beccaria was concerned with achieving 'the greatest happiness of the greatest number' and his work was governed by utilitarian principles which assumes that all human actions are calculated in accordance with their likelihood of bringing happiness. The multitudinous and diverse reforming interest of Jeremy Bentham (1748-1832) embraced voluminous writings of the reform of both criminal jurisprudence and penal administration (Barnes, 1943).

The main limitations of classical school was that the power of the judges had been limited and specified through written criminal law but there was no such police force of modern times for crime controlling. Moreover, there was no difference between first and habitual offender and the armchair philosophy of classical era had no proper empirical and objective evidence such as all offenders are not equal due to having different demographic criteria, mental growth etc. Though there was a sub branch of the classical thinking that was neo-classical (1880-1920) thinking which emphasized on the individualized punishment system through making distinction between first offender and habitual offender. But the next modern era took the notion and gave elaborate explanation of this view point (Adler, 2004:66).

From classical period to positive period, the prerequisites for the development of reformatory or rehabilitative penal strategies were two. First, there was a socio- economic impetus provided by the increasing need for labour brought about by the industrial revolution, to reintegrate offenders into the community rather than to keep them out of the community by severe sentences. Second, there was the growth of the human social sciences, which admitted the idea of criminal behavior as caused by psychological or environmental factors. Reform/rehabilitation is therefore associated with modernism and positivism, which, most simply, means belief in the possibility of change and improvement through the application of science to human behavior, as well as to enterprises such as public health and engineering (Hudson, 1996).

Moreover, in case of deciding punishment, it was considered that punishment should be equal for all and it should have deterrent effect but the thinkers of positive school emphasized more on treatment methods for criminals instead of punishment and considered the circumstances associated with the punishment. At that time some important changes had occurred with the progress in science and technology, industrialization, rise in awareness through education coupled with some major legal changes challenging the existing deterrence philosophy by replacing the rehabilitative philosophy. Industrialization in this regard played a major role because free trade system had been evolved which directly affected the middle class people with urbanization. The advancement in science and technology, more specifically the use of scientific method for explaining criminal behavior by identifying cause and effect relationship had created a socialistic perspective towards the offender. The rehabilitation of the offender or reintegration of the offender (more social and modern view) will benefit the society beneficiary because rehabilitated or reintegrated offender will become a source of production in the present division of labor society. And such viewpoints developed new philosophy of punishment based on corrections, rehabilitation and reintegration.

Philosophy of Punishment in Positive Age

Positivism is one of the important schools of criminology as well as penology regarding causes of crime, use of scientific methods and in determining the questions of appropriate punishments. The positivist school developed in 19th century and the first two thirds of the 20th century, which gained its name from the positive philosophy, as an attempt to apply scientific methods to the study of criminal as well as social problems. This school was based on ideas of people's behavior as being determined by circumstances or by psychological or physiological predisposition (Hudson, 1996: 11). The Positivist school maintained the position that criminology must become scientific by which they meant that the explanation of criminal behavior and the treatment of criminal must be accomplished by scientific means (Jeffery, 1959: 18). Scholar George B. Vold opined that, "the essential point in positivism is the application of a deterministic and scientific method to the study of crime" (Vold, 1998). The search for causes of human behavior led positivists to dismiss the classical notion that humans are free agents who are alone responsible for their actions (Adler, 2004). A new vision of the world had come through challenging the validity of classical theory and presented an innovative way of looking at the causes of crime by positivists. Contemporary ideas about additional imprisonment, or refusal of parole, for prisoners likely to reoffend as well as suggestions about how to help people refrain from reoffending while dealing with them by community penalties such as probation, all derive from current criminological notions about the causes of crime (Hudson, 1996:11).

The main question that arises is, 'why did positivist criminology developed in penology?' According to Hudson, "Development of the human sciences was facilitating the growth of positivist criminology and its correlate, correctional penology, with reformist penalties for the 'corrigible' and preventive detention for the incorrigible" (Hudson, 1996:85). Also, positivistic nature of criminology was influenced by two great scholars and scientists Sociologist August Comte and Biologist Charles Darwin. Firstly, Comte envisioned a society in which all social problems are solved by scientists using positivistic methods of research. He had opined that there could be no real knowledge of social phenomena unless it was based on a positivist (scientific) approach. Secondly, Lombrosian theory of biological 'atavism' was influenced by the idea of evolution proposed by Darwin. In his book, *On the Origin of Species* he had brought about the final break with spiritualist, free will thought of the past. Darwin presented evidence that humans were the same generation kind of creatures as the rest of animals, except that they were more highly evolved or developed (Vold, 1998: 33).

Just as deterrence had its foundational text in Beccaria's work, the text in the development of positivist criminology was Cesare Lombroso's *The Criminal Man*, published in 1876. This set out typology of criminal, who is at a lower evolutionary stage, less morally developed, but non-criminal. Early biological positivist thinking of Lombroso went to extremes to espouse a hard form of determinism in criminology. In addition, positivism slowly moved the criminal justice system away from a concentration on the criminal act as the sole determinant of the type of punishment to be meted out, and toward an appraisal of the characteristics and circumstances of the offender as an additional determinant. So, the Positivist School emphasized individualized treatment and the protection of society against the criminal. The punishment must fit the criminal. A man was sentenced, not according to the seriousness of the offense, but according to the factor or factors which motivated him to commit a crime. It is foolish, reasoned the positivist, to sentence all men guilty of armed robbery to the same length of time since the motivational pattern for each man would be different (Jeffery, 1959: 14). Additionally, each criminal would receive individualized treatment according to his own psychological and sociological needs. The criminal, not the crime, governed the sentence or punishment given. The time a man spent in prison would be determined, not by the crime he had committed, but by the time needed to adjust and rehabilitate him. Whether or not a man was reformed and ready to return to society would be determined by scientific penology.

Garofalo believed that because human action is often evoked by circumstances beyond human control (temperament, extreme poverty, intelligence, and certain situations), the only thing to be considered at sentencing was the offender's "peculiarities," or risk factors for crime. He was skeptical about the possibility of reforming the criminal. So, he advocated the death penalty, overseas colonies, and life imprisonment for those lacking all moral sense. For the young offender he recommended the indeterminate sentence, and for less serious violations he advocated reparations rather than punishment (Allen, 1954). Garofalo's only concern for individualizing sentencing was the danger offenders posed to society, and his proposed sentences ranged from execution for what he called extreme criminals (whom we might call psychopaths today), to transportation to penal colonies for impulsive criminals, to simply changing the law to deal with what he called endemic criminals (those who commit what we today might call victimless crimes). Though, the practice of transporting criminals has been defended by famous criminologist Lombroso, he held that it eliminated the hopeless and non-reformable types in the criminal population and used the less serious offenders for colonizing (Barnes and Teeters, 1965: 455). Lombroso, Garofalo and Ferri favored the transportation of criminal in penal colonies.

Lombroso's evolutionary theory was succeeded by the more sophisticated typology of Enrico Ferri, who divided criminals into three types: the born criminal, the insane criminal and the person who, in different circumstances would not be a 'anthropologically criminal' at all. This broadening of ideas about the causes of crime to psychological and social factors led to development of rehabilitation as we think of it today, with its combination of psychotherapeutic techniques and help with circumstances such as addiction, debt and unemployment (Hudson, 1996: 28). Likewise, Ferri continued the positive schools emphasis on social welfare and social defense. The purpose of criminal justice was to afford maximum protection or defense of society against the criminal. The defense of society was placed above the rights of individuals. He recommended penal colonies, indeterminate sentences, hospitals, scientifically trained judges, and the abolitions of juries. Although he recognized the value of individualized treatment, he also recognized its limitations. Individualized treatment was limited to the five classes of criminals which he developed (Sellin, 1958: 491). German criminal lawyer Franz von Liszt, on the other hand, campaigned for customized sentencing according to the rehabilitative potential of offenders, which was to be based on what scientists found out about the causes of crime (Sherman, 2005). Modern trend in penology has been in the direction of positivism, with such innovations as the indeterminate sentences, parole, probation, suspended sentences, and good time laws. The reforms made in the criminal law in all civilized nations in the last century have resulted in the adoption of many of the proposals of the positivists.

Beside this, a few criticisms were also found in regarding positivism from early days, which is penetrating the post-modern ideas of punishment since second world war . Firstly, the positivist school has ignored the fact that the criminal law is a double edged sword. It protects society against individual, and it protects the individual against the arbitrary actions of the state. Secondly, the positivist emphasizes parole and indeterminate sentence, yet a determinate sentence has more value than does the indeterminate sentence as a factor in success or failure of parole.

In brief, the positivist thinkers emphasized more on scientific approach in defining criminal behavior and setting punishment. Factors like biological inheritance, mental abnormality, situations, gravity of crime, age, sex and offender characteristics were taken into consideration in determining punishment. Besides, the proponents of the positivist school drew attention more on corrective and reformative approach than imposing serious punishment. The notion was to correct the negative behavior of a criminal and reintegrate him into society as a law abiding person. Thus the concept of punishment shifted from barbaric forms of punishment in early era to a corrective and preventive form in modern age.

**Notes: The above table has been constructed from the writings of Barnes and Teeter's seminal book In Criminology: The American Crime Problem; Barbara A Hudson book's Understanding Justice and Normann Johnston et.al book's The Sociology of Punishment and Correction.*

Contemporary debates on Philosophy of Punishment

Punishment resorted in any society, whether it be primitive, barbaric or civilized, is based on a twofold consideration: the assumed damage of the anti social act to the group and the measure of repayment that the social group exacts (Barnes and Teeters, 1943:391). At present philosophy of punishment is an essential part of the philosophy of life - freedom such as existentialism. Initially the philosophy of life stands against the punishment system but later some of the philosophers asked for the punishment system as a means of social control or social obedience. But still there is a debate on this issue. The three major debates are found in contemporary penology such as need of punishment, abolishment of capital punishment and modern punishment system.

In terms of the legal and penal thinking, existentialism which is the philosophy of the life nowadays is most compatible. Existentialism evolved from Kirkeguard and popularized by the French philosopher and writer Sartre. Sartre and Heidegger have insisted in varying ways that justice and punishment are subjective affairs for each individual, for individual is like another, no one situation comparable to that of another man's (Johnston et.al, 1970: 337). Existentialist rejects

ontological, political and linguistic approaches to morality and betrays a marked concentration on the individual apart from society is a fundamental analysis which begins not with words, but with the ontological structure of man (Johnston et. al, 1970:337-339). Former idea is provided by the leading exponent of Existentialism Jean-Paul Sartre and the later is given by eminent philosophers Albert Camus also with Gabriel Marcel, Karl Jaspers, Emmanuel Levinas and Maurice Merleau-Ponty.

According to Sartre, man is a true subject of his own making, yet he is subjected to the artificiality of institutionalized standards and laws. As the individual becomes a member of the law abiding, punishment approving, he slips inconspicuously into the anonymous institution and unknown allows his absolute freedom to be converted into the slavery of the organization man. He obeys: if he does not, he submits to punishment, which itself is form of social obedience. And if he disobeys he has to face punishment, formulated by those institutions (Johnston et.al 1970: 338). He recommends practicing absolute freedom and thus rejects traditional punishment system. Additionally, Sartre stated punishment reduces man's potentiality, limits his freedom and constraints his humanity. On the other hand Camus has emphasized not to the punishment system but to the capital punishment through breaking Sartrean existentialism. In this regard, Camus has pointed out some arguments: For future social benefit, punishment is necessary. Role of the capital punishment is not vengeance but needed for the protection of the society. According to the Human Right thinkers, punishment should be replaced by the reformation and corrections of the offender through maintaining his rights as a person.

Capital punishment, the ultimate limit is the severest type of punishment because nothing can be more painful, cruel to an individual than being deprived of the very life and existence. Thus it creates an issue of arguments. Philosopher Plato said in this regard that, 'if a man cannot be harmless otherwise then in sleep, it is better for him to die than live'. A group of penologists has supported death penalty for the reasons of retribution, deterrence, incapacitation and the instrumental perspectives. On the other hand, few criminologists and criminal justice personnel have rejected the notion of death penalty due to the reasons of morality, the brutalization effect or the risk of executing an innocent person (Lambert, et.al. 2006).

Recently a new thinking has begun to take a philosophical viewpoint towards present punishment system which is nothing but the post modern thinking. It rises question about the penalizing and normalizing responses to crime which nowadays continues to create tension in modern philosophy of punishment. The upcoming thinking on punishment suggests about the transformation from the disciplinary society to actuarial society which refers to break the imprisonment thinking of punishment.

CONCLUSION

Since the growth of civilization, punishment has been existing in different societies to control crime and it has been practiced in present society in diverse forms. For controlling crime, the appropriate nature of punishment is being determined by the philosophical aspect of punishment in structural position of a given society and the philosophy is also being changed due to its associated factors. The barbaric punishment system of pre-classical period has been replaced by the rational thinking, enlightened ideas, and penal reform in determining punishment in classical period. Similarly, the deterrent philosophy of punishment in classical period has been changed by science, individualism, constitutional democracy, penal reform and reformative ideas in setting the punishment in positive period. Postmodernist thoughts influenced the philosophy of punishment with reference to the questions of subjectivity and existentialist identity of man and disciplinary nature and technology since Second World War. Although, the modern philosophy of punishment is reintegrative and rehabilitative, punishment itself is debatable from different perspectives such as existentialism and postmodernism.

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