

CLASSICAL SCHOOL OF CRIMINOLOGY

By *Vijayaini Sharma*

Amity Law School, Noida

Classical school of criminology

A subject of law criminology deals with the behaviour of criminals, the punishments to be given and the theories of crime as to how it evolved.

Background

The classical school evolve from demonology or pre classical school of thought which stated that crime or act of criminal happens due to their demonic possession or other worldly forces on the criminal. It dominated the thinking regarding crime till 18th century. It was result of the affect of supernatural forces like deity, gods, demons, des- tiny, fate, (etc).

Consequently, the punishments which were given during the time around were very harsh which included burning the criminals alive, torture, execution etc. Marked by public execution with usage of instruments which lead to painful death such as pillory, the breaking wheel, iron maiden, scavenger's daughter to recreate scenarios of hell ac- cording to them would have prevailed to torture in it.

In European new methods for determination of innocence and guilt were deter- mined and were laid in practice. God could indicate who was guilty or not by giving vic- tory to the innocent in a trial by battle.[1] The trail would include throwing people in water waiting for the to float which indicated innocence or walk on fire, running a gauntlet.

It could be concluded that this era included harsh punishments, lacked the rationale and also the beliefs which were propounded back the regarding judgment regard- ing committing of any crime.

Introduction

It was the harsh punishment tagged with irrational reasons that gave rise to classical school of thought. The classical school was mainly characterised by rationality and free will. [2]

It was a reaction to the harsh practices and the controlling nature of the authorities which was the church during that time that the liberal philosophers came into pictures and started to denounce the barbarous practices that were happening during that time. One of the provenders

of the theory was Beccaria who came along when liberal thoughts were given much importance who is stated to be the father of classical criminology and started the movement by writing a book named on crimes and punishment in the year 1764. Beccaria started to question the way people were punished as there was a lot of brutality and secrecy and arbitrariness attached to a trial the person found guilty was not even heard and put on harsh sentences. The powerful people were treated differently as to the poor. The pre classical period was marked by the torture and Beccaria harshly denounced the practice stated that no one even the people of authority have the right to torture because such practice might lead to confession for a crime that the person did not even commit thus according to him torture does no good in criminal practice. The people were punished with harsh punishments for minor crimes.

He also stated that the punishment should be in proportion to the crime committed and no punishment shall be allowed arbitrarily by the judge according to their own whims and fancies that the punishment must be a result of a defined law which is made by the legislature and is not discriminatory in nature, equal to all and open to the interpretation of all and for that it should be made public and be published for the masses to see. His ideas are said to have been one of the basic foundations of American and French revolution.

The school basically dealt with the fact that humans are capable of judgment between right and wrong and that the criminal while committing a crime exercises free will and that he/she was possessed by some supernatural force, then being in no control of themselves.

They were of the view that the crime is a result of rational judgment of that person and they always try to maximise pleasure and minimise pain i.e, the hedonistic point of view that is included in this theory which is a theory of Bentham, him and Beccaria being one of the famous propounders of the theory. Whatever a person does was a result of them achieving a sense of satisfaction from the actions done by them. Bentham stated that at every stage of criminal activity we have a choice to snap out of it and that it is our rational choice measuring all pros and cons, the pleasure and the pain and what can happen in return of such action is a choice made by the offender keeping all the factors in mind. This particular aspect of the school was later not accepted as through more research and opinion of other schools the criminal actually does not think of the punishment before he commits the crime or about the consequence that it can behold.

The theory also dealt with the balance of punishment with the graveness of the crime committed and the sentence given for the crime. It cannot be blown out of proportion to the crime that was committed which used to happen in the pre classical era. The jurists of that time contested

for a fair trial and also stated that no man/woman should be punished before a fair trial is held and before he is proven guilty.

The theory later also had a utilitarian cut to it which dealt with maintain balance of private interest with the public one in the trials use more that often the demand to hold the criminal liable would come in the way of the human rights which were not even a concept back then.

The principles of this school were later on adopted and are still in practice such as humanitarian right of the prisoners and giving a fair trial which now is considered as major in most of the countries but is controversial to some for example china

.It should be brought to focus that the principle of fair trial as propounded by Baccaeria later evolved as one of the principles of natural justice of common law(known as Audi altm paltrem) which was later seen as one of the basic concepts on which laws were made and justice was delivered. In India this concept is still used to grant justice in the courts.

This school also talked about the vainness which was attached to punishments as propounded by one of the specific sub school known as the sociological school which stated that the punishments should not be harsh or used not at all in some cases which is now heavy considered by many states as it has come to light of many authorities that putting harsh punishments and putting heavy penalties in law has a minuscule effect in reducing the crime so minute that it cannot be measured. It was later brought to light and even now is being studied that fact strict and harsh punishment have a little to do with the reducing crime as criminals rarely think before committing crime about the punishment what they are afraid about is of them being caught, what actually reduced crime would be employment of citizen, education, increasing the paroling of police. A leading example of the same could be seen when the city of New York from 1999-2012 reduced its state prison population by 26% along with doing so they increased the parole and decreased the punishment and they saw a decline in the crime rate by 31%.

The question also comes in mind upon examination of stats that why legislatures emphasis so much to increasing the punishment and answer could be found in the fact that a lot of people in majority link punishment with reduction in crime and is therefore considered as a part of good governance, so thus such laws have more to do with winning of majority votes than the concern for reducing the crime.

Through more research the reason increasing crime rate was found out more to do with their psychology and how they have been raised. Most of the grievous and 3rd degree criminals were found to have damaged brain systems and would often be having an abusive childhood, more than often do not have any sense of guilt attached to them.

The school is divided into two theories further:

1. Purist Socialist theory 2. Rigid classical theory

1. The socialist theory propounders were of the view that crime should not be severely punished and generally focused on what is wrong with societies or other external social forces producing aberrant-thinking [3] They did not believe in the concept that the criminal had anything to do with the crime.

2. The rigid classical theory propounders believed in the giving of punishments as they help in keeping the society in check.

It's impact on positivist school:

It also has to be kept in mind that this school saw is demise around 19th century to the positivist school of criminology which gave way to various further study as why crimes are committed the.e, social and psychological factors. More recently the fundamentals of the classical theory have been revived into the rational choice theory which highlights the opportunistic element in many crimes and stresses the role of surveillance and environmental design.[4]

The major difference between these schools were that the positivist school believed in the fact that every act had a cause while the classical theory only dealt with the notion of free will. Consequently, the way the purpose of punishment was also different in these 2 schools classical school considered the punishment should be in proportion to the crime committed but positivists were of the view that the punishment must fit the criminal. They had more focus on personalised treatments and betterment of society.

The classical school characterised principle of legality as a political doctrine in which law must prevail but the positivist school sought social defence philosophy in which the individual's interest must be waved off in order to protect the society. It has to be noticed that it was the classical criminal school that brought the revolution and lead to the further development of further schools which are now in practice like neo classical and positivists.

Its relation to Deterrent theory:

The similarities with deterrent theory were made by Baccaria again that the classical theory emphasised on deterrence as well and that deterrence must have a constructive effect on a society. He stated that there are 2 types of deterrence:

- 1. Specific deterrence**
- 2. General deterrence.**

Specific deterrence deals with the criminal only, on the individual that committed the crime and to no one else, it is also known as individual deterrence for the same reason. It is also to be noted that the individual deterrence is the one practiced and aimed at by the laws and the whole justice system.

On the other hand, general deterrence targets at the potential criminals not the ones which have committed the crime but the ones who have the capacity to kill or harm someone. This is majority done by holding trials in which the criminal is punished or by sanctioning of such laws which create a sense of fear in the potential criminal and he abstains himself from doing so.

This came up during the time when the punishments were arbitrarily decided and punishment for any crime was not done with people knowing the consequence of the act committed as they were outrightly decided by the people. Baccaria was of the view that people must know what penalties a criminal act had. It can also be noted that codification of law would be a great step ahead in the same, the more people get aware of it the lesser the crime can get.

As we have seen discussed before through the paper that classical school has led to many changes in criminology and the way it is viewed with evolution of many theories and principles which are even now put into practice.

A lot emphasis is now put on crime prevention than the crime penalisation by including various methods by which crime can be reduced such as increase in parole, faster trials etc. The rights of prisoners are talked about and also about fair trial and procedure while the case is in courts. These things have evolved to well established principles and practices also it is significant to note that more and more research is happening in the area of criminal behaviour and has already been done.

Taking in consideration the biological and environmental scenarios. The biological front deals with the way criminal brain has evolved and it is more than often found that in case of serious criminals the parts that are responsible to deal with emotional reaction such as amygdala, hippocampus, the frontal lobe are often damaged or they may not be properly developed. It is also found that these criminals have a psychotic behaviour having some kind of disorder as well as upon conducting MRI it found out that the anatomy of brain of criminals often differs from that of a normal human.

Environmental scenarios have more to deal with the way they have been brought up, traumas suffered in childhood, the way their parents/ guardians behaved, impact on them of the behaviour of others.

Research regarding the evolution of a person is also studied some of them like Ted Bundy and Edward Olmer stated that the process of becoming a repetitive criminal involves a process, it does not happen all at once but bit by bit through the thoughts that lead to action evolving into more severe actions. It is also to be noticed that these criminals lack sense of guilt to their actions and do not develop a sense of justification as to why they did what they did.

As a result of all such research the jails are slowly developing construction cells, where the criminals are not so much treated like one but as patients whose mental health has to be reformed and thus they are given therapies, regular meetings with the doctors, making them indulge in some activity which boosts their mental health, also which give them source of income. Although all these facilities are not yet available in India but with changing times and increased litigation upon the human rights of the prisoners there is a possibility that this can be introduced in India too.

The studies regarding the conditions in which the prisoners are made and have brought drastic change upon the implementation of charter of human rights which was made by several member countries including India, which started the debate whether the prisoners have human rights as well or not.

There had been establishment of several procedural laws across several nations to ensure a fair trial is held, that the defendant is also allowed to be heard, to minimize the rashness and arbitration by anyone in authority all is done just to minimize the despotic nature of the state. In India the procedural laws for governing civil and criminal law is CPC and Cr.P.C respectively.

The codification of rules and statutes has brought a vast sea of changes in not only the judicial system but also in administrative, public and private sectors as well. Everything is now governed by law (the rule of law prevails), not only this the norms on which an entire country is to be governed i.e., the constitution is also codified and is made available for the public to see. It is of importance to note here that all the ideas which later on evolved to become huge concepts were germinated in the classical era.

These are some of the most important changes that are seen across the world regarding the criminal justice system, which owe its roots to the 18th century by the revolutionists of that era.

Classical Theory and Enlightenment Era

In midst of the two phases of the schools that is pre classical and classical there was formation of new era that was the enlightenment era which was predominantly marked by the philosophers such as Hobbes, Montesquieu, Locke.

Hobbes being one of the famous propounders of the era talked as to why people preferred democracy over any other type of governance because people are rational and they want the government to protect them in lieu of their obedience. Although several philosophers vary in their opinion on several aspects but they agreed on one thing that was Social Contract Theory which stated that the people come into agreement with the government and in return they get protection from it.

This served as a major base on which several propounders of classical theory worked on it was one of the major sources of inspiration for Beccaria.

Conclusion

Through this research we can conclude that the classical school has definitely revolutionised the study of criminology and criminal justice system. The various ideas that were laid down by the thinkers of that time later evolved to be major principles on which countries across the world are now running their legal system. It was this school of thought that changed the previous criminal system and paved way for the future schools to work on.

[1] https://www.sagepub.com/sites/default/files/upm-binaries/97953_Chapter_5_Early_and_Classical_Criminological_Theories.pdf

[2] https://www.sagepub.com/sites/default/files/upm-binaries/97953_Chapter_5_Early_and_Classical_Criminological_Theories.pdf

[3] <http://criminal-justice.iresearchnet.com/criminology/classical-criminology-2>