Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Public Safety Act

Why is This Such a Bad Law?

by Shahdeen Malik

There are more than enough tough laws to deal effectively with the crimes mentioned in the Public Safety Act, but there is no desire to prosecute fairly. We are, therefore, witnessing relentless shows of gimmicks, without taking into account the long term destructive consequences of such gimmicks, slogans and meaningless propaganda. This is sad and disheartening.

THE Public Safety Act is certainly the most controversial law of recent times. On the one hand, politicians, legal experts and print media have been vocal in opposing the law vigorously and, on the other hand, it has been stubbornly defended by the ruling party and the official electronic media.

The arguments for and against the law have been made and presented. Nevertheless, certain cardinal aspects of this law, it seems, have not attracted as much attention as these deserve. Hence, this write up focuses on these aspects in order to fortify the arguments against this law. My objections against this law can be categorised under four headings, as outlined below.

Misconception about law, crime and punishment

The Public Safety Act stems from the misunderstanding that tougher laws can improve the 'law and order' situation. A corollary of this proposition is that criminals would be dealt with sternly and would-be criminals deterred from committing crimes for fear of tough punishments. Consequently, the society would be better protected. However, if such a proposition holds good, then 'law and order' would have long ceased to be a problem. Tougher laws could have been enacted years ago and the problem would have been resolved.

Tough laws have been enacted to deal with criminals for centuries. Faced with the difficult 'law and order' situation, particularly rampant dacoity after the devastating famine of 1769-70, the very first intervention of the then East India Company government of Bengal in the criminal justice system was in the form of a Regulation in 1772. This Regulation promulgated by Governor Hastings provided for public execution of convicted dacoits and selling into slavery of the members of the family of the convicted dacoits. After a few years of the 'implementation' of this law, even the most ardent supporters of the Governor could not claim that dacoity was reduced as a result of executions under the Regulation.

Faced with the 'problem of thugee' robbers (killing of travellers, mostly by strangulation, in order to rob) in 1830s, one Major Sleeman pushed through tough laws and started random arrest and public execution of suspected thugees. After about 1,000 such executions, the 'problem' was temporarily resolved, to surface again within a few years in an alarming fashion.

Leaping forward, one hardly needs reminding that the Military rulers of Pakistan had decided that the then Awami League was the greatest threat to the 'law and order' as well as 'stability' of Pakistan. Their action to 'improve' the law and order situation led to 'tough' actions against the students of Dhaka University on the night of the 25 March, 1971. To improve the law and order situation and to 'save' the society and country (Pakistan), their tough measures ended in deaths of millions — but did it 'improve' the situation from the Pakistani point of view?

If one is looking for tough laws, one example may suffice. Our current laws — the Special Powers Act — provide for death sentence for adulteration of food, nay even for attempt to adulterate food and drinks. Can one think of a sterner law to combat adulteration of food? Certainly none can. Has this toughest law eliminated adulterated food / drink / drugs from the market, after more than a quarter of a century of the law's 'implementation'?

One can go on citing innumerable examples of enactment of tough laws and stringent punishments as populist reaction to the issue of law and order and show that these tough laws have not made any difference. Would any one care to recall the recent tough laws about cheating in public examinations and long term imprisonment for that cheating. Has cheating been reduced? At least the cheating laws have been reduced to meaninglessness and cheating, instead of being a crime, is increasingly being demanded as a right. This should be a good indication of the contribution of tough criminal laws.

The reason for failure to improve the law and order situation by enacting tough laws is simple — 'crime and punishment' is one of the most complex issues, which is not amenable to easy solution by enactment of tough laws. In fact, enactment of tough laws, in the long run, has worsened the situation in almost every society.

Enactment of tough laws to combat crimes is almost synonymous with failure of governance. Whenever a government fails or is failing to improve the 'law and order' situation, it takes recourse to 'tough laws' to camouflage it's failure, without realising that this camouflage ultimately compounds the problem of governance.

Misunderstanding about fundamental rights

Liberty is primarily safeguarded by procedures. How? Let's take the simple example of extracting confession. What is wrong, if police were empowered to extract confession from an accused who the police reasonably believe to have been involved in committing a crime. Police arrest such a person, bring him to the thana and beat him up. He confesses and tells the police where, for example, he has hidden the television which he had stolen a couple of days ago. Police recovers the television, files charges and in the trial his extracted confession along with the stolen television as proof are sufficient for conviction.

The problem with such a scenario is that the next person suspected and beaten by police may be an innocent person. Any of us can be arrested and tortured; though, we may not have committed any crime. Hence, the procedural safeguards to protect our liberty and the constitutional prohibition on torture.

Thanks to American TV serials, we are all aware of the Miranda Warning: the right to remain silent, anything said may be used in court, the right to consult with an attorney and to have a lawyer present during interrogation. Except the presence of an advocate during interrogation, all these Miranda rights are also explicitly ensured by our constitution. Why are all these safeguards for 'criminals'? Because it has been shown and accepted that without these procedural safeguards our right to liberty becomes meaningless. Without these safeguards, a society easily and almost unnoticeably turns into a savage society. In a savage and barbaric society, the issue of law and order becomes redundant. In such a society, we begin to govern ourselves by the rule of jungle — where might becomes right.

This Public Safety Act has taken away a number of procedural safeguards, including bail. The drafters of this Act may have forgotten the simplest, though most central, proposition of law that 'a person is presumed innocent until proven guilty'. Arrest on suspicion is far from being proven guilty of having committed a crime. Mandatory denial of bail of an accused, who may not be convicted in the subsequent trial, is tantamount to imposition of imprisonment on an innocent person. The problem with such a scenario is that you or I may be 'suspected' tomorrow and end up in jail without bail, because someone have thought that we may have committed a crime. We wouldn't want that, would we?

From news report, one understands that the President has objected to certain provisions regarding bail and amendments have been promised. A number of other bail related provisions need to be amended on similar grounds.

Most dangerously, the Public Safety Act provides for uncorroborated testimony of a witness recorded outside the court to be treated as evidence, if such a witness can not be present during trial. Acceptance of such testimony without cross-examination will lead to the destruction of another foundational pillars of criminal justice system. The primary purpose of cross-examination is to ensure that the witness is telling the truth. By taking away this tested mechanism of eliciting truth from a witness by cross-examination, the Act has done away with the very foundation of the criminal justice system. If one is inclined to think that such testimony would hasten and ensure fair trial, one perhaps is not at all aware of the extent of dangers looming large.

Aberration of check and balance

Absence of institutions to act as a check on the activities of another institution is the hallmark of arbitrary power and authoritarian rule. The President as an institution is vested with limited powers and one of the foundations of the Office of President is premised on the proposition that on limited matters he can check and balance certain actions taken by the government. One of such powers of check and balance is the power to send a bill back to Parliament for reconsideration. This Presidential power of check and balance is not applicable, as we all know, for Money Bill. However, by whimsically certifying a bill as a Money Bill particularly when the bill is clearly not a Money Bill according to the definition of a Money Bill under the constitution, the government has taken away the constitutional power of President to offer his considered opinion on this law. By denying the President of his prerogative to return the bill to Parliament for further consideration, the whole institution of President has been undermined. When the government does not even want the President to offer his considered opinion on a question of law, apprehensions about authoritarian rule may not be unfounded.

Errors concerning current laws

The pro-Act publicity by the government controlled electronic media and pronouncements by the ruling party proponents of this law (as reported in newspapers) suggest that, first, there is absence of laws to deal with crimes such as destruction of property, extortion, interference with tenders, etc., secondly, a lot of emphasis has been put on the provision of this law regarding false prosecution and untrue testimonies.

Only a very partial familiarity with our current laws can lead to the first proposition about the absence of relevant laws regarding these crimes. As for the second, one of the saddest part of our justice system has been the non-prosecution for offences such as dishonestly making false claim in court, fraudulently obtaining decree for sum not due, false charge of offence made with intent to injure (sections 209, 210 and 211 of the Penal Code, respectively). If hardly any one has been prosecuted for such offences for almost a century and half of the operation of the Penal Code, how does one suddenly come to the conclusion that similar provisions in the Public Safety Act will suddenly lead to prosecutions for false charges.

Any one familiar with litigation and cases under the tough Dowry Prohibition Act and the *Nari O Shishu Nirjatan (Bishes Bidhan) Ain*-1995,(now replaced by another such law) will surely be aware of the act that the vast majority of cases filed under these laws have been false or for ulterior motives. How will this Public Safety Act be different?

It may not be irrelevant to mention that section 212 of the Penal Code provides for imprisonment of up to five years for persons who "harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment". Isn't ours a society where so many criminals are being harboured and concealed by many others for committing very many crimes? If only there were even a single prosecution under this section! Will any of the 2,000 or so (my guess estimate) prosecuting lawyers (PP, SPP, APP) of the government be able to cite one example of successfully prosecuting a case to punish an influential person under this section for harbouring mastaans? Where would our politicians and law enforcement agencies be if they could not harbour mastaans!

Repressive laws, as I have already mentioned, are the standard indicators of failure of governance. In addition, these laws ultimately make people lose respect for and confidence in law, jeopardising the rule of law. The larger the number of crimes enacted by laws, the bigger becomes the number of people 'enjoying' impunity from such laws and prosecution - creasing impunity surely stroys the very foundation of an ordered society. Hence, laws such as the Public Safety Act will neither restore 'law and order' nor lead to prosecution of criminals, but increasingly undermine the foundation of an ordered society.

There are more than enough tough laws to deal effectively with the crimes mentioned in the Public Safety Act, but there is no desire to prosecute fairly. We are, therefore, witnessing relentless shows of gimmicks, without taking into account the long term destructive consequences of such gimmicks, slogans and meaningless propaganda. This is sad and disheartening.

Hearts Cannot Break Prison Wall

by A K Roy

LIFE convicts' despair is best expressed in the bitter lines of Oscar Wilde :

I known not whether Laws be right,
Or whether Laws be wrong.
All that we know who lie in gaol
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.

But broken hearts cannot break prison wall. Since prisons are built with stones of law, the key to liberation too is in law's custody.

But judges themselves are prisoners of the law and are not free to free a prisoner save through the open sesame of Justice according to law. Even so, there is a strange message for judges too in the rebellious words of MK Gandhi's quasi-guru David Thoreau :

"The law will never make men free; it is men who have got to make the law free. They are the lovers of law and order who observe the law when the government breaks it."

Lord Denning, in the first Hamlyn Lectures and Sir Norman Anderson in the next before last of the series, emphasised :

".....the fundamental principle in our courts that where there is any conflict between the freedom of the individual and any other rights or interests, then no matter how great or powerful those others may be, the freedom of the humblest citizen shall prevail."

Of course, most of those who listlessly languish waiting for their date with Freedom, the human hope of going home holds the lamp of life burning and a blanket ban against release before a brutal span of years together, even if their habilitation be ever so complete and convincing, benumbs the very process of restoration which is cardinal to the rationale of penal servitude. Intermediate sentences, for the same reason, have been criticised since they have — "led to a system of sentencing which has worked substantial hardship and injustice on countless inmates. Intermediate sentences generally are much longer and most costly than fixed sentences and create additional strain on both the inmate and his family who are left to wonder when they will be freed."

The imprisoned poet Oscar Wilde, wrote that courts must know when adjudicating the arbitrariness of long-term minima implacable imposed in the name of social defence :

Something was dead in each of us,
And what was dead was hope
The vilest deeds like poison weeds
Bloom will in prison air :
It is only what is good in man
That wastes and withers there :
Pale anguish keeps the heavy gate,
And the Warder in Despair.

Sentencing is a judicial function but the execution of the sentence, after the court's pronouncement, is ordinarily a matter for the exccutive. Two fundamental principles in sentencing jurisprudence have to be grasped in the context of the Bangladesh corpus juris. The first is that sentencing is a judicial function and whatever may be done in the matter of executing that sentence in the shape of remitting, committing or otherwise abbreviating, the executive cannot alter the sentence itself. What is the jural consequence of a remission of sentence?

The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. This distinction is well brought out in the following passage from Weater's *Constitutional Law* on the effect of reprieves and pardon visa-vis the judgement passed by the court imposing punishment, at page 176, para 143 :

'A reprieve is a temporary suspension of the punishment fixed by law. A pardon is the remission of such punishment. Both are the exercise of executive functions and should be distinguished from the exercise of judicial power over sentences.'

A penological screening is fundamental to sentencing jurisprudence but, for the pursuit, the only relevant point is whether rehabilitation is such a high component of punishment as to render arbitrary, irrational and therefore, unconstitutional, any punitive technique which slurs our prisoners' reformation. We feel that correctional strategy is integral to social defence which is the final justification for punishment of the criminal. nd since personal injury can never psychically heal, it is obdurate obscurantism for prisoner resocialisation from the calculus of reformative remission and timely release. The compulsive span of life term in custody, whether the man within the 'lifer' has become an angel by turning a new leaf or remains a savage, thanks to jail regimen and jailor relations, sounds insensitive. Alienation of our justice system from our cultural quintessence, thanks to the hangover of the colonial past, may be the pathological root of the brute penology which confuses between crime and criminal. Torturing the latter to terminate the former is not promotional of human dignity and fair legal process.

The winds of change must blow into our concerns and self-expression and self-realization creatively substituted for the dehumanising remedies and 'wild life' techniques still not make martyrs of the humane many; and even from these few, trust slowly begets trust. *Sarvodaya* and *antyodaya* have criminological dimensions which our social justice awareness must apprehend and actualize. I justify this observation by reference to the noble but inchoate experiment (or unnoticed epic) whereby late Shri Jai Prakash Narain of India redemptively brought murderously dangerous dacoits of Chambal Valley into prison to turn a responsible page in their life in and out of jail. The rehabilitative follow-up was, perhaps, a flop.

Prison laws, now in bad shape, need rehabilitation; prison staff, soaked in the past, need reorientation; prison houses and practices, a hangover of the die-hard retributive ethos, need reconstruction; prisoners, these noiseless, voiceless human heaps cry for therapeutic technology; and prison justice, after long jurisprudential gestation, must now be re-born through judicial midwifery, if need be.

Social reconstruction and rehabilitation as objectives of punishment attain paramount importance in a Welfare State. The supreme aim of punishment shall be the protection of society, through the rehabilitation of the offender.

The institution should be a centre of correctional treatment, where major emphasis shall be given on the re-education and reformation of the offender. The impacts of institutional environment and treatment shall aim at producing constructive changes in the offender, as would be having profound and lasting effects on his habits, attitudes, approaches and on his total value schemes of life.

One of the subjects dealt within the Manual is 'release planning'. I need not tarry long to tell the truth that every sinner has a future, given the social change, and every prisoner a finer chapter as a free person, given the creative culturing of his psychic being. The measure of this process is not the mechanical turn of the annual calendar but the man-making methodology of the correctional campus, together with individual response. It follows that an inflexible life term for lifers eschews chances of human change and puts all the penal eggs in the linear cellular basket.

A judicial journey to the penological beginning reveals that social defence is the objective. The triple purposes of sentencing are retribution, draped sometimes as a public denunciation, deterrence, another scary variant, with a Pavlovian touch, and, in our ear of human rights, rehabilitation founded on men's essential divinity and ultimate retrievability by raising the level of consciousness of the criminal and society. We may avoid, for the nonce, theories like 'society prepares the crime, the criminal commits it'; or that 'crime is the product of social excess' or that 'poverty is the mother of crime'.

It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. People today view sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. I, therefore, consider a therapeutic, rather than an 'in terrorem', outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw : "If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

While the light of this logic is not lost on us and the non-institutional alternatives to prison as the healing hope of humane habilitation are worthy of exploration, we are in the province of constitutionality where the criteria are different.

I agree that many studies by criminologists, high-powered commissions and court pronouncements have brought home the truth of the lie; once a murderer always a murderer and, therefore, early release will spell a hell of manslaughter. Social scientists must accept Robert Ingersoll's terse remark : 'In the history of the world, the man who is ahead has always been called a heretic'. We, as judges, have no power to legislate but only to invigilate. In the current state of things and ethos of society we have to content ourselves with the thought that, personal opinions apart, a very long term in prison for a murderer cannot be castigated as so outrageous as to be utterly arbitrary and violative of rational classification between lifers and lifers and as so blatantly barbarous as to be irrational enough to be struck down as ultra vires. Even so, to overcome the constitutional hurdle much more material, research results and specialist reports, are needed. How to assert who has become wholly habilitated and who not, unless you rely on the Rehabilitation Index? Currently, we have theories, and experiments awaiting social scientists' certificates of certitude.

It is trite law that civilised criminal jurisprudence interdicts retroactive impost of heavier suffering by a later law. Ordinarily, a criminal legislation must be so interpreted as to speak futuristically. While there is no vested right for any convict who has received a judicial sentence to contend that the penalty should be softened and that the law which compels the penalty to be carried out in full cannot apply to him, it is the function of the court to adopt a liberal construction when dealing with a criminal statute in the ordinary course of things. Liberality in ascertaining the sense may ordinarily err on the side of liberty where the quantum of deprivation of freedom is in issue.

Speaking generally, Lord Acton's dictum deserves attention:

"I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is the other way, against the holders of power, increasing as the power increases."

Likewise, Edmund Burke, the great British statesman, gave correct counsel when he said:

"All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author and Founder of society."

Once I accept the basic thesis that the public power vested on a high pedestal has to be exercised justly the situation becomes simpler. The principal considerations will turn upon social good by remission or release. Here, we come back to the purpose of imprisonment and the point of counter-productivity by further prolongation of incarceration. But when is this critical point reached? Bitter burns better into us this die-hard error:

This too I know — and wise it were
If each could know the same —
That every prison that men build
Is built with bricks of shame,
And bound with bars lest Christ should see
How men their brothers maim.

President Carter when he was Governor of Georgia, addressing a Bar Association, said:

"In our prisons, which in the past have been a disgrace to Georgia, we've tried to make substantive changes in the quality of those who administer them and to put a new realm of understanding and hope and compassion into the administration of that portion of the system of justice. Ninety-five per cent of those who are presently incarcerated in prisons will be returned to be our neighbours, and now the trust of the entire programme, as initiated under Ellis MacDougall and now continued under Dr Ault, is to try to discern in the soul of each conviction and sentenced for that person to be pursued while he is in prison. I believe that the early data that we have on recidivism rates indicate the efficacy of what we've done."

Likewise, in many current research publications the thesis is the same. Unless a tidal wave of transformation takes place Georege Ellis will be proved right:

"There are many questions regarding our prison systems and their rehabilitative quality. Observers from inside the walls find prisons to be a melting pot of tension and anxiety. Tension and anxiety are the result of a variety of abnormal conditions. Prisons, including the so-called model prisons, rob a man of his individual identity and dignity.

"Contrary to popular opinion, all convicts are not rock-hard individuals slacking sufficient emotional balance. They are people with fears and aspirations like everyone else. Generally, they don't want to fight with or kill their neighbour any more than the man on the street. They want to live in peace and return to their loved ones as soon as possible. They are not different breed of human beings or a distinct type of mentality. They are persons who have made mistakes. This point is made not to solicit pity but to bring attention to the fact that any individual could be caught in a similar web and find himself inside a pit such as Folsom Prison."

The process of reasoning that even in spite of death sentence murders have not stopped is devoid of force because, in the first place, we cannot gauge, measure or collect figures or statistics as to what would have happened if capital punishment was abolished or sentence of long imprisonment was reduced. Secondly, various criminals react to various circumstances in different ways and it is difficult to foresee the impact of a particular circumstance on their criminal behaviour. The process of reformation of criminals with an unascertained record would entail a great risk as a sizable number of criminals instead of being reformed may be encouraged to commit offences after offences and become a serious and horrendous hazard to the society.

The question, therefore, is — should the country take the risk of innocent lives being lost at the hands of criminals committing heinous crimes in the holy hope or wishful thinking that one day or the other, a criminal, however dangerous or callous he may be, will reform himself? Valmikis are not born everyday and to expect that our present generation, with the prevailing social and economic environment, would produce Valmikis day after day is to hope for the impossible.

The problem of penology is not one which admits of an easy solution. The argument as to what benefit can be achieved by detaining a prisoner for life is really begging the question because a detention for such a long term in confinement, however comfortable it is, is by itself sufficient to deter every criminal or offender from committing offences so as to incur the punishment of confinement for a good part of his life. The effect of such a punishment is to be judged not from a purely ethical point of view but from an angle of vision which is practical and pragmatic.

Explaining the material and practical advantages of long-term imprisonment, Sir Leon Radzinowicz in his book *The Growth of Crime* aptly observes as follows:

"Long imprisonment could be regarded as the neat response to all three requirements; it would put the miscreants behind bars for a long time; it would demonstrate that the game was not worth the candle for others." (p 195)

But, at the same time, it cannot be gainsaid that a sentence out of proportion of the crime is extremely repugnant to the social sentiments of a civilized society. This aspect of the matter is fully taken care of when it confines its application only to those categories of offence which are heinous and amount to a callous outrage on humanity. Sir Leon Radzinowicz referring to this aspect of the matter observes thus:

"Maximum penalties, upper limits to the punishment a judge may impose for various kinds of crime, are essential to any system which upholds the rule of law. Objections arise only when these penalties are illogical, inconsistent, at odds with people's sense of justice."

Ted Honderich in his book *Punishment* while dealing with the deterrent form of punishment observes as follows:

"It is also to be noticed that the conditions have other consequences as well. Penalties must be sufficiently severe to deter effectively."

Bentham has also pointed out that a penalty may be justified when the distress it causes to the offenders and others is not greater than the distress that will result if he and others undeterred, offended in the future. Ted Honderich after highlighting various aspects of the deterrent form of punishment concludes as follows:

"There are classes of offenders who are not deterred by the prospect of punishment, it cannot be acceptable that a society should attempt to prevent all offences by punishment alone. In anticipation of the discussion to come of compromise theories of punishment, we can say that punishment may be justified by being both economically deterrent and also deserved."

I am not at all against the reformative form of punishment on principle, which in fact is the prime need of the hour, but this matter has been thoroughly considered by Graeme Newman in his book *The Punishment Response* and where he has rightly pointed out that before the reformative form of punishment can succeed people must be properly educated and realise the futility of committing crimes. The author observes as follow:

"In sum, I have suggested that order was created by a criminal act, that order cannot exist without a structured inequality. Order and authority must be maintained by punishment, otherwise there would be even more revolutions and wars than we have had throughout history.

"People in criminal justice know only too well that the best intentioned reforms often turn out to have unfortunate results."

In the first place, there is no evidence that all or most of the criminals who are punished are amenable to reformation. It is true that in recent years an opinion has been strongly expressed in favour of reformation being the dominant object of punishment but then an opposite opinion has not been lacking in expression. Champions of the former view cry from housetops that punishment must have as its target the crime and not the criminal. Others, however, have been equally vocal in bringing into focus the 'mischief following from what the criminal has done to his victim and those near and dear to him and have insisted on greater attention being paid to victimology and therefore to the retributive aspect of punishment. They assert:

"Neither reformers nor psychologists have, by and large, succeeded in reducing recidivism by the convicted criminals. Neither harshness nor laxity has succeeded in discouraging repeaters. Criminality is not a disease admitting of cure through quick social therapy."

The matter has been the subject of social debate and, so far as one can judge will continue to remain at that level in the foreseeable future.

Secondly, the question as to which of the various objects of punishment should be the basis of a penal provision has, in the very nature of things, to be left to the legislature and it is not for the courts to say which of them shall be given priority, preponderance or predominance. It may well in fact be that a punitive law may be intended to achieve only one of the four objects but that is something which must be decided by the legislature in its own wisdom. An offence calculated to thwart the security of the State may be considered so serious as to demand the death penalty and nothing else, both as a preventive and a deterrent, and without regard to retribution and reformation. On the other hand, offences involving moral turpitude may call for reformation as the chief objective to be achieved by the legislature. In a third case all the four objects may have to be borne in mind in choosing the punishment.

As it is, the choice must be that of the legislature and not that of the courts and it is not for the latter to advise the legislature which particular object shall be kept in focus in a particular situation. Nor is it open to the courts to be persuaded by their own ideas about the propriety of a particular purpose being achieved by a piece of penal legislation, while judging its constitutionality. A contrary proposition would mean the stepping of the judiciary into the field of the legislature which, I hardly need to say, is not permissible.

The third reason flows from a careful study of the penal law prevalent in the country, especially that contained in the Penal Code which brings out clearly that the severity of each punishment sanctioned by the law is directly proportional to the seriousness of the offence for which it is awarded. This, to my mind, is strongly indicative of reformation not being the foremost object sought to be achieved by the penal provisions adopted by the legislature. A person who has committed murder in the heat of passion may not repeat his act at all later in life and the reformation process in his case need not be time-consuming. On the other hand, a thief may take long to shed the propensity to deprive others of their good money.

If the reformative aspect of punishment were to be given priority and predominance in every case the murderer may deserve, in a given set of circumstances, no more than a six moths' period of incarceration while a thief may have to be trained into better ways of life from the social point of view over a long period. The argument based on the object of reformation having to be in the forefront of the legislative purposes behind punishment must, therefore, be held to be fallacious.

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