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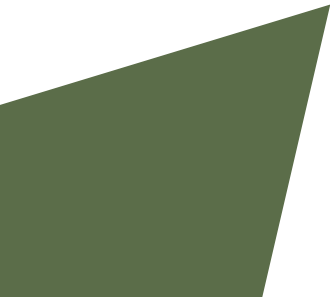
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**The Blackstone Ratio and It's Compatibility in Today's Technological
World**

Akaash D & Ilakkiya K

ABSTRACT

Horace once said that "Crime is followed by punishment" which means that when a person outbreaks the law he/ she will surely suffer punishment for the same. In short, the punishment would be the price for the crimes which one does. Punishment is given to minimize the crime and to reform the criminal. But many criminals escape from the punishment using the theories of the law itself which was once framed for a good motive. One such principle is the Blackstone ratio. In this paper, the authors explain about the concept of Blackstone ratio and its history, how other countries use this idea, is this idea suitable for today's technical world and reduction of crime by development in law with the balance to the technological development.

Keywords: Blackstone ratio, POCSO act, Section 34 of IPC, identical twins, retributive and reformative form of punishment, technology development.

INTRODUCTION

India is one of the countries which gives huge importance to the safety of its citizens. In the Indian Constitution under Article 21, every citizen is granted the right to life, liberty, and security. Accordingly, many laws are implemented to govern the safety of the people. Many theories were formed for the same. One such idea which was adopted by India was the Blackstone ratio which states that “It is better that ten guilty persons escape than that one innocent suffer”. This idea was imposed to save innocent people from being punished by the law. This idea accomplished its main goal of protecting innocent people from being punished. At the same time, many criminals have used this idea as a defense to escape the clutches of law and go unpunished.

BLACKSTONE FORMULATION

English jurist William Blackstone during his seminal work *Commentaries on the Laws of England*, expressed the idea of “Ten guilty can escape rather than one innocent suffer”. This idea was popularly known as the Blackstone’s ratio and it was published in the 1760s. This is being used by our Government until now. This idea continues to be a topic of debate. Going back in centuries there are also many sentiments similar to this in a variety of legal traditions.

HISTORY OF BLACKSTONE FORMULATION

Hale and Fortescue articulated the immediate precursors of Blackstone’s ratio in English Law, Hale (about 100 years earlier) stated that “for it is better five guilty persons should escape unpunished than one innocent person should die” and Fortescue’s *De Laudibus Legum Angliae* (about 200 years ago) stated that “one would much rather than twenty guilty persons should escape the punishment of death than that one innocent person should be condemned and suffer capitally” they both were influential jurists in their time.

Another Jewish legal theorist Maimonides about 500 years ago stated that “the Exalted One has shut this door” against the use of presumptive evidence, for “it is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent one to death” which has been propounded by Blackstone centuries later. Maimonides also argued that it will lead to a mere conviction if any person is executed on anything less than absolute certainty and it also explains both the Exodus 23:7 “*the innocent and righteous slay thou not*” and an Islamic text, [Jami] of at-Tirmidhi.

Mohammad as saying in [Jami] of at Tirmidhi quotes, “*avoid legal punishments as far as possible, and if there are any doubts in the case then use them, a judge should be lenient than giving punishment*”

Volokh also compiled a similar sentiment long ago. The idea that it would be preferable that many convicts escape consequences than a few innocents suffer them, this is a vaguely similar principle, which seems to be narrated as early as in the Cities of Plain in Genesis.

Abraham drew near, and said, “Will you consume the righteous with the wicked? What if there are fifty righteous within the city? Will you consume and not spare the place for the fifty righteous who are in it?¹... What if ten are found there? “He [The Lord] said,” I will not destroy it for the ten’s sake.”²

Early the next morning Abraham got up and returned to the place where he had stood before the Lord. He looked down towards Sodom and Gomorrah, towards all the land of the plain, and he saw dense smoke rising from the land, like smoke from a furnace.³

So when God destroyed the cities of the plain, he remembered Abraham, and he brought Lot out of the catastrophe that overthrew the cities where Lot had lived.⁴

In this above-mentioned verse, the “Lot” means families of the righteous. As mentioned above in the verse some “righteous” are there in the city which has overwhelming wickedness, the city can claim a warrant for the “stay of execution” as the mere presence of the righteous is enough.

IS INDIA FOLLOWING THIS FORMULATION

Until today India is following this formulation. This formulation is the baseline for every law legislated. As this idea becomes the baseline it brings another term ‘presumption of innocence’ this says that every person is considered innocent until he is proven guilty, so the burden of proof falls on the prosecution side as they must prove that the accused is guilty beyond reasonable doubts. If reasonable doubts remain he must be acquitted. This becomes a legal right to the accused and it is an International Human right under Article 11 of the UN’s Universal Declaration of Human Rights. So by saying that the innocents should be saved the accused are being acquitted. In the present scenario, India is overcoming this formulation to some extent, in POCSO Act 2012

¹Genesis 18:23, World English Bible

²Genesis 18:32, World English Bible

³Genesis 19:27-28, World English Bible

⁴Genesis 19:29, World English Bible

the person who is being prosecuted is presumed to be guilty until the contrary is proven⁵. In Dowry's death also the presumption guilt⁶ as per section 113b of the Indian Evidence Act, 1872 only applies when the woman dies within seven years of marriage and there is proof of cruelty or harassment.

RISE IN CRIMINAL ACTIVITIES DUE TO TECHNOLOGY AMELIORATION

Technology has revised extraordinarily in contrast to the earlier days. In this modern world, technological advancement is not a matter of surprise. Almost every day we come across some innovation. The invention of mobile and the internet has made everyone's life easier. But actually, this technological leap is widely misused by criminals which gives room for injustice. Many online criminal acts like theft, cyberbullying, phishing, spoofing, sexual harassment, drug smuggling, racketeering, credit card fraud, and many other cyber crimes are different types of crime that are largely taking place today due to technology development. Advancement in technology has given a golden opportunity for crooks to accomplish their malicious intent. As a matter of fact, "It has become appallingly obvious that our technology has exceeded our humanity," as once said by the famous technological mathematician Albert Einstein.

Law and technology (information technology act) travel on the same path. Law must improve according to the advancement of technology. But in relevance law cannot keep up with the technology development. This paves way for many crimes to take place in society.

IS BLACKSTONE RATIO APPLICABLE FOR PRESENT-DAY

In early days death sentences were included even for cases like theft, stealing, and pouching which is considered to be a minor offense today. To change this situation and to safeguard innocent people from undergoing punishment Blackstone has guided this idea of the Blackstone ratio to the judicial system. But, this idea has been an active source of debate in jurisprudence from the date of its commencement. Arguments against and in favor of this theory have become a continuous talk. Many jurists have shared their views on this theory. Even authoritarian personalities like Bismarck opposed this theory stating that "Ten innocent men should suffer than one guilty man escape". The judicial system would become fragile if it blindly accepts this theory

⁵The State Of Maharashtra vs Atul Rama Lote , MANU/MH/0737/2019.

⁶Criminal Law Amendment Act No. 43 of 1986 as the implementation of the 91st Law Commission Report

as it is. The ratio of Blackstone would not apply to today's world. This is explained in detail in the following cases,

JOINT LIABILITY CASES:

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone⁷. As per this section, each person is liable for doing a criminal act jointly with common intention. In the case of Barendra Kumar Gosh v King-Emperor⁸, Barendra Kumar gosh defended that is intention was not to kill the postmaster but only guarding outside the post office while is companions looting. But this contention was rejected both by sessions and high court and he was sent to the death sentence.

Now if we apply Blackstone formulation in joint liability cases, in cases where there is no proper evidence to prove one's guilty it would not alone help a particular criminal to escape from the law but it will act as a life-saving situation for all the persons who had the common intention to do that criminal act.

IDENTICAL TWINS:

Identical twins are also known as monozygotic twins. They share the same gene and they look the same. These types of twins generally have same-sex, same eye color, same blood group and they also share the same DNA code. Their uniqueness lies in their fingerprints and their personalities. Identical twins have played hide and seek with the law, once they came to the knowledge that they could. Though they had different fingerprints, in cases where fingerprints were not found out it felled to be a difficult task for the investigation officers to identify who was the actual criminal.

Identical twins named Hassan and Abbas were freed from prosecution in the year 2009 in Germany. The police found a missed glove in the scene of the theft. They could not find the actual thief even when they extracted the DNA sample from the glove. The police finally freed both brothers even though the jewelry remained missing⁹. This decision was an output of Blackstone's formulation. In this manner, many criminals have escaped from the law.

⁷Section 34 of the Indian Penal Code.

⁸AIR 1925 PC I.

⁹<https://listverse.com/2018/07/29/10-times-identical-twins-tried-getting-away-with-crime/>

IS THIS FORMULATION IS APPLICABLE IN OTHER COUNTRIES OR STROKED OUT

Most of the countries like Canada, Australia, and Europe follow that every offender is considered innocent until he is proven guilty (Presumption of Innocence), where the burden of proof (Section 101 of Indian Evidence Act, 1872) falls on the prosecution side. This formulation is mainly to protect the innocents, but some countries like China, North Korea, Japan, and Myanmar treat the suspect as guilty until proven innocent (Presumption of Guilt), where the burden of proof falls on the accused side, which clearly states that they don't follow the Blackstone's Formulation as there is no protection for the innocents. As a coin has two sides, this idea of the Blackstone ratio also has its advantages and flaws. That is in reformative the accused are using them as their defense and in retributive many innocents are being punished.

REFORMATIVE FORM OF PUNISHMENT

The main aim of this theory is to reform the criminal into a normal person. This theory is based on the humanistic principle where the person who commits the crime is not ceased from the human being. This theory gives a chance for the accused to change. This theory follows the method of individualism.

RETRIBUTIVE FORM OF PUNISHMENT

This theory is based mainly on punishing the person who has done a crime; the punishment will be proportionate to the crime committed. Some other purpose of this punishment is the prevention of further crimes and rehabilitation of the offender.

The reformative form is followed in most of the countries as this form works most of the time.

OPPOSITION TO BLACKSTONE FORMULATION

The Blackstone ratio does not suit for most of the cases as of today. By following this idea the judicial system can be diverted towards wrong amiss acquittal. Many remorseful criminals escape using this idea of the Blackstone ratio. Our judicial system must not allow any offenders to roam about in the society in the name of saving innocent people. If once the criminals are aware of their chance of taking the Blackstone ratio as their defense, it will tend them to do more wrongful acts. The opposition to the Blackstone theory does not mean that innocent people should be convicted in mere suspicion. The authors are trying to stress that the judicial system should be updated as

well as embraced with reform necessary and the law should be upgraded as per the betterment and development of the society. By doing so the judicial system can ensure that every guilty is convicted and not a single innocent is punished.

CONCLUSION

A theory like the Blackstone ratio in this advanced society can act as a loophole to escape for criminals. Law and technology must be kept in balance. Advancement of law and legal maxims alone is not enough to ensure that all criminals are punished, awareness and the knowledge of the same is also necessary. And as said by W. S. Gilbert, "Let the punishment fit the crime". Thus, the theory of the Blackstone ratio will not suit today's modernized society.