

THE NEW PENOLOGY: NOTES ON THE  
EMERGING STRATEGY OF CORRECTIONS AND  
ITS IMPLICATIONS, BY: PROF. MALCOLM M.  
FEELEY & PROF. JONATHAN SIMON,  
CALIFORNIA CONFERENCE ON GROWTH AND  
ITS IMPACT ON CORRECTIONAL POLICY,  
UNIVERSITY OF CALIFORNIA, JUNE 1992 BY  
DEBAN SATYADARSHI NANDA\*

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**Introduction:**

The changed notion of considering crime and criminal, has been served as master piece in the article of Prof. Malcolm M. Feeley and Prof. Jonathan Simon. Both are having a beautiful and amazing career as academicians and have propounded the concept of "New-Penology". The origin of this concept has its roots in dynamic nature of Sociological Studies. The dynamics lies in the conceptualization of both Crime and Criminals. The positive inference of New Penology states the essential of prevention as well as acceptance of criminal behaviour.

At the very outset the Authors have successfully stated the objective of their article and research. They have said it in clear terms that the basic inferences are same but the use of terms and language in expressing them is different. So the review from the Abstract itself reaches at the conclusion that the Authors are ready to accept the fact that New Penology with regard to its goals is not new but with regard to methodology is different. The shift of focus can be seen and the concern is aggregates not individuals. The Authors have clearly stated that, "The New Penology argues that an important new language of penology is emerging. This new language, which has its counterparts in other areas of the criminal law and criminology, which have focused individuals and redirects it to actuarial consideration of aggregates."<sup>1</sup>

**Points of Discussion in the Article:**

The Author has also talked about the ideological as well as practical shift of the Penological Studies due to the political valence of penal policy. The change is in conception-discourse, objectives and the techniques<sup>2</sup>. By *strategy* we do not mean a conscious and coherent agenda employed by a determinate set of penal agents or others. It talks about a uniform system

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\* 3<sup>rd</sup> Year, B.A LL.B(Hons.), School of Law, KIIT University, Bhubaneswar, Odisha

<sup>1</sup> The New Penology: Notes on the Emerging Strategy of Corrections and Implication, Presented at the California Conference on Growth and Its Impact on Correctional Policy, University of California, June 1992, p. 1 (Abstract), webreference: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1717&context=facpubs>

<sup>2</sup> Supra Note- 1, p.1

exercising power due to the coherent interconnected units of the penal system. It is moreover concerned about the strategy of using the loose links of the system and the achievement of a goal which is not ideal and non-attainable. The Authors for proper understanding have cited the Foucault's (Scholarly Articles 1978:94) notion, that power is both "intentional and non subjective". It provides a useful tool for examination at the same time also.

The article also gives a brief idea of the new discourse that the New Penology wants to set forth and the new objective and goal attainment. The new system is more sensitive and is more concerned about the efficient control and the internal system process. The Authors have stated that, " The emergence of new discourses: In particular, the language of probability and risk increasingly replaces earlier discourses of clinical diagnosis and retributive judgment. The formation of new objectives for the system: The objectives we have in mind are not simply new to the system (some of them have old antecedents) but are in some sense newly "systemic." We are especially interested in the increasing primacy given to the efficient control of internal system processes in place of the traditional objectives of rehabilitation and crime control. Goals like reducing "recidivism" have always been internally shaped in important ways (Maltz, 1984), but in the contemporary setting the sense that any external social referent is intended at all is becoming attenuated. The deployment of new techniques: These techniques target offenders as an aggregate in place of traditional techniques for individualizing or creating equity."<sup>3</sup> The New Penology and the new sense oriented system generates a general concern for the external factors of crime causation in Criminal Justice System. This system also aims at punitiveness of sentencing system. The Reviewer is also impressed with the approach of discussing the shortfall of the suggestions of the Authors by themselves only. They have clearly stated the shortfall of this system as there can be a shift of both external as well as political policy decisions. The brilliant credibility of both the Authors have been proved when they have criticised the Political Influence on the Criminal Justice System with reference to the drawback to their new proposed system.

"The outlines of the "old" penology become most visible when one considers what has been shared across the perceived lines of opposition in modern corrections and criminal law."<sup>4</sup> with this connotation the Authors have started discussing about the Old Penology and other related concepts. They have also mentioned about the teaching patterns of American Schools with regards to old penology. Authors have stated that the New Penology is not concerned about responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender, rather it is concerned with techniques to identify, classify, and manage groupings sorted by dangerousness.<sup>5</sup> So the new trends are not related to goal but to the methodology adapted by the Penologists.

The Authors argues that the task is for the Managerial concern not for the transformation and the Reviewer also finds sense in this argument with regard to the earlier Hypothesis developed by the Authors. They also argue about the Systematic Rationality and efficiency created thereby.

The faulty characteristics of the old system has been discussed efficiently and the new discourse has been depicted as the replacement to the old methodology followed by the

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<sup>3</sup> Supra Note 1, p. 1

<sup>4</sup> Supra Note 1, p. 3

<sup>5</sup> Supra Note 1, pp. 3-4

penologists. They have mentioned it with a clear tone by stating, "Central feature of the new discourse is the replacement of a moral or clinical description of the individual with an actuarial language of probabilistic calculations and statistical distributions applied to populations."<sup>6</sup> The New Penology aims at the social utility and the concept of management. The Authors have tried to segregate the criminal law and the tort law. They have said about the management and consideration of the aggregate and the managerial task of controlling crime and criminal. They have also stated about the individual liability in tort law and the emergence of new aggregate system.

The Authors have also focused about on the advanced method of getting the statistics and the methods of scientific approach in crime prevention as well. "Its goal is not to eliminate crime but to make it tolerable through systemic coordination."<sup>7</sup>, the Authors have started the objective with these words and have clearly stated about the basic mindset of the people in a society. The tolerance moreover in Reviewers point of view is about the acceptance of the deviant behaviour in the society and trying to condemning the root of the such deviant behaviour completely.

Then the Authors have cited the examples of Recidivism and said that the increased instances of this phenomena is a clear indication of the failure of the Penal System. They have also given the examples of the Parole for the integration of the offenders in the society. This concept talks about the effective control by correctional programs in terms of the aggregate control and have encouraged us not to give emphasis on the individual success or failure. According to them, "The importance that recidivism once had in evaluating the performance of corrections is now being taken up by measures of system functioning"<sup>8</sup>. Scholars<sup>9</sup> have noted a tendency in courts and other social agencies toward decoupling performance evaluation from external social objectives. Instead of social norms like the elimination of crime, reintegration into the community, or public safety, institutions begin to measure their own outputs as indicators of performance. Thus, courts may look at docket flow. Similarly, parole agencies may shift evaluations of performance to, say, the time elapsed between arrests and due process hearings. In much the same way, many schools have come to focus on standardized test performance rather than on reading or mathematics, and some have begun to see teaching itself as the process of teaching students how to take such test<sup>10</sup>.

The Authors have targeted the new techniques to be used and have stated that, " These altered, lowered expectations manifest themselves in the development of more cost-effective forms of custody and control and in new technologies to identify and classify risk. Among them are low frills, no-service custodial centres; various forms of electronic monitoring systems that impose a form of custody without walls; and new statistical techniques for assessing risk and predicting dangerousness. These new forms of control are not anchored in aspirations to rehabilitate, reintegrate, retrain, provide employment, or the like."<sup>11</sup> So the very use of old technologies and methods have been rejected by the Author and the idea of prevention by effective sensitization and identification has also been developed in this thesis.

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<sup>6</sup> Supra Note 1, p. 5-6

<sup>7</sup> Supra Note 1, p. 8

<sup>8</sup> Supra Note 1, p. 9

<sup>9</sup> Heydebrand and Seron (1990)

<sup>10</sup> Heydebrand and Seron, 1990:190-194; Lipsky, 1980:4-53

<sup>11</sup> Supra Note 1, p. 10

# LAW MANTRA THINK BEYOND OTHERS

(International Monthly Journal, I.S.S.N 2321 6417)  
[Journal.lawmantra.co.in](http://Journal.lawmantra.co.in) [www.lawmantra.co.in](http://www.lawmantra.co.in)

The very basic use of incapacitation has been encouraged in the article also. This can be used as a model of punishment for prevention of crime and has been supported by the Utilitarian Scholars<sup>12</sup>. This also supports the custodial continuum and divides the groups on the basis of dangerousness of the person, thereby managing the risk on the society at large.

The Penal Sanctions on the People has increased since last few decades. But the community based sanctions can be understood in terms of risk management rather than rehabilitation as per the Authors. He has also given examples of US prisons thereby touched the concept of BEHAVIOURAL CRIMINOLOGY. The use of new technology along with innovative ideas have made the US prison system more effective also.

The Authors have given their innovative ideas in a separate heading and have suggested some alternatives for the methods of correction and prevention. The Reviewer feels that the suggestion regarding the boot camps should be mentioned first as it targets the youth and tries to re integrate them to the society. The Authors have stated that, "One of the current innovations most in vogue with the press and politicians are correctional "boot camps." These are minimum security custodial facilities, usually for youthful first offenders, designed on the model of a training centre for military personnel, complete with barracks, physical exercise, and tough drill sergeants. Boot camps are portrayed as providing discipline and pride to young offenders brought up in the unrestrained culture of poverty (as though physical fitness could fill the gap left by the weakening of families, schools, neighbourhoods, and other social organizations in the inner city)."<sup>13</sup> The Authors have mentioned about the absence of long-term treatment facilities, community-based follow-up, and prospects for viable conventional life-styles and employment opportunities. The treatment of the offenders for the reintegration of them to the society has been emphasised and the procedure therein has also been mentioned.

They have cited different examples and given their suggestion with regard to the new alternatives available to them. "Drug testing and electronic monitors being tried in experimental "intensive supervision" and "house arrest" programs are justified in rehabilitative terms, but both sorts of programs lack a foundation in today's social and economic realities. The drug treatment programs in the 1960s encompassed a regime of coercive treatment: "inpatient" custody in secured settings followed by community supervision and reintegration."<sup>14</sup> These suggestions are applicable to most of the cases and are highly effective to first time offenders.

The New Penology focuses on the Scientific study and the actual research on the aggregates. They have said, "The new penology has an affinity with a new "actuarial" criminology, which eschews these traditional concerns of criminology. Instead of training in sociology or social work, increasingly the new criminologists are trained in operations research and systems analysis. This new approach is not a criminology at all, but an applied branch of systems theory. This shift in training and orientation has been accompanied by a shift in interest. A concern with successful intervention strategies, the province of the former, is replaced by models designed to optimize public safety through the management of aggregates, which is

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<sup>12</sup> Greenwood, 1982; Moore et al., 1984

<sup>13</sup> Supra Note 1, p. 16

<sup>14</sup> Supra Note 1, p. 17

the province of the latter."<sup>15</sup> They have called for the shift of the technology and sociological studies at the same time. The change has been seen throughout these years and the distinction between the applied scientific method and research based methods can be seen here also. The new concern for the system is to optimise the focus on public safety more and the management of aggregate is the only solution for the achievement of this goal.

At the end they have talked about the real problem faced by the people. They have given the example of underclass and poverty. They have also talked about the likeliness of causing crime in these classes and the prominent threat to society from these groups. As per the Authors, "in contrast to groups whose members are deemed employable, even if they may be temporarily out of work, the underclass is understood as a permanently marginal population, without literacy, without skills, and without hope; a self-perpetuating and pathological segment of society that is not integratable into the larger whole, even as a reserve labour pool (Wilson, 1987). Conceived of this way, the underclass is also a dangerous class, not only for what any particular member may or may not do, but more generally for collective potential misbehaviour. It is treated as a high-risk group that must be managed for the protection of the rest of society."<sup>16</sup> But they have also given their suggestion to prevent this phenomena from happening.

#### **Conclusion:**

From the close study of the article the Reviewers feels that the Authors have extended the role of State in welfare matters and have increased the burden on the state. Now the suggestion indicate about the increased role of the state not only in correction but also prevention by welfare means. The welfare statehood has gone to a new extent in this twenty first century, so the reviewer feels that the goals set by the Authors are achievable and attainment of those goals may lead to the social reform which has been sought by the people to integrate themselves into the society without any hurdle. The Article has been written after true empirical research with some doctrinal basis in it. The reference to the writing of various Authors convey the doctrinal approach and the penal strategy of different countries so the imperial side of the research. The Authors have also tried to develop a new concept of tolerance of crime by the society which is a real challenge both for the society and the offender as per the Reviewer. But new penology as a concept is well developed and established as per the Reviewer and this theory includes a new approach having the same goals.

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<sup>15</sup> Supra Note 1, p. 19

<sup>16</sup> Supra Note 1, p. 21