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Reconciling Berlin's Liberty Principles And Craig Haney's Crime Master Narrative

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Abstract: *The understanding of criminality has evolved to include social and contextual influences, highlighting the need to consider these factors in legal concepts of culpability. Traditional views of crime should now accommodate the impact of criminogenic factors that influence behavior, thus limiting the state's ability to curtail individual liberty. A nuanced understanding of criminality would allow for more just and proportionate sanctions, in line with natural justice. This paper entails the integration of the concept of liberty as propagated by Isaiah Berlin, and Craig Haney's crime master narrative, through perspectives of both, an individual and state. The arguments are centered around the role of the state and its interference with individual autonomy.*

Key Words: : Criminality, Individual Autonomy, Crime Master Narrative, Social Contract, Criminogenic Factors.

Isaiah Berlin (1969) in the essay titled Two Concepts of Liberty in his book Four Essays on Liberty elaborates the underlying philosophy of individual liberty and the role of state coercion in determining the extent of operation of political liberty. The notion of liberty is understood in two senses, keeping in mind the contextual variance- negative (freedom from) and positive (freedom to). The notion of negative liberty proposes that the true essence of liberty is the absence of coercive legal sanctions, restraints or constraints on the ability to act in an unobstructed manner, either by actions of a private individual or state. Political liberty is curtailed when there's deliberate interference on part of the state, which is coercive to an extent that prevents any harm to other individuals or oneself from the exercise of such liberty by an individual. However, due to disagreement pertaining to the extent of non-interference; in order to avoid anarchy, social chaos and state of inequality, a frontier shall be drawn to ensure that minimum freedom that exists is common to all. On the other hand, the notion of positive liberty propagates that the state plays a paternalistic/constructive role to assist an individual to be what they ought to, and help realise their true rational and autonomous self, as every individual is not born with such inherent ability. It facilitates the ability of the individual to take control over self and realise their fundamental purpose. State coercion is willfully accepted as individuals "should behave" in a certain way to attain freedom. Due to the absence of inherent pure reason, the state must act on its paternalistic instinct to enable citizens to make rational choices in pursuit of an ideal self. Hence, state interference is justified as its presence marks the true essence of liberty.

Craig Haney (2020) in his book titled Criminality in Context: The Psychological Foundations of Criminal Justice Reform reviews the developmental and immediate situational roots of criminality. In one his chapters, namely Individualistic Myths and the Crime Master Narrative, which is written in the backdrop of the American jurisprudence, he critically analyses and conceptualises the aetiology of criminal behaviour based on the concept of individual autonomy. Crime is comprehended through a very narrow lens where the social, historical & institutional aspect unencumbered by past and present circumstances are at abeyance while determining the legal culpability of an alleged criminal. As Louk Hulsman states, the criminal is separated from the crime by focusing on the deep-seated internal mechanism and inherent badness deployed by the criminal that triggers deviancy. It ignores the social contingencies of criminal events and holds the individual solely responsible for their actions. Hence, the crime master narrative, which is a widely accepted understanding of human events and behaviour, is criminal centric where the criminal behaviour is understood in a total social vacuum. In the 18th -19th century, Western European and American jurists were focused on pseudoscientific theories which posited that causes of criminal behaviour are embodied in biologism, which was central to craniometry, phrenology, eugenics and instinct theory. This popular and pseudoscientific representation of criminality distinctly shaped the legal doctrines and criminal justice policies and practices. Hence, the venerable crime master narrative was unquestionably accepted which curtailed the possibility of careful and in-depth analyses by legal decision makers who instinctively assume crime as a product of free choice.

POSITIVE LIBERTY AND CRIME MASTER NARRATIVE- An individual desires to be its own master, to be an instrument of their own acts of will, to be autonomous through self-realisation in pursuit of an ideal self. Yet, not everyone has that inherent ability. The state, through the enforcement of social and welfare policies, can impose restraints and restrictions to facilitate individual behaviour aimed at creating a free, rational, autonomous and moral individual, without having a bearing on their free will. The individual shall make the right choice as it's not the power of doing as we like but being able



to do what we should do. As a result, when the individual engages in criminal behaviour, the alleged perpetrator can be deprived of some existing privilege so that there's no harm to oneself and others. The causal locus of such deviancy is shared between individual and the state. Thomas Hobbes refers to the theory of social contract stating that a reasonable man would enter into a contract with a particular individual who in turn would create a sustainable society where rights of individuals are protected. Hence, it's the positive duty of the state to adopt reasonable and suitable measures to protect the rights of individuals without diluting their individual autonomy. Criminal law should be used as a means to strengthen the rule of law in order to avoid anarchy whereby if liberty of others is encroached upon, it will attract criminal liability and award proportionate punishments to criminals. It's an unfair benefit for those in power to support an individualistic and criminal centric approach to determining legal culpability as individuals aren't solely responsible for their behavioural depravity.

NEGATIVE LIBERTY AND CRIME MASTER NARRATIVE- The reconciling nature of negative liberty and crime master narrative is influenced by internalised beliefs of good and evil, whereby the individual acts on free will i.e., individual autonomy, without any restraint or interference by actions of private individuals and the state, and engages in aberrant behaviours. Therefore, it can be contented that when a free, autonomous and morally driven individual, without interference by a private individual or the state, acts or omits as a rational person does, while having awareness about the consequences yet choosing to further the ill belief, they will be held criminally liable. However, the restraints imposed through criminal legislation should take into consideration this liberty of an individual. The criminal prohibitions and procedural restraints which encroach upon an individual's autonomy to exercise liberty should be motivated by the right reasons. The harms of state coercion should not outweigh the goodness inherent to exercising individual autonomy, though there are certain actions that should legitimately be criminalised by the law because of their inherent badness. But if the actions professed by free will are not inherently wrong, the goodness of its prevention does not outweigh the presumption in favour of its liberty. The punishment should not be disproportionate to the gravity and seriousness of the crime committed.

LIMITATION- The scope of criminal prohibition is an indication of political society's attitude towards citizen liberty. It's a conflict between individual autonomy and social morality, as individual morality is subjugated for collective welfare when the principle of sanctity of life is accorded primacy. The chief limitation of crime master narrative is that it interprets the actions of a criminal in a complete social vacuum. This anachronistic and deeply entrenched view hinges upon the doctrine of free will, which also draws parallels with existentialism in psychology. Its tenets are based on the belief that individuals have a free choice to determine the course of their lives, wherein they are solely responsible for their actions. According to existentialist criminology, social and cultural developments are oriented around contingency and unpredictability. Hence, completely isolating the behaviour of an alleged criminal from environmental, social and structural influences is an erroneous view in a contemporary liberal democracy.

According to social psychologist Hazel Markus, the operative model dominating both academia and lay psychology assumes the source of all thought, feeling and action is deep inside the human mind, completely ignoring the influence of the social world. Construction of a master narrative that perceives deviant individuals as social enemies who don't deserve sympathy for willfully acting upon their innate badness narrows down the scope of reformation and prevention, and the alleged criminal is further dehumanised, obviating any possibility and responsibility of understanding the aetiology of criminal behaviour. Even if an individual engages in deviant behaviours and the state prohibits it through legal sanctions and restraints, it may not be necessary that the principles and policies that motivated such an action from the state are guided by a fair, equitable and inclusive understanding. The crystallisation of psychological individualism deeply permeates the legal rules, principles and doctrines. Crime master narrative conforms to the mainstream discourse regarding criminality, which as stated is essentially flawed owing to its inception in absolute social vacuum, ultimately impinging upon the presumptions in favour of liberty.

CONCLUSION- Over the passage of time, the scope of understanding criminality has expanded as social scientists articulated new models of behaviour, resulting in a paradigm shift to shedding light on the social history and context as well. As Bernard Diamond argues, the scope of traditional legal concepts of culpability should include the impact of social contextual influences on criminal behaviour which can limit the extent of state's curtailment of the liberty of individuals. There's a dire need for a more nuanced and contemporary understanding of criminality with detailed thematic analysis of various aspects of criminogenic factors aggravating and precipitating criminal behaviour and its relevance in determining the extent to which the state can impinge in the domain of exercising individual liberty. Therefore, it becomes imperative that if the state is to impose coercive sanctions to regulate deviancy which may intrude upon an individual's liberty, they should be based on the principles of natural justice and should not award disproportionate and unduly harsh punishment. This can pave the way for



the state to devise an effective policy framework as well as enhance the inclusivity of functioning of the criminal justice

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