



DATE DOWNLOADED: Wed Apr 8 07:43:34 2020  
SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 20th ed.

K. A. A. N. Thilakarathna, Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System, 16 US-China L. Rev. 271 (2019).

ALWD 6th ed.

K. A. A. N. Thilakarathna, Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System, 16 US-China L. Rev. 271 (2019).

APA 6th ed.

Thilakarathna, K. K. (2019). Classical school of criminology and its application in the sri lankan criminal justice system. US-China Law Review, 16(7), 271-280.

Chicago 7th ed.

K. A. A. N. Thilakarathna, "Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System," US-China Law Review 16, no. 7 (July 2019): 271-280

McGill Guide 9th ed.

K A A N Thilakarathna, "Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System" (2019) 16:7 US-China L Rev 271.

MLA 8th ed.

Thilakarathna, K. A. A. N. "Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System." US-China Law Review, vol. 16, no. 7, July 2019, p. 271-280. HeinOnline.

OSCOLA 4th ed.

K A A N Thilakarathna, 'Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System' (2019) 16 US-China L Rev 271

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

# Classical School of Criminology and Its Application in the Sri Lankan Criminal Justice System

K. A. A. N. Thilakarathna

University of Colombo, Colombo, Sri Lankan

Classical school of criminology tries to explain the crime causation and the methods adopted to control them in their own rationalization. It developed as a separate school of thought in the 17th and 18th century which rejected the somewhat barbaric methods used under the pre-classical era which was heavily influenced by the demonological thought and the classical school changed this idealism with the rational choice theory which advocates that humans as rational beings have free will to decide on their actions or omissions. This article is written with a Sri Lankan perspective as to how the ideas of classical school of criminology has found its place in the administration of the criminal justice system in the country. When one considers the development of the criminal laws in Sri Lanka, it is solely based on the English common law principles and developed through the statutes. This article focuses on the Sri Lankan criminal justice system and how it has incorporated some of the ideas as advanced under the classical school of criminology.

*Keywords:* criminology, classical school of criminology, criminal justice, Sri Lankan criminal justice system

## Introduction

A prominent Italian criminologist, Enrico Ferri, observes that most countries of the world are trying to adopt criminal policies which would help them protect their societies and the individuals living therein from the incidence of crime and criminals (Paranjape, 2018, p. 21). In deciding on the particular policies which are to be adopted in achieving the above mentioned goals, the influence of some theories on the subject matter would seem inevitable. According to Frank E. Hagan (2010), “[t]heory in criminology refers to efforts to explain or understand crime causation” (p. 93). However, many have not been much satisfied with what these theories have had to offer in terms of explanations related to crime causation. Some have argued that these theories have tried to justify or make excuses rather than explain the true effects on and of crime causation (Hagan, 2010, p. 93). In counter arguing against the above propositions, Ronald L. Akers (2013) stated that if a theory is properly developed it would help to reveal and express real human scenarios and experiences. In addition he also states that, a properly developed theory could be helpful to test the known facts against the new ones (p. 2). Further, the late George Vold observes that, “[a] theory can gain a great deal of credibility if all the reasonable alternative theories are shown to be inconsistent with the observed world of facts” (Vold, Bernard, & Snipes, 2002, p. 3). He further observes that, the field of criminology is blessed with a number of theories irrespective of their merits and demerits (Vold et al., 2002, p. 3).

---

K. A. A. N. Thilakarathna, LL.B. (Hons), Attorney-at-Law, lecturer, Institute of Human Resource Advancement, University of Colombo, Colombo, Sri Lankan.

In explaining as to what is meant by a “school of criminology”, Sutherland has observed that the gist of the meaning underlines a system of thought consisting of an integrated theory of causation of crime and the policies which are implemented to control such crimes (Paranjape, 2018, p. 42). Adherents of each school try to give an account of their own as to the explanations of causation of crime. Each particular school of thought in their broad perspective on criminology tries to explain not only crime but also the appropriate measurements which could be taken to reduce or minimize the number of crimes, the appropriate punishments, and the protection of both the victim and the offender from the unwanted consequences of crime. Criminological theory in its holistic spectrum is very broad. It tries to explain or improve our understandings and knowledge of a number of things, such as why particular laws are made, reasons for obedience and non-obedience, enforcement of certain rules in certain ways, how the system appreciates or rewards law abiders, and how in the opposite token the rule breakers are punished.

A single theory that tries to explain or articulate reasons for these occurrences would fail in its endeavour as it would not be able to answer all the questions in the same vigour (Williams, 2012, p. 8). The analysis of a particular theory could be either macro or micro as well. For an example, a particular theory could look at the tendencies of crime in a macro level while another theory could look at more individualistic factors, such as income, education, and social and living conditions from a micro level. The articulated theories coming under criminology that seeks to explain the reasons for crime causation can be whittled down to two major theories which comprise of the classical theory and the positive theory. Out of the two theories, the classical school emerged in the 18th century while the positive emerged in the 19th century. Walsh and Ellis (2006) observed that “early contributors to criminology were amateur dabblers, a mixed bag of philosophers, physicians, lawyers, judges, theologians, and anthropologists whose primary interest lay in penology rather than criminology per se” (p. 53). However, unlike in other fields where older theories become replaced by new ones to the extent that older theories becomes only of academic interest, the field of criminology is quite the exception to the above phenomenon. Even in modern times, the things articulated by the older theories and the theorist are very much important for the study of the subject as even at the present criminology is faced with the same old problem of explaining crime and criminality. As there are clear crossovers with regard to theories coming under criminology coupled with their underlying basis, the most common breakdown of criminological theories begins with a distinction between classical criminology and positivism (Williams, 2012, p. 10).

The classical theory itself can be subdivided into pre-classical, classical, and neo-classical theories on crime causation. These three theories, although they belong to the major species of the “classical theory”, are nevertheless in contrast to one another in bringing about their respective claims as to the reasons for crime causation. It differs from the demonological arguments made during the pre-classical era to the free will theory postulated under the classical theory to the consideration of extenuating factors during the neo-classical era. However, the composite classical theory is separated from the positive school of criminology due to the more comprehensive and scientific analysis brought about under the latter.

### **The Classical School of Criminology**

The origins of classical criminology are tied up with the Enlightenment of the 17th and 18th centuries. Modern systems relating to behavioural control and criminal justice procedures pertaining to investigating and sentencing emanated as a reason of the European “Enlightenment” of the 18th century. During this time period, a distinctive field of study called “Criminology” began to emerge (Williams, 2012, p. 11). The classical school

of criminology grew out of the harshness that existed before its emergence. The pre-classical time period was dominated by the religious beliefs. During these periods, both the church and the monarch had absolute power over its subjects and disobediences were severely punished. The Enlightenment thinkers vehemently rejected either notions of control through religion or arbitrary and brutal utilization of sovereign power. They were adamant about the use of their intellect to analyze the problems and issues of the day and made suggestions and solutions to those problems (Williams, 2012, p. 11). During these periods, there was a search for rational solutions to issues, such as crime and punishment and concepts such as justice began to be fully considered. The Enlightenment was responsible for the emergence of the classical school of thinking. However, the rationalization brought under the Enlightenment period was questioned in latter periods for being too abstract and failing to take in to consideration, the individual factors which may both influence and be used to explain crime causation. In order to fully appreciate the classical school of criminology in general, it becomes necessary to gain a basic idea on both pre and post notions of ideologies on criminology related with crime causation as well.

### **Pre-classical School**

Before the Enlightenment period, the shadow of religion casted a wide shadow over the rays of rationality. During this period, people were almost prohibited from questioning the existing traditions and they had to do as they were told. Thinking patterns during these periods were dominated by superstition and myths. The main thesis of this theory was that all human actions are controlled by a divine being and that causation of crime is a result of the influence of some kind of a demon or an evil spirit. This was coined as the demonological theory of crime causation and the proponents of this theory argued that offender commits a crime not through his or her own will but by the evil spirit which has influence over such a person (Paranjape, 2018, p. 43). Hagan (2010) observed that “demonological theory or supernatural explanations of criminality dominated thinking from early history well into the 18th century” (p. 63).

Under the pre-classical school, it was thought that once an individual is possessed by an evil spirit the only way to cure such an individual was the testimony of the effectiveness of the evil spirit or the demon. Paranjape (2018) observed that, “[w]orships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit and relieve the victim from evil influence” (p. 43). Torture and infliction of pain were justified by the argument that such was done in order to cure the individual who is possessed by an evil spirit. The individual intuition was disregarded and the only concern was made on the crime or the act that was in question. Even the historical accounts found in Sri Lanka provide examples for such kind of ordeals. These ordeals played an important part in the ancient judicial system in determining the guilt of an individual. These practices, even though seem as barbaric and irrational in the new millennium, were held to be the rational during the pre-classical period. However, with the Enlightenment and the vast majority of knowledge acquired thereafter, the irrationalities of the pre-classical era had to give away and be replaced by the thinking’s of the classical school.

### **Classical School**

Larry Siegel (2015) observed that “[t]he writings of Beccaria and his followers form the core of what today is referred to as classical criminology” (p. 98). Cesare Beccaria along with British philosopher Jeremy Bentham is considered as the principal advocates of the classical school of criminological theory. The classical

theory is coined with the rational choice theory which advocates that humans as rational beings have free will to decide on their actions or omissions. Siegel (2015) observed that classical school formulates their arguments based on four major premises. Firstly, this theory finds that, in every society, people have free will to choose criminal or lawful solutions to meet their needs or settle their problems. Secondly, criminal solutions can be very attractive because for little effort they hold the promise of a huge payoff. Thirdly, a person will choose not to commit crime only if he or she believes that the pain of expected punishment is greater than the promise of reward. This is the principle of deterrence. Fourthly, in order to be an effective crime deterrent, punishment must be severe, certain, and swift enough to convince potential criminals that “crime does not pay” (Siegel, 2015, p. 99).

The classical theory is influenced by the thinking of Bentham who advanced his theory based on utilitarianism. Therefore, a human being as a rational individual will try doing anything which will yield him with the utmost pleasure. Therefore, by committing a crime, if an individual is able to have a certain amount of pleasure which exceeds the displeasure, he may have to face if he is prosecuted and found guilty, on a cost benefit analysis an individual will be committed to crime. Therefore, the Benthamite theory suggests that the pleasure of crime should always be lesser than the pain and suffering inflicted for seeking such pleasure. Commenting on this, Donald Taft states that this doctrine implied the notion of causation in terms of free choice to commit crime by rational man seeking pleasure and avoiding pain (Paranjape, 2018, p. 44).

Classical school deviated from the demonological theory and cleared the irrational thinking that was linked to the evil spirit or the possessing of demons in the individual body which was seen as the main reason for the causation of crime. Classical criminology was not only important to justice but also presented one of the earliest theories of crime causation: Crime resulted from free will, a bad choice of action (Williams, 2012, p. 13). Instead of outside forces, classical school believed that it was the individual being a rational thinker who could separate the right from the wrong who acted according to his own free will that was solely responsible for his acts or omissions. Human action according to this view is both self-generated and self-controlled. Thinkers in the classical school believed that the human will can persuade a human being to change his acts or omissions for the fear of punishment. Under this theory as intent was always presumed to be in existence due to the free will believed to be inherent in the human, criminologist coming under this theory focused only on the act or the omission and not the intent.

The proponents of this school of thought agreed with the infliction of punishment as a method of crime control. However, they were more focused on the prevention of crime rather than on punishing crime. Many of the criminal codes that were developed in the 18th and early 19th centuries drew their inspiration from this school of thought and countries, such as France, Germany, and Italy owed much gratitude to the teachings of Beccaria which gave them the necessary impetus for developing their criminal codes (Williams, 2012, p. 45). Punishment was seen as necessary under this theory and they believed that the punishment should inflict a greater amount of pain than the pleasure derived from a criminal act (Bellamy, 1995, p. 11).

This school of criminology advocated against the judicial discretion and firmly advanced the view that each crime should carry with it a specific punishment to be given to all offenders without considering any of the extenuating factors, such as age, sex, social and economic conditions. They believed in a uniform system of criminal justice where according to Beccaria punishment was mostly justified as a mean for deterrence rather than retribution.

By the end of the 19th century, the popularity of the classical approach began to decline, and by the middle of the 20th century, this perspective was neglected by mainstream criminologists. During this period, criminologists focused on internal and external factors, such as poverty, IQ, education, and home life—which were believed to be the true causes of criminality. Because these conditions could not be easily manipulated, the concept of punishing people for behaviors beyond their control seemed both foolish and cruel. Although classical principles still controlled the way police, courts, and correctional agencies operated, most criminologists rejected classical criminology as an explanation of criminal behavior.

### **Neo-classical School**

No theory stands still and some of the shortfall has been corrected (Williams, 2012, p. 13). The classical theory in its original form was not able to survive the strains of pressure that was exerted on it by the new developments in the forensic fields. Neoclassical theory basically admits environmental, psychological, and other mitigating circumstances as modifying conditions to classic doctrine (Hagan, 2007, p. 66). Neo-classical theory took into account the external factors which both influence and determine the true reasons for crime causation. Neo-classical theory advocated that the external conditions should be taken into consideration in deciding upon the guilt of an individual. Therefore, considering mitigating factors in deciding the appropriate punishment instead having a single spoon to feed all approach was rejected.

Neo-classist for the first time recognized the need for variations in sentencing by judges depending on sex, age, mental conditions, etc., of the offender. They asserted that certain categories of offenders, such as minors, idiots, insane, or incompetent had to be treated leniently in matters of punishment irrespective of similarity of their criminal acts because these persons were incapable of appreciating the difference between right and wrong. The tendency of the neo-classist to distinguish criminals according to their mental depravity was a progressive step inasmuch as it emphasized the need for modifying the classical view (Paranjape, 2018, p. 46).

Neo-classical school approached the study of criminology by utilizing more scientific methods. They believed that certain extenuating factors or mental disorders deprived a person of his free will. Hence, in contrast to the classical theory which held that an individual is in sole control of his free will, neo-classist contradicted this view and explained that due to some extenuating factors, there would be instances in which an individual may lose the opportunity to control his free will and therefore, it would not be correct to hold such a person accountable for his acts or omissions without considering the extenuating factors which led such a person to lose control of his free will. Commenting on this point Professor Gillen observes that, “neo-classists represent a reaction against the severity of the classical view of equal punishment for the same offence” (Paranjape, 2018, p. 47). Neo-classist supported individualization of the offender and the treatment methods which required the punishment to suit the psychopathic circumstances of the accused.

The core argument of the neo-classists rests on the basis that while those who have control over their free will should be held responsible for their own willed acts or omissions, those individuals who have lost such ability due to some extenuating factors should not be treated in the same manner. Therefore, instead of totally negating the free will theory advanced by the classical school, they rather modify the concept and bring in conditions or exceptions as to when the general rule will not become applicable. Neo-classists instead of arguing for treating the offenders in a uniform manner disregarding the extenuating factors nevertheless argue that where a person has done a crime irrespective of the conditions of his mental condition, age, or sex, such a person should be segregated from the society so he no longer poses a threat to the society. This line of thinking

led to the development of different kind of correctional institutions such as parole, probation, reformatories, and open-air camps.

From the above analysis, it is clear that classical and neo-classical thought has had an enormous influence on our society, criminal justice system, and environment. However, both the theories have an inherent limitation as it only interferes with choice by altering the attractiveness of the crime or the target; it does not address the offender (Williams, 2012, p. 14). Though there was to give more focus to the offender instead of the offence, all the sub theories coming under the classical school failed to achieve this endeavour.

### **The Applications of the Classical Theory in the Sri Lankan Criminal Justice System**

The criminal justice system in Sri Lanka is based on the British tradition as the country was once ruled by the British monarch. Therefore, the influences of the classical school had on the British would have therefore, been embedded in the Sri Lankan context as well. Due to the unsatisfactory nature of the existing criminal laws, which was something achingly similar to the once that exhibited, the demonological approaches led to a state of uncertainty. In order to bring certainty to the criminal justice system, the Penal Code of Sri Lanka was first enacted in 1883 as the Penal Code No. 2 of 1883. It was based on the corresponding Indian law. The Criminal Procedure Code of 1898 was established and then replaced by the Administration of Justice Law of 1973. This was later replaced by the Code of Criminal Procedure Act No. 15 of 1979. The Fundamental Rights chapter of the 1978 Constitution in combination with the Penal Code and the Criminal Procedure Act and the Evidence Ordinance No. 14 of 1895 set out the main framework for the criminal justice system aided by the other pieces of legislations relevant to the subject.

The pre-classical notion of demonological theory does not appear to be part of the existing criminal justice system. The demonological theory is seen as been too illogical and irrational to be used up in legislations that were made during the latter half of the 19th century. However, the free will theory advanced by the classical school can be seen embodied in the Penal Code of the country which makes it a rule that unless the contrary is proven, a man is supposed to be in control of his faculties and therefore is action rationally knowing the consequences of the act or omission which he can be made accountable for. In the case of *Nandasena v. A. G.*,<sup>1</sup> the Court held that, “every man is presumed to be responsible for his acts till the contrary is clearly shown”.<sup>2</sup> Apart from the fact that the accused is allowed to show the contrary, the basic notion of criminal liability is therefore, underlined by the free will theory as advanced by the classical school of criminology. Section 37 of the Penal Code interprets what is meant by “voluntarily” which according to the section means that,

[a] person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Therefore, when a person does something which falls into this definition, the basic premise is that such a person could be held accountable for his acts or omissions.

In the Penal Code, Sections 78 and 79 dealing with intoxication make it clear that unless the person was intoxicated without his knowledge or against his will, in such an instance a person being in an intoxicated state of mind will nevertheless be held accountable. This is a primary example for the application of the free will theory advanced by the classical school where a person who is acting under his free will would be held

---

<sup>1</sup> [2007] 1 Sri LR 237.

<sup>2</sup> *Ibid.*, p. 241.

accountable for his acts or omissions. The rationality for imposing liability on those who voluntarily get intoxicated can be linked to the classical school's theory on free will as the individual has taken a rational decision of getting voluntarily intoxicated and then taking on the consequences which may result from such an intoxication. In the case of *Dayaratna v. Republic of Sri Lanka*,<sup>3</sup> it was held that,

the basic premise of liability under our criminal law is that a man is presumed to intend the natural consequences of his act. This, however, is a rebuttable presumption. Therefore, an accused who seeks to set up a plea of voluntary intoxication has to, on the evidence, rebut the application of that presumption.<sup>4</sup>

This reasoning aptly epitomizes the free will theory that a man is responsible for his acts and omissions. However, the extenuating factors considered thereafter in mitigating the culpability run counter to the main theme of the classical school which adamantly declares that no extenuating circumstances are to be considered.

The offences laid out in the Penal Code generally require the presence of both the *mens rea* and the *actus reus* to be present. However, the classical theory only looks at the *actus reus* without acknowledging the *mens rea*. Classical school advocates that once an offence is committed, the offender is to face the consequences of his dues. However, in many instances envisaged in the Penal Code when the requisite *mens rea* is not present, it is not possible to convict an accused person. In the case of *Prasad Perera v. A. G.*,<sup>5</sup> Court observed that intention is the determination of the will and implies volition and willingness-knowledge, and on the other hand implies cognition and consciousness. It was further observed that in determining these, the surrounding circumstances should be looked at in arriving at a decision as to the culpability of the accused. Hence, the approach taken in the Penal Code requiring the twin elements of *mens rea* and the *actus reus* runs counter to the ideologies of the classical school which rejected considering even the *mens rea* of an individual in deciding the culpability. Even offences which attract liability on a strict basis called strict liability allow the accused to bring in mitigating circumstances other than ones connected with *mens rea* run counter to the absolute liability imposed under the classical theory which does not consider any extenuating circumstance whatsoever. Sections 53 and 54 of the Penal Code are very much in contradiction to the thinking's of the classical school who argues that no external factors, such as age or sex could be considered in pronouncing a particular kind of punishment. However, Section 53 provides that no person who is below the age of 18 shall be given the death penalty. Section 54 stipulates that no pregnant women should be given the death penalty.

The classical school also advocates that similar crimes should be dealt with in a similar manner and that there should be no discretion given to the judges in deciding on the punishment. Regarding the first argument of similar kinds of crimes being punished in a similar manner, the Penal Code and the Criminal Procedure code adhere to this noting in recognizing a relationship between the gravity of the crime and the amount of punishment given therein. For an example, under Section 296, a person convicted under Section 294 for murder will be given the death penalty while minor offences, such as causing simple hurt would only carry a comparatively lesser amount of punishment. However, with regard to deciding on the appropriate punishment that could be given for a particular crime, a judge is given a broad sense of discretion as many of the offences would declare only an upper limit of the punishment which could be inflicted on an offender.

---

<sup>3</sup> [1990] 2 Sri LR 226.

<sup>4</sup> *Ibid.*

<sup>5</sup> [2004] 1 Sri LR 417.



The classist theory on administering punishment without any discretion can only be found with offences that carries with them a minimum mandatory sentence. Statutory rape, an offence which was introduced in to the Penal Code under the Penal Code Amendment Act No. 22 of 1995 makes it an offence to have sex with a girl below the age of 16 irrespective of consent. Section 364 of the Penal Code stipulates that where a person is convicted of rape, he shall be given a minimum mandatory sentence of 10 years of rigorous imprisonment. However, in the case of *Rohana Alias loku v. A. G.*,<sup>6</sup> the Supreme Court while endorsing an earlier judgement<sup>7</sup> of the same Court held that,

the minimum mandatory sentence in Section 362(2)(e) is in conflict with Articles 4(c), 11 and 12(1) of the Constitution and that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion notwithstanding the minimum mandatory sentence.<sup>8</sup>

However, this decision is very much contradictory with the general ideologies of the classical school which does not confirm with any kind of discretion given to the judges in deciding on the amount of punishment when the legislature has made it clear as to what the punishment must be. However, as the criminal justice system in intricately linked with the Fundamental Rights provisions of the constitution, it would seem that a strict adherence to the classical theory would be a possibility.

The Sri Lankan Criminal Justice System when compared with the neo-classical ideologies seems to cope much better than the ideologies of the pre-classical and the classical schools. The neo-classical theory advanced the view that although a person is generally presumed to be acting on his own accord or under his own free will as a rational being and therefore, should be held accountable for his dues, there could be instances where an individual may not actually be in control of his free will due to the influence of some external or extenuating factors. Therefore, in deciding on the culpability of an individual, if one is not to consider these extenuating factors, comprehending whether the individual was actually in total control of his own free will before inflicting any kind of punishment for his dues will be irrational.

The Penal Code recognizes a number of general and special exceptions which an individual is able to bring about as a mitigatory plea to reduce his culpability. These are in line with the neo-classical ideology which advanced the view that, extenuating circumstances such as age, sex, mental condition, etc., should be considered in deciding on the culpability. Even the Evidence Ordinance has some provisions which distinguished between the extenuating actors. Section 114 of the Evidence Ordinance stipulates that, there is a non-rebuttable presumption that a boy below the age of 12 cannot commit a rape.

Penal Code recognizes a number of exceptions which could be divided as general and special. General exceptions are contained in Sections 66 to 88. When these exceptions do apply, the person responsible for the act or omission is not convicted due to that there is no *actus reus*; instead when these exceptions apply, the necessary *mens rea* would not be present to make the person liable. In the case of *Gamini v. Attorney General*,<sup>9</sup> the Court of Appeal stated that, “the plea of automatism ... is, in effect, a plea that the act in question was involuntary”. In elaborating further, the Court held that,

---

<sup>6</sup> [2011] 2 Sri LR 174.

<sup>7</sup> SC Reference 3/2008, HC Anuradhapura Case No. 333/2004, SCM 15.10. 2008-2008 B.L.R.-Part III-BASL Law Journal (2008) Vol. XIV-160.

<sup>8</sup> [2011] 2 Sri LR 174.

<sup>9</sup> [1999] 1 Sri LR 321.

in discharging its duty to establish against the accused the doing of a voluntary act, [t]he prosecution could rely on the presumption of mental capacity, which is a provisional presumption, to establish the voluntary nature of the act. Then, if the accused succeeds in placing a sufficient foundation for a plea of automatism that either the act was committed due to concussion, whilst sleep walking or due to epilepsy, the aforesaid provisional presumption is displaced and the prosecution is required to prove the legal burden and discharge the ultimate burden of proving that the act was voluntary. However, in order to displace the presumption of mental capacity, defense must place a sufficient foundation by evidence from which it may reasonably be inferred that the act was involuntary.<sup>10</sup>

This makes it clear that the neo-classical stance regarding taking into extenuating factors has become the rule while the classical notion of disregarding extenuating factors have become the exception.

### **The Pros and Cons of the Classical School**

The classical school can be appreciated for getting rid of the irrational methods of determining crime causation through the religious believes that prevailed for the most part of the medieval period. It can be further appreciated for bringing some rationality in explaining crime causation. It defined crime in legal terms and put their emphasis on the free will of the humankind and made them responsible for their own dues, which was a departure from the pre-classical thought. They believed in deterrence and spoke of strict punishments for offences, and this worked in the societies in which these theories emerged. The emergence of the jury system is also linked with the thinking of the classical school. They were against the discretionary powers of the judges in deciding on criminal matter. In order to curtail this discretion as a practical means, they were instrumental in introducing the jury system in the criminal justice process.

The classical school, though it helped the individuals to get away from the myths and demonology, classical school itself has serious and major flaws. As it defined crime in legal terms, the emphasis was on the criminal act rather than on the person who committed it. Due to this fact the true reasons for crime causation were not made clear as the classists failed to take into account the incidents of crimes from an external point of view. Because of this reason, the classical school believed in equal punishment for similar offences disregarding the external factors which were later criticized for being too artificial and harsh. In disregarding the extenuating factors in crime causation, the classists became irrational and their theory no longer became pragmatic. It did not think of other methods of criminal justice apart from deterrence and retribution. Classical school failed to appreciate the value of institutions such as rehabilitation and reformation. It also lacked the scientific vigil of the positive school. With the latter developments in the scientific knowledge and technology, the classical thinking was almost bad as the neo-classical thinkers in their respective contemporary settings.

### **Conclusion**

The classical school emerged as a response to the irrational thinking and practices of the medieval period. In the medieval period, rationality was shadowed by the myths and superstitions that were present in the society. Crime causations during these periods were explained and attributed to the external factors of the devil and the evil spirit which was termed as demonological approach to the explanation of crime causation. Guilt was determined with reference to ordeals and sacrifices. The person committing the act was not taken into consideration and only the criminal act was considered. Classical school challenged this line of thinking and argued that a human being as a rational being is acting in a rational manner according to his or her free will and

---

<sup>10</sup> [1999] 1 Sri LR 321 at 327.

the individual himself or herself was in total control of his or her free will and hence responsible for acts and omissions done according to that free will. This was a radical departure from the medieval thinking and classical school gradually tries to move the focus from the criminal act to the individual and the shift was completed under the positivistic school. The classical school itself had some major flaws. Though it recognized the free will of individuals, it failed to appreciate the extenuating factors which may affect the proper functioning of that free will. In deciding to impose the same kind of punishment for the same kind of offense without looking at any of the external factors, it too suffered from irrationality. However, this was changed with the neo-classical thinking and they insisted that external factor should be considered in mitigating or deciding on the appropriate punishment. In the neo-classical period, most of the roots of the modern criminal justice system were seeded. In considering the Sri Lankan context, being a colonial country under the British regime, it has gathered much from the classical school as the British themselves were influenced by the classical school who in turn influenced its colonies. The classical school laid the foundations for the later analytical theories of crime causation and specially the positivistic school of thinking and is appreciated for what it has done for the criminal justice system as a whole.

### References

- Akers, R. (2013). *Criminological theories: Introduction and evaluation* (2nd ed.). New York: Routledge.
- Bellamy, R. (Ed.). (1995). *Beccaria: "On crimes and punishments" and other writings* (1st ed.). Cambridge: Cambridge Publishers.
- Hagan, F. E. (2007). *Crime types and criminals* (1st ed.). Thousand Oaks, California: Sage Publications.
- Hagan, F. E. (2010). *Introduction to criminology: Theories, methods, and criminal behavior* (7th ed.). Thousand Oaks, California: Sage Publications.
- Paranjape, N. V. (2018). *Criminology and penology with victimology* (8th ed.). Allahabad, India: Central Law Publications.
- Siegel, L. (2015). *Criminology: Theories, patterns, and typologies* (12th ed.). Boston: Cengage Learning.
- Vold, G. B., Bernard, T., & Snipes, J. (2002). *Theoretical criminology* (4th ed.). Oxford: Oxford Univ. Press.
- Walsh, A., & Ellis, L. (2006). *Criminology: An interdisciplinary approach* (1st ed.). Thousand Oaks, California: Sage Publishers.
- Williams, K. S. (2012). *Textbook on criminology* (7th ed.). Oxford: Oxford Publishers.