

Theories of Punishment

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Abstract: A term that is inherent in criminal justice is punishment. It is only because of the term punishment that 'crimes' are classified as certain acts. We have seen, down the course of society's past, that without retribution, it would often have been difficult to tame the public's barbaric and primitive impulses. It was the tool called 'punishment' that the rulers used against their subjects to sustain a fear in the public's minds about their rulers' capacities and powers. Punishments have also often been given to someone else as an insult. The most common discipline we are all familiar with, however, is the scolding or mild beating we get from our parents. In that scenario, in the case of serious offences, what are the hypotheses of punishment? How have they developed? What are the pros and cons of the different methods of punishing people? Through this article, we will try to address all such questions and explain how much the different theories of punishment in the present era are relevant.

Keywords: Criminal., Fear, Justice, Primitive, Punishment and Theories.

INTRODUCTION

There is not enough mere denunciation of crime; it must be driven to its logical end that by punishing the criminals, crime does not pay. Punishment means, "It is the remedy taken by the commonwealth against an offending member." Punishment is a form of social censorship and does not actually require physical pain. In his General Theory of Law and State, H Kelson defined "punishment is socially organized consisting of deprivation of possession-life, liberty, or property." According to Jeremy Bentham, punishment is evil in the form of fear-operating remedy [1]. Johan Finnish has said that a person's delinquent conduct needs to be taught not with melody but with an iron fist. "Almost every member of society needs to be taught what the law's obligation, the traditional path to follow the common good, is actually: and {relatively!} Vivid drama of the arrest, prosecution, and punishment of those departing from the traditional way specified.

Different motives justify punishment, but as punishments have one major purpose, criminal law is to eliminate self-help and private sanctions. When society recognizes that sanctions are required, they must be enforced collectively, formally, legally and publicly. Various theories of punishment have been proposed by different scholars, but these can be generally categorized as non-utilitarian and utilitarian. The emphasis and aims of these theories are what distinguishes them: utilitarian theories are forward-looking; non-utilitarian theories are backward-looking, interested in past actions and mental states; and mixed theories are both forward and backward-looking.

The utilitarian point is that punishment is awarded to mitigate crimes and used as a means to an end. George Hegel and Immanuel Kant opposed and dismissed the philosophy of utility and proposed the retributive theory of punishment in comparison, which is non-utilitarian on the basis that punishment does not mean an end but an end in itself. Even 20th century scholars are holding this war tug between George Hegel and Immanuel Kant on one side and Jeremy Bentham on the other side [2]. Professor Glanville Williams of Cambridge University, a professor of criminal law, applauds the utilitarian view that punishment is either preventive or deterrent.⁹ Both schools accept that punishment is necessary, but disagree with its purpose. In addition, the usefulness doctrine classifies punishment as preventive (restraint), satisfactory (compensatory), reformatory (therapeutic or corrective), and deterrence.

DIFFERENT THEORIES OF PUNISHMENT

Deterrent Theory

The retributive theory assumes that only for the sake of it is the punishment given. It also implies that, without taking into account any consequences, bad should be restored to evil. This theory can be further divided into two theories. Relevant deterrence and general deterrence are them. In specific deterrence, punishment is structured

such that the offenders can be trained. Thus, the criminals who are subject to this principle may be reformed. It is also held that criminals are reformed through punishment. By generating a doubt that the penalty will be replicated, this is done. While the aim of general deterrence is to prevent potential crime. So, by having an instance of each defendant, this is done. It scares the people, therefore, not to do what the defendant did.[3]

Incapacitation Theory

The term "incapacitation" means 'by punishing to deter the crime, such that the future generation fears committing the criminal act.' One of the primary aims of this principle is to eliminate from society the sufficiently dangerous individuals [4].

Retributive Theory

The most ancient reason for punishment is vengeance. This hypothesis argues that a person deserves punishment because he has committed a wrongful act. This principle also assumes that unless the person has violated the law, no person can be arrested.

Preventive Theory

This theory has used the constraint that if the illegal act is repeated, a perpetrator is guilty of death, exile or incarceration. The theory derives its meaning from the idea that it is important to defend society from criminals. Thus, for solidarity and protection, the penalty here is. Modern criminologists have seen the preventive theory from a different viewpoint. First, they realized that it was important to eliminate social and economic powers from society. Therefore, one must pay attention to people who display anti-social behavior. This is because of handicaps in psychology and biology [5].

Reformative Theory

Examples of classical and non-classical theories are deterrence and retributive. The reformatory theory was born from the constructive theory that positive thought is the focal point of crime. According to this theory, therefore, reformation by the victim must be the purpose of punishment. So, this is technically not a penalty, but rather a rehabilitative mechanism. Thus, this method aims as much as possible to make a criminal a decent person. In addition, it makes a person a meaningful citizen and a straight man upright [6].

Compensatory Theory

Compensation is the true essence of revenge, change and a critical contribution to deterrence. In a crime, victims should be compensated predominantly for two reasons, namely—

- A offender who has hurt an individual (or group of persons) or property must be compensated for the damage caused to the victim and compensated for the loss caused to the victim.
- The State, which has failed to provide its people with protection, must obtain compensation for the loss caused.

Relevant Judicial Pronouncement

- (i) Mukesh and Anrs. Vs NCT Delhi (Nirbhaya Case) [7] – While talking about retributive justice in India, this case is indeed the first and foremost case to be listed. In this judgment, four out of six felons convicted in the extremely heinous Delhi gang rape case were sentenced to death by the Supreme Court, to the joy of humanity, since they had committed an extremely gruesome and morally unthinkable crime.
- (ii) Dr. Jacob George v state of Kerala[8]: In this case, the Supreme Court held that deterrence, reformatory, preventive, retributive & compensatory should be the object of punishment. One alternative hypothesis over the other is not a sound penalty strategy. Each principle of punishment, depending on the merit of the event, should be used separately or integrated. "Every saint has a past & every sinner has a fortune" is also mentioned. Criminals are very much a part of society, but society is therefore responsible for reforming and correcting them and making them sober members of society. Since crime prevention is the key priority of culture and policy, both of which should not be overlooked.
- (iii) In State of Gujarat and Anr. v. Hon'ble High Court of Gujarat[9], Justice Thomas had held that "Reformatory and reparative theories deserve serious consideration where the victim(s) of crime or

members of his family should be compensated by the wages earned by the criminal in prison." The Court proposed that a comprehensive statute should be enforced by the specific State in relation to his compensation owed to the victim of a crime.

- (iv) Sri Ashim Dutta Alias Nilu vs State of West Bengal [10]– In this case, it was observed that the purpose of both deterrence and retributive penalties was to avoid the recurrence of offences by those who passed an exemplary penalty for a specific offence. Yet culture and society are increasingly advancing. Science and technology are advancing here. In a different way, literate people and specialists in various branches of expertise began to think. The right solution to criminals is no longer considered to be an eye for an eye and a tooth for a tooth. The Jungle rule may be perpetuated by this theory, but the rule of law may not be guaranteed.

CONCLUSION

Each punishment theory has its own merits and demerits. Therefore, if it depended on any one principle of punishment, criminal justice would not be safe. IPC Section 53 prescribes various forms of punishment, namely, death, life imprisonment, rigorous or simple imprisonment, property forfeiture, and fine, but does not mention the purpose of punishment that depends on the theory of punishment. The Indian Penal Code provides for maximum punishment, without exceptions, and leaves the imposition of adequate punishment in the hands of the judiciary, which makes the IPC versatile. In the Indian legal system, capital punishment, which is part of the conventional deterrence principle, is maintained and continued.

Thus, we have seen in depth the various theories of punishment. We knew what the guiding principles behind them are, how they vary from each other and some of the same very relevant case laws. Nonetheless, we need to realize very clearly that punishment is something that should be handled very carefully. As the common saying goes, 'Let go of a hundred guilty, rather than punishing an innocent,' we need to realize that inflicting a penalty on someone dramatically affects his emotional, physical and social status. It is having a very serious effect on him and his being. Thus, absolute carefulness needs to be executed when conducting criminal justice, or else the very ideals of justice will go for a toss.

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