

CRITICAL ANALYSIS OF THEORIES OF PUNISHMENT

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ABSTRACT

The Research was done by a researcher who has chosen various sources of information which cover a wide range of areas and solely depending on one work will not give the exact inference as it may be written in their perspective view of the following act. While conducting the research the researcher should put facts in the research but not his own opinions and while conducting research their view should be like a normal person and his thinking or what he feels should not interfere with the research work. Without a doubt, reformatory theory must be prioritized, but the deterrent and preventative aspects of punishment must not be overlooked. A perfect punitive policy would use rehabilitation for children or first-time offenders and deterrence for recidivists and hardened criminals. Even some theories of punishments do not show any scientific results as it states that if the state uses these punishments, then the crime rate decreases but there is no solid or scientific proof for it. Thus, while reformation may be utilised as a general technique of addressing offenders, individuals who do not react well to corrective treatment must be severely punished. But some parts of these theories won't work in reality as they may increase the crime rate in society if someone is providing free food and shelter the people prefer to participate in crime rather than engage in activities which is beneficial to society.

INTRODUCTION

Aside from the penal code, criminal law can also be found in a number of special and municipal penal acts. Though the penal code recognises most common law fundamental principles of criminal culpability, these principles must be considered in light of the specific codified laws as well as the existing social context.

RETRIBUTIVE THEORY

The most fundamental, yet the careless notion of punishing a culprit is the retributive theory of punishment, or the "theory of vengeance," as many individuals in the community would refer

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to it. It is founded on a very narrow philosophy called Lex talionis, which might be interpreted as "an eye for an eye." People may consider that it is preferable to administer such retributive punishments in the instance of really significant and horrific offenses, such as the Delhi gang rape case, in order to ensure that a deterrent is set across society in order to prevent such crimes in the near future.

Retributive justice has been referred to in a number of different contexts, but it is best understood as the type of justice that adheres to the following three principles: If a lawful punisher delivers people the punishment they deserve, it is essentially morally good—good without regard to any other goods that may occur for certain types of wrongdoing, paradigmatically serious crimes; it is morally unacceptable to intentionally punish the innocent or to impose disproportionately large punishments on wrongdoers.

The three aforementioned concepts further highlight the necessity of retributive justice. The majority of retributive sanctions are created at the intersection of moral and criminal law. Although there are seven various categories that individuals may use to categorize punishments, every punishment is actually retributive in nature. It is quite intriguing to note that while the damages sought under tort law, or the remedies for environmental infractions, may be compensatory in form, at their core, they are retributive. Why then aren't they classified as retaliatory instead? The solution is straightforward, I suppose.

Retributive penalties have a vengeful quality to them (an eye for an eye). They might not necessarily seek revenge; instead, they might only seek moral vengeance. When we say this, it signifies that even though the penalty isn't exactly what the offender did in the first place, it nevertheless functions as retribution due to its seriousness.

For instance, if someone rapes someone, the death penalty may be applied as retaliation. It would be enjoyable rather than torturous for the person if we simply gave him what he did, which is sex.

DETERRENT THEORY

This view contends that the goal of punishment should be to dissuade potential offenders. The purpose of punishing an offender is to serve as a warning to future offenders about the potential repercussions. Alternatively stated, "Deterrence is the usage of punishment to deter the perpetrator from doing the same crime again and to show other demonstrate to potential

offenders what will occur to them if they emulate the perpetrator. It is noteworthy that deterrence has two meanings: first, punishing an offender will dissuade second, it will dissuade the accused person from perpetrating the crime for which they were convicted; prevents a person convicted of an offence from committing additional offences.

Punishment is the manifestation of social disapproval. It is thought that communicating the message "creates conscious and unconscious inhibitions towards committing the crime." In the long term, it results in a circumstance where one witnesses a "habitual adherence" to the laws that forbid particular behaviours by way of meted-out consequences.

The utilitarian nature of the deterrence idea of punishment is evident. For a better comprehension, we might remark, "The guy is punished not only because he performed criminal conduct, but also to ensure that the crime will not be perpetrated again." It is best articulated by Burnett, J, who told a prisoner, "Thou art to be hung not for having stolen a horse, but to prevent more horses from being stolen." The deterrence approach attempts to reduce the crime rate in society by making potential offenders understand that it does not pay to commit a crime."

PREVENTIVE THEORY

This idea has employed the constraint that an offender is liable for death, exile, or jail if he or she repeats unlawful conduct. The theory's significance stems from the belief that society must be safeguarded from criminals. As a result, the punishment, in this case, is for solidarity and defence. Modern criminologists took a different approach to the preventative idea. They initially realised that the social and economic pressures in society needed to be abolished. Individuals who exhibit antisocial behaviour should also be monitored. This is due to psychological and biological limitations.

REFORMATIVE THEORY

Deterrence and retributive are examples of classical and non-classical philosophies. The reformative theory was born out of the positive theory that the focal point of crime is positive thinking. Thus, according to this theory, the objective of punishment needs to be reformed by the offender. So, this is not a punishment but rather a rehabilitative process. Thus, this process helps in making a criminal a good citizen as much as possible. Furthermore, it makes the citizen a meaningful citizen and an upright straight man.

EXPIATORY THEORY

Separate experts and scientists known as "Victimologists" have recently proposed specific treatments for offended victims and their families. This distinct science is known as "Victimology." The Expiation Idea is supported by this theory. According to Victimologists, society may reduce the chain reactions of personal vengeance by compensating victims for the culprits' property. It has the potential to reduce criminal conduct in society. Because it puts an end to the chain reaction. It dampens the desire for personal vengeance. Economically, the victim or his family members are satisfied with the money and may continue to live their lives safely. It also instills contrition in the hearts of offenders. Thus, significant groups of modern criminologists, jurists, penologists, jurisprudents, sociologists, and others endorse the concept of victimology.

INTERNATIONAL PERSPECTIVE

Capital punishment has not been seen as an effective deterrent to crime. It has been criticised by various courts and groups for a variety of reasons. According to the UNGS, in circumstances of the death penalty, a very high level of a fair trial should be observed. The death penalty has been abolished in the majority of EU countries. The UNESC has even requested that member nations eliminate the death penalty. Many treaties have been established to eliminate the death penalty.

Capital punishment is considered harsh or barbaric by the international community. No one shall be subjected to cruel treatment, according to the 1949 Universal Declaration of Human Rights. It is contended that the death penalty violates an individual's human rights. However, India does not appear to be in a position to abolish the death penalty, and it is maintained by India that capital punishment is only imposed in the rarest of rare circumstances, indicating that the crime was committed with such terrible purpose and the facts strike the collective conscience of the society.

INDIAN LAWS

It should be noted, however, that no one theory would fulfill the interests of criminal justice administration. Without a doubt, reformatory theory must be prioritised, but the deterrent and preventative aspects of punishment must not be overlooked. A perfect punitive policy would use rehabilitation for children or first-time offenders and deterrence for recidivists and

hardened criminals. Thus, while reformation may be utilised as a general technique of addressing offenders, individuals who do not react well to corrective treatment must be severely punished. The criminal measures must be aimed at demonstrating society's aversion to crime.

IMPORTANT CASE LAWS

AP state v Sayyaduddin: A.P. Supreme Court Justice Motilal Naik On November 25, 1996, the High Court issued a stunning decision addressing this expiation notion. The following are the case specifics: Due to personal grievances, Sayyaduddin and his brother invaded Maslehuddin. Maslehuddin was as a result slain. The High Court sentenced the accused to three years in jail and granted Rs. 60,000/- in compensation to Maslehuddin's family members. In his decision, Justice Motilal Naik stated, "Imposing jail on the accused could not be useful to the victim's family members." In my opinion, it is preferable to assist the victim's family members, as there is no one to care for them following the breadwinner's death.

As a result, imposing a penalty/fine of Rs. 60,000/- on the accused, in addition to putting him to prison for three years, is reasonable." The fundamental concept of criminal responsibility is that an unlawful act (actus reus) must be linked with bad intent. The maxim "Actus non facit reum nisi mens sat rea" embodies this notion. It indicates that unless accompanied by a guilty mind, an act of guilt is not a crime.

Dr. Jacob George V State Of Kerala: The Supreme Court ruled in this case that the goal of punishment should be deterrent, reformative, preventative, retributive, and compensating. One hypothesis over the other is not a good punishment strategy. Each theory of punishment should be utilised separately or in combination depending on the merits of the case. Criminals are a part of society, and it is society's job to reform and correct them so that they can be productive members of society. Because preventing crime is the primary purpose of society and the law, neither of which can be overlooked.

State of Gujarat and Anr. v. Hon'ble High Court of Gujarat: Justice Thomas ruled in the State of Gujarat and Anr. v. Hon'ble High Court of Gujarat that "the reformative and reparative theories require significant attention when the victim(s) of crime or his family members should be reimbursed from the criminal's income earned in jail." The Court advised that the specific State create complete regulations about the compensation payable to a victim of a crime.

Sri Ashim Dutta alias Nilu vs. West Bengal State: In this case, it was found that both deterrent and retributive punishment strive to prevent repeat offences by others by imposing exemplary punishment for a specific offence. However, culture and society are fast evolving. Science and technology are progressing. Literate people and professionals in many fields of knowledge began to think differently. Such a premise may sustain the rule of the jungle, but it cannot guarantee the rule of law.

ESSENTIALITY OF THE DOCTRINE

Essentiality of the Retributive theory of Punishment: As we follow the principle of an eye for an eye, it is tit for tat, and it also helps in giving moral justice to the victim. Moreover, in most cases, it acts as a strong deterrent. It also maintains equilibrium in society, as it instills a feeling of trust within society and the judiciary. According to the retributivist philosophy of punishment, the act of being punished serves as "payback" for the crime(s) that have been done. Retributive justice, for the most part, aims to punish a person for a crime in a way that makes up for the crime. Retributivists contend that because of their transgression, criminals should be punished. Justice requires that we punish them if they deserve it. We commit injustice if we don't punish offenders because they won't get what's coming to them.

Essentiality of the Deterrent Theory: According to the deterrence theory of punishment, the goal of punishment should be to prevent the offender from committing the offence for which they have been found guilty and, more importantly, to prevent others from committing the same crime. Deterrence theory has been criticised for treating people like means, instead of as means. How effective the deterrence hypothesis has been, however, is still up for question successful in accomplishing the goal it is said to have. The fundamental goal of a punishment is to have a deterrent impact on the offender so that he will not repeat the offence and on others so that they will not commit the offence out of dread of the penalty. The consequences used to be exceedingly severe in order to serve as a deterrent.

The hands of thieves or robbers were chopped off, the organs of sexual offenders were severed, etc. Only a harsh punishment with a deterrent impact would be effective. People should be so terrified that they will refrain from doing the offence out of fear that they will receive the punishment. This hypothesis has demonstrated that it is not financially advantageous for the offender to commit the crime.

As Locke has observed: "it is an ill bargain the offender".

Essentiality of the Preventive theory of Punishment: Crimes can be averted by investigating the criminal and his infamous behaviour. Disablement makes the check possible. There are several types of disablement. Confinement inside the prison is a limited sort of temporary disablement, but confinement outside the prison is an infinite type of permanent disablement. It is said that the most effective form of crime prevention is incarceration since it aims to remove offenders from society, preventing them from committing crime again. This ideology underpins the death punishment as well. This is another form of deterrent strategy. The first is to deter society, while the second is to prevent the criminal from committing the crime.

Essentiality of the Reformatory theory of Punishment: The purpose of this discipline idea is to make the offender lament his poor behaviour. In this case, the motive for the discipline is very personalised and revolves around the individual in question or his family's mental outlet. The fundamental reason might be done through parole and probation, which have been recognised as contemporary processes for rehabilitating the guilty all over the world. As a result, supporters of this argument justify incarceration for reasons other than segregating and killing hoodlums. Many sophisticated reformatory disciplinary processes, including probation, parole, indeterminate sentence, exhortation, and pardon, are primarily devised for the treatment of guilty persons based on their mental characteristics.

Essentiality of the Expiatory theory of Punishment: The reformatory hypothesis arose from the positive theory, which holds that positive thought is the source of crime. Thus, according to this approach, the offender must reform the goal of punishment. As a result, this is a rehabilitative procedure rather than a punishment. Compensation is the primary building block of deterrence, reform, and retribution.

SUGGESTIONS

While implementing those theories of punishment the courts have to take the cases into consideration to increase or decrease the level of punishment. But some parts of these theories won't work in reality as they may actually increase the crime rate in society if someone is providing free food and shelter the people prefer to participate in crime rather than engage in activities which is beneficial to society.

CONCLUSION

These punishments should not exceed certain as it may lead to sympathy for the criminal and there may be a chance of revolting against the state if the state strictly imposes these punishments on the people. Even some theories of punishments do not show any scientific results as it states that if the state uses these punishments, then the crime rate decreases but there is no solid or scientific proof for it. But these theories of punishments can be taken into consideration until certain limits and the courts were intelligent enough to know the certain limit of each theory of punishment.

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