

A Critical Evaluation Theories of Punishment

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ABSTRACT

The object of the theories of punishment is the prevention of crime, and every punishment is intended to have a double effect, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the society from committing similar crimes. The purpose of punishment has been to inflict hurt. Punishment is awarded to reduce crimes and maintain peace in society. It is a commonly accepted concept that theories of punishment represent the basis of legitimating for the state's criminal punishment procedures. The justifications for punishment are deterrence. The objective of punishment in all system is the avoidance of crime in order to provide a cleaner society.

INTRODUCTION

A term which is inherent to criminal justice. It is only because of the term punishment, that certain acts are classified as 'crimes'. Down the lane of the history of the society, we have seen that without punishments, it would have sometimes been impossible to tame the barbaric, as well as primitive tendencies of the public. It was the weapon named 'punishment', that the rulers used against their subjects in order to maintain a fear in the minds of the public regarding the capacities and powers of their rulers. Punishments sometimes were also given as an insult to someone else. However, the most common punishment from which all of us are familiar is the scolding or mild beating that we get from our parents. The theories of punishment are as follows

Retributive Theory.
Deterrent Theory.
Preventive Theory.
Compensatory Theory.
Reformatory Theory.

Theory of punishment

The Retributive Theory of Punishment, or the 'Theory of Vengeance', as many people in the society would perceive it as, is the most basic, yet inconsiderate theory of inflicting a penal sentence over a perpetrator. It is based on a very small doctrine, namely the doctrine of *Lex talionis*, which if translated, means 'an eye for an eye'. Now, if looked at from the perspective of very serious and heinous offences, like the Delhi gang rape case, people may feel that it is better to inflict such retributive punishments, so as to ensure that a deterrent is set across the society, in order to prevent such crimes in the near future.

However, we forget to understand sometimes that always having a retributive approach will render the society one with a primitive system of justice, where the Kings or the Judges were considered to be the supreme beings and were provided with the stature of God Himself (hence the address *My Lord*) and thus, collapse the very concepts of the representatives being 'servants'. Before we move on to a deeper understanding of the Retributive Theory, we need to understand two very important doctrines. Let us have a look at them both.

Understanding Retributive Theory of Punishment:

'The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles:

1. that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment;
2. that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and
3. That it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.'

The above three principles clarify the needs for retributive justice even further. We may understand retributive justice in this manner. The place where both Criminal Law as well as Moral Law meet, is the place where mostly the retributive punishments are generated.

In fact, although people may classify punishments into seven different types, but in reality, every punishment, indeed, is retributive in nature. It is very interesting to see that the damages claimed under Torts, or the remedies sort for environmental violations, maybe compensatory, but at their hearts, are retributive in nature. Then why aren't they labelled as retributive, instead? Well, the answer to the question is simple. Retributive punishments are somewhat vengeful in their nature (an eye for an eye). They may not be vengeful always, but maybe merely morally vengeful. When we say this, it means that although the punishment is not literally the thing that was originally done by the perpetrator, is still acts as a vengeance by virtue of its seriousness.
to see some important case laws regarding this theory of punishment.

Case Laws:

1. **Nirbhaya Judgement**– This case is indeed the first and foremost case to be mentioned, while talking about retributive justice in India. In this Judgement, the Supreme Court sentenced four out of six felons involved in the extremely heinous Delhi gang rape case to death, much to the delight of the society, as they had committed an extremely gruesome, as well as morally unimaginable crime.
2. **Anwar Ahmad v/s. State of Uttar Pradesh and Anr.**– In this case, the convicted had already undergone a six month imprisonment term, before being officially convicted by the Court. The Court held that since the convict had been convicted and also, the required 'blemish' had also been imposed upon him, it was not necessary to sentence him again in the name of 'retributive punishment', as it would inflict a very big loss upon the family as well.

Pros-

1. Acts as a strong deterrent.
2. Helps in giving moral justice to the victim.
3. Instils the feeling of trust within the society, towards the judiciary.

Cons-

1. Sometimes, may become disproportionate with the seriousness of the crime.
2. Society develops feelings of vengeance and destructive tendencies follow.
3. The State may become autocratic in its functioning, using the punishment to torment people.

Deterrent Theory of punishment

In Deterrent theory of punishment, the term "DETER" means to abstain from doing any wrongful act. The main aim of this theory is to "deter" (to prevent) the criminals from attempting any crime or repeating the same crime in future. So, it states that deterring crime by creating a fear is the objective; to set or establish an example for the individuals or the whole society by punishing the criminal. That simply means, according to this theory if someone commits any crime and he/she is punished by a severe punishment, then, it may result maybe that the people of the society will be or may be aware of the severe punishments for certain kinds of crimes and because of this fear in the minds of the people of the society, the people may stop from committing any kind of crime or wrongful act. Here I used the phrase "*may stop*" instead of "*will stop*". That means, there is a probability of committing any crime or repeating the same crime.

The deterrent theory of punishment is utilitarian in nature. For a better understanding we can say like, 'The man is punished not only because he has done a wrongful act, but also in order to ensure the crime may not be committed.'
In Nirbhaya gang rape judgement, it's being suggested that justice has finally been served to "India's Daughter" and though the decision came after a staggering seven years, it will help to secure the safety of women and prevent rape cases in the future. But it seems to further, as starting of the year 2020 has seen a slew of rape cases continue unabated. As an example, we can see for a recent gang rape case which was happened at Hathras, Balrampur, on 1st October 2020. So, simply we can see that there is no improvement through severe punishments also. "Death penalty does not act as a deter to rape cases"- This is the actual message we have understood. So that's why we can say that in today's generation there is no major implication of 'Deterrent Theory of Punishment'.

Preventive Theory of punishment

Preventive theory of punishment seeks to prevent prospective crimes by disabling the criminals. Main object of the preventive theory is transforming the criminal, either permanently or temporarily. Under this theory the criminals are punished by death sentence or life imprisonment etc.

Philosophical View of Preventive Theory:

Utilitarian's such as Bentham, Mill and Austin of England supported the preventive theory of punishment due to its humanizing nature. Philosophy of preventive theory affirms that the preventive theory serves as an effective deterrent and also a successful preventive theory depends on the factors of promptness. The profounder of this theory held that the aim of punishment is to prevent the crimes. The crimes can be prevented when the criminal and his notorious

activities are checked. The check is possible by disablement. The disablement may be of different types. Confining inside the prison is a limited form of disablement, that is temporary and when it is an unlimited form of disablement, that is permanent. It suggests that imprisonment is the best mode of crime prevention, as it seeks to eliminate offenders from society, thus disabling them from repeating the crime. The death penalty is also based on this theory. This theory is another form of deterrent theory. One is to deter the society while another is to prevent the offender from committing the crime. From an overall study, we came to know that there are three most important ways of preventive punishment, they are as follows:

- By creating the fear of punishment.
- By disabling the criminal permanently or temporarily from committing any other crime.
- By way of reformation or making them a sober citizen of the society.

Case Laws:

1. **Dr. Jacob George v state of Kerala:** In this case, the Supreme Court held that the aim of punishment should be deterrent, reformatory, preventive, retributive & compensatory. One theory preferred over the other is not a sound policy of punishment. Each theory of punishment should be used independently or incorporated on the basis of merit of the case. It is also stated that “every saint has a past & every sinner has a fortune”. Criminals are very much a part of the society so it is a responsibility of the society also to reform & correct them and make them sober citizens of the society. Because the prevention of crime is the major goal of the society and law, both of which cannot be ignored.
2. **Surjit Singh v State of Punjab:** In this case, one of the accused, a policeman entered the house of the deceased with the intention to commit rape but failed to do so as the sons of the deceased shouted for help. Another accused suggested the policeman to kill the deceased. The accused was held liable under section 450 of the Indian Penal Code. While on the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

Compensatory Theory of punishment

Definition:

The main look out in the law of crimes is to penalize the criminal, and/or to seek his reformation and rehabilitation with all the resources and goodwill available through the Courts and other Governmental and non-Governmental organizations. It must be seen that the criminals should get proper judgement for their crimes so caused and the harassment caused to the victim and towards their family members and property. The victims in a crime can be compensated on mainly two grounds, namely-

1. A criminal who had inflicted an injury against the person (or group of persons), or the property must be compensated for the loss caused that has caused to the victim, and
2. The State that has failed to provide safety towards its citizens, must receive compensation for the loss caused.

Compensation is the true essence of deterrent, reformatory and a necessary contribution of retribution.

Case Laws:

- In the landmark case of *DK Basu v. State of West Bengal* the Apex Court held that a victim who is under the custodial right, has every right to get compensated as her Right to Life, which is under Article 21 of the Constitution, has been breached by the officer of the State.
- In *State of Gujarat and Anr. v. Hon'ble High Court of Gujarat*, Justice Thomas had held that, “The Reformatory and reparative theories deserve serious consideration, where the victim(s) of crime or his family members should get compensated from the wages that is earned in prison by the criminal.” The Court suggested that the particular State should enact a comprehensive legislation in respect of his compensation payable to victim of a crime.

Reformatory Theory of punishment

The idea of the Reformatory Theory is hypothesis. As per this hypothesis, the object of discipline ought to be the change of the crook, through the strategy for individualization. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, he doesn't stop to be a person. In this way, an exertion ought to be made to change him/her during the time of his/her detainment. For example, he may have executed bad behaviour under conditions which may never happen again. Hence an effort should be made to transform him during the hour of his confinement. The object of order should be to accomplish the moral difference in the liable party. He ought to be told and perform some craftsmanship or industry during the hour of his confinement with the objective that he may have the alternative to start his life again after his conveyance from jail.

The Main Purpose Reformatory Theory:

The reason for this hypothesis of discipline is to make the criminal languish over his bad behaviour. Here the motivation behind the discipline is profoundly customized and rotates around the mental outlet of the person in question or his family. The primary reason might be accomplished to parole and probation, which have been acknowledged as current procedures of improving the guilty parties all around the globe. Consequently, the backers of this hypothesis legitimize imprisonment not exclusively to separate hoodlums and kill them from society. Not many of the advanced reformatory procedures of discipline are essentially concocted for the treatment of guilty parties as per their mental attributes, for example, probation, parole, uncertain sentence, exhortation and pardon. The reformatory techniques have demonstrated to be valuable in the event of adolescent misconduct, first wrongdoers and ladies. Sex cases additionally appear to react well to the reformatory strategy for discipline. All the more as of late, the reformatory hypothesis is in effect widely utilized as a technique for treatment of intellectually denied wrongdoers.

Criticism:

1. Reformatory theory anticipates better framework and offices in jail, legitimate co-appointment between various control and diligent exertion on their part to shape criminals. It requires gigantic ventures which poor nation can't bear the cost of.
2. A great many guiltless individuals who have high respects for law are finding hard to get fundamental courtesies hypothesizes moral avocation for giving better offices inside jail.
3. Also, the soundness of the hypothesis is more towards motivators for the commission of wrongdoing instead of counteraction.

A portion of the opportunities of the guilty party, capital punishment removes his life.

CONCLUSION

Thus, we saw the different Theories of Punishments in detail. We understood what are the guiding principles behind them, how are they different from one another and some very important Case Laws pertaining to the same. However, we need to understand very clearly that punishment is something which should be inflicted very carefully. As the famous saying goes that *'Let go of a hundred guilty, rather to punish an innocent'*, we need to understand that inflicting a punishment upon someone changes his mental, physical and social status drastically. It has a very grave impact upon him and his being. Thus, while administering criminal justice, utter carefulness has to be executed, or else the very principles of justice would go for a toss.