

LEGAL EYE PARTNERS

Article

Theories of punishment

**Authored By Abhishek Kumar Agrahari, Student,
Sister Nivedita University**

Abstract

This article analyzes the legality and implications of different types of punishment by applying different types of theories that are followed in all countries. Here describe the different types of theories of punishment that is used to treat criminals. Here we describe the different ideologies of scholars about punishment.

In this research the different ideologies and research methods have been used to get a better insight of the topic. The research is based on punishments and their implications. These theories describe how to treat criminals, control the crime and make good law and order in the society.

Keywords

conceptual, penalizing, proportionality, interlinked, payback, severity, Vengeance, proportionality, sympathy, deterrent, retributive, Incapacitation, Preventive, rehabilitation, transformation, philosophical, inflicting, felons, gruesome, restraining, juvenile, Offenders, compensatory, rigorous, imprisonment, forfeiture, perpetuate, Utilitarian, Comprehensive circumstances.

Introduction

Punishment is a negative award imposed on culprits by the state for their wrongdoings. It means inflicting a penalty or harm on a criminal for violating the rules of law or state. The main objective of punishment is to do justice to the victim, and to prevent crime by penalizing the criminal. There are different theories of punishment that describe different types of punishment. The theory of punishment refers to the philosophical and conceptual foundations that underpin our

understanding of punishment and the purpose it serves in society. There are several different theories of punishment that have been proposed over time, each of which offers a unique perspective on why punishment is necessary and how it should be carried out. Several different theories of punishment have been proposed over time

In other words, punishment is a process by which the state inflicts some pain on the persons or property of a person who is found guilty of a crime. The object of punishment is to protect society from mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offenses and by reforming and turning them into law-abiding citizens. The importance of theories of punishment has been recognized even in ancient times for the protection and welfare of the State and its people. In ancient India, the King was duty-bound to punish the offender.

Object

The Object of Punishment is to protect society from mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offenses and by reforming and turning them into law-abiding citizens.

The theories of punishment are as follows:

RETRIBUTIVE THEORY.

DETERRENT THEORY.

PREVENTIVE THEORY.

INCAPACITATION THEORY.

COMPENSATORY THEORY.

REFORMATIVE THEORY.

UTILITARIAN THEORY.

Retributive 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**'. The theory of retributive punishment is based on two core principles, desert and proportionality. The two principles are interlinked, the punishment has to be proportional to the crime committed. The principle of desert in philosophy refers to the condition to being deserving of something, whether good or bad. The principle of proportionality requires the level of punishment to be related to the severity of the offence. This form of punishment is seen as a form of 'payback' for the crimes one has committed.

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.

The Doctrine of Societal Personification can be stated as-

'When a member of society is subjected to a very heinous crime, as a result of which, the whole society, as if it were a natural person, considers the offense to be inflicted upon itself, comes to the defense of that person either by way of demanding justice or by conducting the same on its own, the society is said to be personified.'

It means that society, whenever a heinous crime of an extreme form is committed, assumes the form of a natural person and behaves in a collective manner so as to get justice.

Eg: The country-wide protests for the Delhi gang rape case, the current Hathras rape case, etc.

The Doctrine of Correctional Vengeance may be stated as-

'When society, in a fit to get justice, demands the concerned authorities to inflict vengeful (as painful as the original act, or even more) punishments upon the victim to create a deterrent, it is said to exhibit correctional vengeance.'

Case Laws:

Mukesh & Anr v. State for NCT of Delhi & others (2017)6 SCC1(Nirbhaya Judgement)– This case is indeed based on one of the first Retributive Judgements. In this judgement, the Supreme Court sentenced four out of six offenders involved in the extremely heinous Delhi gang rape case to death,as they had committed an extremely heinous crime,much to their delight society and giving them moral satisfaction.

Anwar Ahmad v/s. State of Uttar Pradesh and Anr AIR 680 1976 .– In this case, the convicted had already undergone a six month imprisonment term, before being officially convicted by the Court.But after hearing the case in court, he was found guilty, of six months imprisonment, but in this case, court could not sentence him any imprisonment because he had already spent six months in jail.If court gives him a further six months of imprisonment, then it will retributive judgment against him, and cause great loss to his family.

Sri Ashim Dutta Alias Nilu vs State of West Bengal on 13 May,1998– In this case, it was observed that both deterrent and retributive punishment aim at prevention of the recurrences of the offenses by others passing exemplary punishment for a particular offense. But civilization and societies are progressing rapidly. There is advancement of science and technology. The literate people and the experts in different branches of knowledge started thinking in a different way. Eye for an eye, and tooth for a tooth are no longer considered as the correct approach towards the criminals. Such a principle may perpetuate the rule of the Jungle but cannot ensure the rule of law.

Pros and Cons:

Pros-

- People will not commit more crimes because they are scared of peaceful healing.
- More peaceful healing
- Repairs the charm.
- All parties come together and solve it.

- The person who did the crime would understand what they had done wrong.
- It Acts as a strong deterrent.
- Helps in giving moral justice to the victim.
- Instills the feeling of trust within the society, towards the judiciary.

Cons-

- Sometimes, it may become disproportionate to the seriousness of the crime.
- Society develops feelings of vengeance and destructive tendencies follow.
- The State may become autocratic in its functioning, using punishment to torment people.
- Everyone will look badly upon others.
- People are punished severely
- The punishment might not be right for the crime.
- Repairing can take money and be time-consuming
- the victim might not feel justice.
- They might not learn and just do it again.

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 the 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 that the people of 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.

Drawbacks of the Deterrent Theory of Punishment

Punishment fails to create fear in the minds of criminals once the punishment is over.

This type of punishment fails to create fear in the minds of hardened criminals.

Arouses sympathy in the mind of the public for criminals.

Example of the deterrent theory of punishment: post the Nirbhaya judgment, rape cases are on the rise.

Preventive Theory of punishment

The main goal of preventive theory is to create fear and put an end to crime. That is, by disabling the criminal, to prevent crime. This theory motivates the potential offender out of fear of punishment and prevents the offender from committing any crime. It changes the offender through a rehabilitation or transformation process so that he does not commit the crime again. Preventive theory disables offenders through the application of punishment, ending potential crime. Preventive theory seeks to permanently or temporarily put an end to the offender's crime. This theory supports the death penalty or life imprisonment of criminals. Philosophers such as Bentham, Mill and Austin have supported the theory of resistance in the interests of human nature. Preventive theory claims that this theory is employed as an effective preventive. Crime can be prevented if the perpetrator's misdeeds are stopped. Ending this crime is possible only by disabling the offender. Disability can be of different types. Detention in prison is a limited form of disability, it is temporary. When it is an unlimited form of disability, it is permanent. Imprisonment is one of the best ways to prevent crime. Because, it tries to eradicate crime from society. And disables the offender to prevent the offense from repeated. The death penalty is also based on this idea. Three important aspects of preventive punishment exist.

They are as follows: -

1. Punishment creates fear.
2. Prevents the offender from committing any other crime permanently or temporarily.
3. To make the criminal a good citizen of the society through reforms

Drawbacks of the Preventive Theory of Punishment

fails to fulfill the aim of juvenile offenders and offenders who have committed an offense for the first time.

Case Laws:

Dr. Jacob George v state of Kerala on 13 April 1994 : In this case, the Supreme Court held that the aim of punishment should be deterrent, reformatory, preventive, retributive & compensatory. 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 future”. Criminals are also part of society, so it is the duty of the society to treat them properly and help to make them law abiding citizens of India and make the law and order in society.

Surjit Singh v State of Punjab AIR 1388 1996: In this case, one of the accused and a policeman. entered the house of the deceased. with the intention to committing rape, but they did not succeed because the son of the deceased shouted for help and the accused suggested the policeman to kill the deceased. The accused was held liable under section 450 of the Indian Penal Code. On the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

Incapacitation Theory of punishment

The word “**incapacitation**” means ‘to prevent the offense by punishing, so that the future generation fears to committing the criminal act.’ Incapacitation happens either by removing the person from society, either temporarily, or permanently, or by some other method, which restricts him due to physical inability. One of the most common ways of incapacitation is incarceration of the offenders, but in case of severe cases, capital punishments are also applied. The overall aim of incapacitation is to prevent or restrain the danger in the future.

Definition:

“Incapacitation refers to the restriction of an individual’s freedoms and liberties that they would normally have in society.”

An Example of the incapacitation theory of punishment: Capital punishments and life imprisonment.

According to a report by Chicago University, such a theory succeeded in eliminating twenty percent of the crimes.

Compensatory Theory of punishment

Definition:

The compensatory theory of punishment is a controversial approach that suggests that punishment should be focused on compensating victims for the harm they have suffered, rather than retribution or deterrence. This theory is based on the idea that punishment should be designed to repair the harm caused by crime and to provide restitution to victims and their families, rather than simply imposing consequences on offenders.

One of the main arguments in support of the compensatory theory is that it can provide a sense of justice and closure for victims and their families, who may feel that they have not received adequate compensation for the harm they have suffered. By requiring offenders to pay monetary or other forms of compensation, the compensatory theory suggests that we can help to repair the harm caused by crime and to provide some measure of justice to those who have been affected.

. The victims in a crime can be compensated on mainly two grounds, namely-

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

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.

Criticism :

Critics point out that it tends to oversimplify the motive to crime.

Case Laws:

In the landmark case of *DK Basu v. The State of West Bengal* (1997(1) SCC 416) in the case, court verdict was that the convict has the fundamental right of life under Article 21 and the police officers had violated it.

In *State of Gujarat and Anr. v. Hon'ble High Court of Gujarat* (1998) 7 SCC 392, Justice Thomas had held that, "The Reformatory and compensation theories deserve serious consideration, where the victim(s) of a crime or his family members should get compensated from the wages that are earned in prison by the criminal." The court suggests that there should be strong legislation for the compensation to victims and their families.

Reformatory Theory of punishment

According to Reformatory theory, the object of punishment is the reformation of criminals. This theory seeks to bring about a change in the attitude of an offender so as to rehabilitate him as a law-abiding member of society. Even if an offender commits a crime under certain circumstances, he does not cease to be a human being. The circumstances under which he committed the crime may not occur again. Crime is a mental disease, caused by different anti-social elements. Therefore, the mental treatment of criminals rather than awarding punishment will serve the purpose. If criminals are educated and trained, they will be competent to behave well in society.

The object of the punishment should be to reform the offender. The criminal must be educated and taught some art or craft or industry during his term of imprisonment, so that they may be able to lead a good life and become a responsible and respectable citizen after release from jail. While awarding punishment, judges should study the character and age of the offender, his early breeding, family background, his education and environment, the circumstances under which he or she committed the crime, the motive which prompted him or her to indulge in criminal activities, etc. The object of doing so is to acquaint the judge with the circumstances under which the offense was committed so that he could award punishment that could serve the ends of justice.

Drawbacks of the Reformatory Theory of Punishment

If this theory is applied to criminals, the prison will no longer remain a prison but rather become a dwelling house.

This theory fails to meet its objective on criminals who are habitual offenders.

If a good citizen is punished for what he has not done, this theory may have adverse effects.

Utilitarian Theory of punishment

The Utilitarian theory of punishment states that punishment should be designed to produce the greatest balance of good over evil for society as a whole. This theory is based on the idea that punishment should be evaluated in terms of its consequences, and that the goal of punishment should be to maximize the overall well-being of society.

One of the main arguments in support of the Utilitarian theory of punishment is that it can be effective at reducing crime and promoting social welfare, as it focuses on the overall consequences of punishment for society. By evaluating punishment in terms of its effects on crime rates and social well-being, the Utilitarian theory suggests that we can determine the most effective approaches to punishment and use them to maximize the overall good for society.

Another argument in favor of the Utilitarian theory of punishment is that it can be more cost-effective in the long term, as it focuses on the consequences of punishment rather than retribution or deterrence. By evaluating the costs and benefits of different forms of punishment, the Utilitarian theory suggests that we can choose the most effective and efficient approaches, which can save money and resources in the long run.

Example of the utilitarian theory of punishment: Death penalty for murder convict.

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 theories of punishment based on the principle '*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 had 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 will go for a toss.

Reference

<https://www.legalserviceindia.com/legal/article-1808-theories-of-punishment.html>

<https://www.writinglaw.com/5-theories-of-punishment/>

<https://blog.ipleaders.in/theories-of-punishment/>

<https://lawbhoomi.com/theories-of-punishment-an-overview-of-the-nature-and-features-of-various-theories-of-punishments/>

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