

Course – LL.B sem 4
Penology (unit -3)
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Theory of punishment

CONCEPT OF PUNISHMENT

- Punishment, according to the dictionary, involves the infliction of pain or forfeiture, it is the infliction of a penalty, the purpose of punishment is to cause physical pain to the wrong-doer, it serves little purpose.

CRIMINAL JUSTICE SYSTEM

Blackstone writes : “ wrongs are divisible into two sorts, private wrongs and public wrongs. The former are an infringement of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed civil injuries; the second are a breach and violation of public rights and duties which affect the whole community considered as a community and are distinguished by the harsher appellation of crimes and misdemeanors.”

- A crime is an act deemed by law to be harmful to society in general.
- Murder injures primarily the particular victim but its disregard of human life does not allow the same to be a matter between the murderer and the family of the murdered.
- Those who commit such acts are proceeded against by the State and they are punished if convicted.



PURPOSE OF CRIMINAL JUSTICE

The main purpose of criminal justice is to punish the wrongdoer. He is punished by the State. The question arises, what is the purpose of punishment or in other words, what is the end of criminal justice. From very ancient times, a number of theories have been given concerning the purpose of punishment.

- Deterrent Theory
- Preventive Theory
- Reformatory Theory
- Retributive theory
- Theory of Compensation

CONTD

- Based on the above view of theories is that the end of criminal justice is to protect and add to the welfare of the State and society.
- The view of the other class of theories is that the purpose of punishment is retribution.
- The offender must be made to suffer for the wrong committed by him.



THE DETERRENT THEORY OF PUNISHMENT

Punishment is primarily deterrent when its object is to show the ineffectiveness of crime, and thereby teach a lesson to others. Deterrence acts on the motives of the offenders, whether actual or possible. Offences are committed, in most cases, as a result of a conflict between the so called interests of the wrong-doer and those of society at large.

The object of punishment, according to this theory, is to show that, in the final analysis, crime is never profitable to the offender, and as



In the ultimate analysis, the preventive mode of punishment works in three ways, viza)

- a) by inspiring all prospective wrong-doers with the fear of punishment;
- b) by disabling the wrong-doer from immediately committing any crime; and
- c) by transforming the offender, by a process of reformation and reskilling, so that he would not commit crime again.

THE PREVENTIVE THEORY OF PUNISHMENT

If the deterrent theory tries to put an end to the crime by causing fear of the punishment in the mind of the possible crime-doer,

the preventive theory aims at preventing crime by disabling the criminal, for example, by inflicting the death penalty on the criminal, or by confining him in prison, or by suspending his driving license, as the case may be.

THE REFORMATIVE THEORY OF PUNISHMENT

According to the reformatory theory, a crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the inducement of the motive is stronger or because the restraint imposed by character is weaker.

This theory would consider punishment to be curative or to perform the function of a medicine. According to this theory, crime is like a disease.

This theory maintains that "you cannot cure by killing".

The exponents of the reformatory theory believe that a wrong-doer's stay in prison should serve to re-educate him and to re-shape his personality in a new mould.



- Justice Krishna Iyer opens his judgment in **Rakesh Kaushik Vs Superintendent, Central Jail** (1980 Supp. S.C.C. 183) with the following poignant question : ***"Is a prison term in Tihar Jail a post-graduate course in crime ?"***
- ***In Sunil Batra (II) V. Delhi Administration (1980 3 S.C.C. 488)***, The judgment deals at length with the shocking conditions prevailing in Indian prisons and suggests a series of prison reforms.

- Probation of Offenders Act, 1958 has been passed to reform the **JUVENILE OFFENDER**.
- About this Act, the Supreme Court observed in ***Rattan Lal v. State of Punjab*** that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.
- ***In Musa Khan v. State of Maharashtra,***
- The Supreme Court observed that this Act is a piece of social legislation which is meant to reform juvenile offenders with a view to prevent them from becoming criminals by providing an educative and reformatory treatment to them by the Government.



THE RETRIBUTIVE THEORY OF PUNISHMENT

It was seen that punishment by the State is a substitute for private revenge. In all healthy communities, any crime or injustice disturbs up the retributive anger of the people at large.

Retribution basically means that the wrongdoer pays for his wrongdoing, since a person who is wronged would like to revenge himself, the State considers it necessary to inflict some pain or injury on the wrongdoer in order to otherwise prevent private vengeance.


THE COMPENSATION THEORY OF PUNISHMENT

According to this theory, the object of punishment must not be merely to prevent further crimes, but also to compensate the victim of the crime. This theory further believes that the main-spring of criminality is great and if the offender is made to return the ill-gotten benefits of the crime, the spring of criminality would be dried up.

Though there is considerable truth in this theory, it must be pointed out that this theory tends to over-simplify the motives of a crime. The motive of a crime is not always economic.

Offences against the state, against justice, against-religion, against marriage, and even against persons, may not always be actuated by economic motives.

In such cases, the theory of compensation may be neither workable nor effective.



Thank you !!!

