Conceptual caravan
Act-Wrong-Offence-Crime

• Law of man is an uncaned liberty and Law of God is a caned liberty. An accepted measure of action is good and so “prescribed”, and unaccepted act is “proscribed”.

• A proscribed act, in generic sense, is known as ‘wrong’ and public reason directs caging of such misdemeanor.
Then

• Sovereign law transforms the social disapprobation into defined “offence”.
• Such legally proscribed act i.e. “Offence” is subjected to “just and fair” judicial investigation, duly evidenced and established is reckoned as “Crime”.
• Crime, a proved offence, impels caustic consequences – PUNISHMENT.
DEFINITIONAL DILEMMA

• Punishment is identified by – infliction of pain, forfeiture, chastisement, castigation or penalty.
• Punishment to prevent the perpetration of acts classified as criminal, to coerce or deter culprits to realize and reform, to undo injustice.
Ancestral analysis

• Hindu Law giver ‘MANU’ summerized the object of punishment as –
• “Punishment governs all mankind; punishment alone preserves them; punishment wakes while their guards are asleep; the wise considers the punishment (Danda) as the perfection of justice.”
So punishment is warranted

• To protect the society from mischievous and undesirable elements;
• by deterring potential offenders,
• By preventing the actual offenders from committing further offences
• Transforming the tainted convicts into law-abiding citizens.
THEORETICAL APPRISAL

For safe, orderly, peaceful and prosperous society to exist and flourish – the following tools of theory are found to be good guides:

1. Deterrent Theory
2. Preventive Theory
3. Retributive Theory
4. Reformative Theory
5. Expiatory Theory
6. Multiple Approach theory.
DETERRENT THEORY

• “I do not punish you for stealing the ship, but so that the ship may not be stolen” – the central cynosure of the theory.

• Not only to prevent the wrongdoer from doing a wrong, but also to make him an example for others, calculated to curb criminal tendency in others.

• At times, severe punishments like death by stoning or whipping, mutilation of limbs etc are awarded even to minor offences.

• This theory lives even to day in many muslim countries.
PREVENTIVE THEORY

• Concentrates on the prisoner to prevent him from repetitive endeavors – to ward off recidivism.

• Offenders disabled by punishments like death, exile or forfeiture of office and incarceration.

• Found to be having undesirable effect on first offenders or juvenile offenders.
RETRIBUTIVE THEORY

• “Tooth for Tooth, Eye for Eye, Limb for Limb and Nail for Nail” – principle of this theory.

• Earlier, legal sanctions grounded in vengeance and retaliation - revenge is justice gone wild.

• found to be archaic, inhuman and barbaric – modern human rights philosophy condemns this cruel concept.
REFORMATIVE THEORY

• “Condemn the Sin, not the Sinner” – Mahatma Gandhi.

• Reformation process is like a surgeon operating on a person to remove the pain.

• It is a craft or skill in bringing back the tainted and condemned culprits to national mainstream and civil society, as meaningful citizens.

• Critics hold the prisons as dwelling homes – a satire.
EXPIATORY THEORY

• “To pay for the sin committed”
• Repentance, compunction, atonement and reparation - conscience oriented cleansing of hearts.
• Offender to serve the victims and their dependents to compensate the deprivation.
• Held impracticable being too idealistic.
• Experimentation of this theory is too expensive in terms of public safety and security.
MULTIPLE APPROACH THEORY

• Application of any single theory may not render complete justice –
• The aforesaid theories are not mutually exclusive.
• hence judicious combination of theories is the latest approach.
• “If the potentials of prisoner-person are unfolded, a robber may become a Valmiki, and a sinner may become a saint.” – Krishna Iyer. J. (Rakesh Kaushik vs. Supdt. Central Jail)
PUNISHMENTS - INDIAN PENAL CODE.

• Ss- 53 to 75 of I.P.C. (Ch.III) refer to graded system of punishments.
• 1. Death.
• 2. Imprisonment for Life.
• 3. Imprisonment – Rigorous and Simple.
• 4. Forfeiture of property.
• 5. Fine.
• In addition to the above, Ss-73 & 74 refer to solitary confinement.
NEW OUTLOOK

• To exert social, psychological, moral impact on criminals, new judicial tools are suggested –
  2. Compensatory Jurisprudence. (S-357 of CrPC) (Rudal Shah, Bhimsingh, Veena Sethi, etc.)
3. PUBLIC CENSURE or Social Censure.
   – Followed in Russia and Columbia in cases of white collar crimes, Food Adulteration offences.
   – Indian Law Commission – 42\textsuperscript{nd}. Report also recommended in certain class of offences.

4. COMMUNITY SERVICE OR CORRECTIVE LABOR.
   (extension of Expiatory theory)

5. DISQUALIFICATION FROM HOLDING PUBLIC OFFICE AND CONTEST ELECTIONS. (R.P.Act, 1951)