

THEORIES OF PUNISHMENT

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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' summarized 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 –
 - 1.Externment or Banishment.(habitual and hardened criminals – Bombay Police Act, 1951, Kerala Police Act,1964, Delhi Police Act, 1964, M.P.Security Act, 1959 etc.)
 2. Compensatory Jurisprudence. (S-357 of CrPC)
(Rudal Shah, Bhimsingh, Veena Sethi, etc.)

Contd...

3. PUBLIC CENSURE or Social Censure.

- Followed in Russia and Columbia in cases of white collar crimes, Food Adulteration offences.
- Indian Law Commission – 42nd. 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)