



A Critical Evaluation of the Theories of Punishment

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ABSTRACT

Punishment is the suggestion to propose effect upon the person doing wrong for his sin. It is projected as it is decisively scheduled, and it is a liability as it has a sense of anguish. The primary purpose of this writing is to see and study the different theories of punishment through an eagle-eye view. Before intruding into the further details at first stance, I shall ink here the three ideas of punishment which are a deterrent theory of punishment, retributive theory of punishment and reformative theory of punishment; and after I shall see these theories one by one to evaluate them critically because each of them has its peculiar importance, benefits, and drawbacks.



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INTRODUCTION

Punishment is a communal mechanism that aids the society to hold its laws and control the subjects of the State. If there had been no punishment concept for wrongdoers, humanity would not have survived. There are principally three theories of punishment which are the deterrent theory which attempts to deter criminalities by punishing the criminal; the retributive

theory, which articulates to attain retribution by punishing the wrong doer for his sins and at last reformative approach, which anticipate reforming the attitude of the lawbreakers by imposing punishment. Needless to mention that each theory has its own merits and demerits¹.

Deterrent Theory of Punishment

This kind of theory is also sometimes called the preventive idea of punishment. Thomas Hobbes, Jeremy Bentham, and Cesare Beccaria initially advocated the deterrent theory. The underlying purpose is to deter the criminals, not commit the crime. It is attempted as a prospective measure to snub the crime. When one person commits any crime, certainly it entails some motivation or some type of pacification in any sense. Under this theory, pain and anguish are given to the wrongdoer so that he may not repeat or commit the same offence in the future. In this theory, State gives an exemplary punishment to the wrong doer to alarm the other people of the State to avoid committing a crime.² This theory is based on the concept that if wrongdoers are not punished, then wrong/sin shall multiply and increase, leading to lawlessness in society. Jeremy Bentham is of the view that actual wrong doers should punish so that other people of the country who even have the intention to commit the crime must avoid committing it.³ By punishing the criminals, general and specific deterrence is aimed. For better understanding, it must be said that in deterrent theory criminal is punished for the not only reason that he has done a wrong but also for the purpose that any person in society may not repeat it. Deterrent theory entails three major components, i.e., Severity, certainty, and celerity. The deterrent theory aims to create some fear in the mind of the people not to commit the crime or repeat the offence. For Instance, A seals a laptop from the custody of B, so in such eventuality, his one hand is cut off. It will take a lesson for A not to commit or repeat the crime and be an example for the other persons, which shall serve as prevention to prevent corruption in society.⁴

Aims at, according to Mackenzie, "to deter others from committing similar.

Critical Evaluation of Deterrent Theory of Punishment

The deterrent theory entails resolution to prove a certain act as wrong. Therefore, punishing the offenders and daunting the offenders and other people for acting the wrong. This theory has been proposed and advocated primarily by the Utilitarians. It shall cast two main benefits for the society that the wrong doer shall be punished and at the second hand the other people of the organisation shall also feel deterrence not to commit the crime. It is condemned that its only purpose is to prevent crimes. Critics also believe that this theory has no space to reform the wrong doers. For example, if a person is caught stealing a she-goat and is shot for doing, it will exceed the limit of their crime. I cannot help saying the saying of William Lillie, who says that "*punishment beyond a certain limit for a particular crime is unjust.*" As the goal of the deterrent theory of punishment is to frighten, it does not emphasise improving the offender. In the same way, it does not attend the retribution. It only concentrates on the anticipation of the crime.⁵

Benefits of Deterrent theory.

- It deters the people of the State not to repeated crimes.
- Relief to the victim or the legal heirs of the victim is imparted.

- Peace and tranquillity in society are maintained.

Retributive Theory of Punishment

The concept of this theory is based upon the well-known proverb "As you sow, so shall you reap" or Tit for Tat.⁶ The main purpose of this type of theory is retribution. Its main emphasis is that the wrongdoer should be penalised or how he caused suffering to the victim. By this theory, the criminal has lost their rights by committing wrongs. For example, if a person commits murder, they have lost their right to live. The aim of this theory is only retribution, not reformation. Thus, for example, if a wrongdoer slaps, he is punished according to the wrong gravity. That is why it is said about this type of theory that punishment should fit the crime. For easy understanding, examples, i.e. eye for an eye, hand for hand, head for head, can be quoted.⁷

In the past retributive punishment meant an eye as a rule. But in the continuing era, there are different types of retributive theories that castigate by means mostly balanced to the wrong rather than a hand for hand. Therefore comes reward-based retributivism, penalisation based retributivism, and justice-based retributivism.

Critical Evaluation of Retributive Theory of Punishment

The retributive theory of punishment aims to propose sentences following according to the gravity and manners of the sin. This theory gives air to revenge. Critics are also of the view that sometimes it crosses its limits. Some jurists reject this theory by opining that it is impossible to propose the same Punishment because Punishment is always determined following the facts and circumstances prevailing at the time of the decision.⁸

Challengers of this theory ponder that overriding the law must not always outcome in retribution by punishment. This theory is also criticised that offenders' civil rights ought not to be forfeited in any case because humans are supreme creatures of God. Thus, must respect their rights. The aspect of reforming the criminals is also not the component and aim of this theory whereas, the underlying principle behind the punishment is reformation. In other words, sometimes, retribution does not seem appropriate for all crimes. For Instance, if a boy of 22 age is raped by a lady having 30, then in said it does not look appropriate that the wrongdoer lady be raped in the manner as the boy was rapped. One group of critics say that there is constantly a likelihood of crossing the streak while gruelling the criminal. Foes of this concept think that infringement of the law must not permanently consequence in retribution by punishment. The equality-based discipline is criticised on the "free rider" interpretation. Others assessed it by inking that it is not likely to have, and we must not have the same vengeful punishment in all criminal cases. The idea of elevating retaliation initially assesses the theory. It is expected that this theory gratifies the necessity for retribution.⁹ For Instance, if an offender is crushed up as he has crushed a blameless person, it will lift the view of revenge. So this theory is condemned by the notion of inspiring revenge. The critics also believe that there is a casual to cross the boundary of punishment in these cases. As it is founded on vengeance, the criminal may be chastised more numerous than the wrongdoing he has acted. Adversaries of this theory Contemplate that a breach of law must not always result in vengeance by punishment. It is

criticised for forfeiting the rights of the offender. That goes against forfeiture based retribution. That is because human rights are supreme and universal for all humans. Because of that, the abolishing of ownership due to the offender's criminal activity is not accepted by some.¹⁰

Furthermore, even if rights are forfeited, the question arises about its length and duration. So it is criticised against losing the rights of the offender. So, the retributive theory of punishment does not coincide with all types of cases.

Reformative Theory of Punishment

The main aim of this theory is very much candid from its name that it mainly stresses the reformation of the offenders and society. It believes that wrongdoers can also be useful citizens of the State. Therefore, it is also sometimes named the educational or rehabilitation theory of punishment.¹¹ This punishment theory was opposed because it did not affect criminals. Still, as time passed, different states started to adopt this theory to reform their criminals. Other states adopt this theory who see the wrong doers as criminals and patients.¹²

Critical Evaluation of Reformative Theory of Punishment

The main trend of reformative theory is to reform and the offenders. It is an admitted fact that all the crimes are not the result of mental illness, and all the wrongdoers cannot be treated as mentally sick. Most of the time, persons commit crimes intentionally to murder anyone or cause loss to their rivals. So, can not modify such kinds of criminals to good character. They should at all be treated like hardened criminals. This theory claims that the main crime stakeholder is always the victim or their legal heir. By adopting this theory, what will be given to the victim or the legal heir of the victim as the case may be? For example, if A murders B. By adopting reformative theory, if A is admitted to jail for his mental treatment without any time of punishment, then it would be not be justified. This theory cannot mend the ways of hardened and desperate offenders. So, the reformative approach does not cover all types of criminals.¹³

Criticism:

1. Reformative theory expects improved summary and workplaces in jail, legitimate co-appointment between various control and hard-working effort on their part to form criminals. It needs enormous schemes which emerging nations can't bear the cost.¹⁴
2. Countless innocent individuals with great compliments for law are hard to get vital considerations to imagine moral occupation for giving well workplaces inside the jail.
3. Also, the theory's reliability is more towards persuaders for the command of misconduct instead of counteraction.¹⁵
4. Alteration can work out for those who can be better; some people can't transform like bad-to-the-bone delinquent, extremely trained and capable gangsters.
5. However, this theory disrespects imaginable criminals and folks who have consented to crime, not inside the law. Further, it overlooks the cases of stayers of violations.

6. Debased social organic is liable for the crime yet not person duty, is the way of rational of reformative which is difficult to process. In any case, it is out of line to excuse the honourable idea of rebuilding as a whole dissatisfaction. All know about the times when inept, ignorant, and desperate criminals shaped their talents in jail, which altered them into intensely valued people.¹⁶

How can the problems and lacunas found in different theories of punishment be cured?

In this modern era, one single theory of punishment cannot be feasible and useful for any country. States should adopt the beneficial portion of all the theories and abate the useless amount for the smooth working of the criminal justice system. If I talk about our beloved Pakistan, here single theory is not feasible because here we find the criminal of different minds and ages. Sometimes a juvenile is brought to the courts for trial, and sometimes hardened criminals are tagged for the test. Both categories cannot be treated similarly and for the same relief. I humbly propose some methods under which the lacunas of the deterrent theory, the penal theory and the reformative theory may be diminished; perhaps in this way, May maintain peace and tranquillity.¹⁷

- By the proper investigation of crime.
- Must ensure Trustworthy evidence.
- The stage must enact the role of the prosecutor at the investigation
- Powers of Presiding Officer of the court to visit the place of alleged
- Laws be specially enacted through special legislation.
- The wrong dower must be found guilty.
- External and internal factors for committing crimes must be considered while awarding punishment.¹⁸

CONCLUSION

As I earlier mentioned that all the above-discussed theories of punishment have their peculiar benefits and drawbacks; therefore, all the states should adopt the approaches while legislating their laws as far as they are beneficial and should abandon the rest of the principles of the particular theory, which are not coinciding to their circumstances. We cannot say any idea of punishment is exhaustive and comprehensive to cope with every need of society. There is always a space for modification and alteration.

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