



THEORIES OF PUNISHMENT AND ITS APPLICABILITY IN MODERN SOCIETY

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Abstract :

Crime and punishment are two sides of a coin. The word punishment means sanction or undesirable or unpleasant outcome or retribution. To survive in a society there are certain rules, principles, norms are very much needed to be obeyed. Punishment is awarded to reduce crimes and to maintain peace within the society. Due to the action of the offender the offender is awarded with punishment which can be only pardon by the aggrieved party and not even by the public servant. It is presumed that each and every person should know the law of their land “_ignorantia non excusat” no person can use it as a plea to get exempted from punishment after commission of crime.

Introduction :

Punishment is most prominent feature of a criminal law. Every society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. Punishment is an outcome of unpleasant act that is committed by the wrong doer. Punishment are generally provided to render peace and avoid clash within the societys . Rules and regulation are generally backed up by sanction . Punishment provides equality in the society and provides justice to the aggrieved person. Simply

punishment is the pain to the a person or his property who is found guilty in crime. Different scholars have defined punishment in a different manner.

As per professor Von Hunting he regards punishment as the established of artificial danger to avoid injury to humanity itself. Principle of ‘Laissez Faire’. All punishment is in itself a pain.

As Bentham in his theory of Punishment mentioned that the Punishment should go with the crime. That is, the amount of punishment should not exceed the amount of offence. If this is done then there will be no reform of the deviant and hence the deviant will never ever keep his faith over the Sovereign and its Commands.

In case of R vs Dudley and Stephens¹

In this case three seamen namely Dudley, Stephen, brooks and the boy of 18year were crew in that English vessel. The ship strikes against a hill and resulted an accident three men and the boy escaped into an open boat . On the 20th day, Of their travelling when they had no food and water for suddenly Stephen killed the boy to survive and to feed upon him. Later when they where picked up by a passing vessel. They where prosecuted and tried of murder of the boy the offender plead of nessesity .The Privy council held the person guilty of murder and convicted the person on the following ground

1. Self preservation is not absolute nessesity
2. No man has right to take someone life under any circumstance
- 3 .No nessesity justifies homicide for

¹ AIR 1884 14 Q.B.D. 273



The seamen were punished for committing Homicide and were punished accordingly. *Basudev vs state of Pepsu*²

The accused in this case was a retired military officer. He was charged with murder of a 15 years old boy. The accused fired at the boy in his marriage lunch as he refused him to occupy the seat. Later it was found the retired military was drunk but was not under much influence. The trial court sentenced him life imprisonment and the same was upheld by the Pepsu high court. Then the appellant went to Supreme court and filed a special leave to appeal rejected the plea under section 86 of Indian penal code and the reduction of charge from murder to culpable homicide was made. Supreme Court laid down the following rules for guidance

1. absence of understanding nature and consequence of the act whether produced by drunkenness or otherwise is a defense to the crime charged
2. Evidence act as huge to proof whether mensrea or the mental element was present or not that decides the intent of the person.
3. The evidence of drunken felt short and the person was charged for culpable homicide And his punishment was reduced from murder to culpable homicide

Need for punishment

With the change in society the need for punishment was felt within the society. As with change in time their took place a huge change in crime and the need was felt for ensuring justices and the need to equality was felt in the society. with this the need the necessity to award punish meant was felt by the society.

Punishments were awarded to maintain peace and harmony within the society

Punishments were awarded to create fear in the mind of offender and reduce the rate of crime

Punishments are awarded to check the unpleasant behavior of a person

Punishment serves as a justice and protects the interest of person.

Types of punishment :

Before the commencement of Indian penal code 1860. People were governed by different criminal laws of their beliefs. The punishment previously was based on principle of evidence. There were mainly two types of punishment one was corporal and the other was non corporal.

Corporal punishment or physical punishment is a punishment intended to cause physical pain on a person who had committed the offence or is guilty of offence with the growth of humanitarian ideals since the Enlightenment, such punishments were increasingly viewed as inhumane. On 20th century³ the corporal punishment were eliminated from the legal system as they were opposing the humanitarian laws. In the 21st century it seen the human rights law where questioning the corporal punishment. And the human right law gave a huge blow to the corporal punishments in the home even punishment of children or teenagers by parents or other adult guardians, is illegal in most of the world. 58 countries, most of them in Europe and Latin America, have banned the practice as of 2018⁴. School corporal punishment, of students by teachers or school

² AIR 1956 SC 488

³ www.Wikipedia.com

⁴ Www.essaybasic.com



administrators, has been banned in many countries, including Canada, Kenya, South Africa, New Zealand and all of Europe. It remains legal, if increasingly less common, in some states of the United States. Judicial corporal punishment, as part of a criminal sentence ordered by a court of law, has long disappeared from European countries. However, as of November 2017, it remains lawful in parts of Africa, Asia, the Anglophone Caribbean and indigenous communities of Ecuador and Colombia. Closely related is prison corporal punishment or disciplinary corporal punishment, ordered by prison authorities or carried out directly by staff. Corporal punishment is also allowed in some military settings in a few jurisdictions.

Non corporal punishments are those punishment which are doesn't involves physical punishment rather the punishment creates more impact on a person then a physical punishment. Sometime words can speak louder then the action of a person similarly in this kind of punishment the word creates a huge impact on the person . As per . Imam 'Ali, The Commander of the Faithful, says:

“There are many types of punishments which have bigger impact than physical assault.

It is possible that these punishments might be more severe on the mind rather than the physical punishments. These punishments will injure the personality of the person and create elements of fear and restlessness in his nature. It has happened many a time that when a child is locked alone in a dark room, the effect on his nerves was so severe that he was not able to erase it from his mind for a major part of his life.

Their where five kinds of punishment by mohammedan criminal law as follows:⁵

Kisa(qisas)- it say that a person has to equally pay for his his sins. This means to retaliation. The offender here is given similar punishment based on the type of crime he has committed. For example a limb for a limb, hand for a hand and also a life for a life

Diya(diyat)- it means blood-money. Diya symbolises that the offender can get rid from his liability by making a payment to the injured or aggrieved. For example if a person has killed a man he has to pay the amount in returns of his blood.

Hadd - boundary or limit. In this the punishment is fixed and the judge didn't have discretionary power to award more or less punishment for example their was a fixed punishment for Zina(rape)the offender was awarded with death.

Tazeer- It means discretionary punishment in this the judge award discretionary punishment to the offender that is the punishment is different for different crime and the judge has discretionary power to decide. For example a man has killed a person by knife and a man has killed a person by burning him it is not always same punishment awarded for similar type of crime it depends on discretion of the judge

Siyasat - it is a mode of punishment where king award punishment to the offender.

The punishment of Indian penal code 1860 is prescribed under section⁶ of the Indian penal code

Death penalty : it is also called capital punishment some countries have abolished it. It is awarded in India in some exceptional

⁵ Criminal law by Dr rega surya rao

⁶ Section 53



cases some offences are awarded with Death sentence includes

1. Waging war against government of India under section 121
2. Attempt to murder by a person under life imprisonment under section 307
3. Giving false evidence against a innocent person and the person suffered with death under section 194
4. Punishment for causing death or resulting in persistent vegetative state of victim under section 376A.
5. Dacoity accompanied with murder under 396

Life imprisonment: The code of criminal procedure Act 1955 it substituted the word imprisonment for life with transportation for life it means the person is imprisoned for life that is till his natural death. but in India it is from 14 years to 20 years under section 57 of Indian penal code. The sentence for life imprisonment is provided in following offence

1. Waging war section 121
2. Conspiracy against state section 121A
3. Aiding for escape of prisoner section 130
4. Abetment to mutiny section 131
5. Import and export of counterfeit coin section 255
6. Murder section 302

Imprisonment:

It means confinement or total deprivation of a person's liberty. Imprisonment can be of two types :

- a. Rigorous imprisonment
 - b. Simple imprisonment
- a. Rigorous imprisonment- the offender in rigorous imprisonment puts large effort or labour such as for grinding, digging earth, drawing water and etc. there are some

punishment awarded in case of rigorous imprisonment as per indian penal code.

1. Personating a public servant section 170
 2. Punishment for bribery section 171E
 3. Punishment for false evidence section 193
 4. Causing miscarriage section 312
 5. Punishment for voluntary hurt causing hurt section 323
- b. Simple imprisonment – in this kind of imprisonment the offender is confined to jail and is not put in any kind of work. simple imprisonment are awarded in following situation
1. Wrongful restraint section 341
 2. Continuance of nuisance after injunction to discontinue section 291
 3. Defamation section 500, 501, 502
 - Misconducting in public place by a drunk person section 510

Fine- the word is derived from the word finis because the payment puts an end to the offence for which it was imposed . generally a fine is an punishment that is imposed by tribunals it is the sum of money court orders for the offence committed by him. Fine can be imposed as punishment in following case

1. Failure to keep election accounts section 171
2. Obstructing public way section 283
3. False statement related to election section 171G
4. Agent or manager of person in like situation section 156

Theories of punishments :

The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment



theories have become more tolerant to these criminals.

Thus it becomes very important on behalf of the society to punish the offenders. Punishment can be used as a method of educating the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. Theories of punishment, contain generally policies regarding theories of punishments. It is an punishment attempt to portray punishments as a method of inflicting of unpleasant circumstances over the offender.⁷

The words of Salmond⁸, “The ends of criminal justice are four in number, and in respect to the purposes served by them punishment can be divided as:

1. Deterrent
2. Retributive
3. Preventive
4. Reformative

Deterrent Theory⁹

'Deter' means to abstain from doing an act. The main objective of this theory is to deter (prevent) crimes. It serves a warning to the offender not to repeat the crime in the future and also to other evil-minded persons in the society. This theory is a workable one even though it has a few defects.

Retributive Theory¹⁰

Theory Retribute means to give in return. The objective of the theory is to make the offender realise the suffering or the pain. In

the Mohammedan Criminal Law, this type of punishment is called 'QISAS' or 'KISA'. Majority or Jurists, Criminologists, Penologists and Sociologists do not support this theory as they feel it is brutal and barbaric.

Preventive Theory

The idea behind this theory is to keep the offender away from the society. The offenders are punished with death, imprisonment of life, transportation of life etc. Some Jurists criticize this theory as it may be done by reforming the behavior of criminals.

Reformatory Theory¹¹

The objective is to reform the behavior of the criminals. The idea behind this theory is that no one is born as a Criminal. The criminal is a product of the social, economic and environmental conditions. It is believed that if the criminals are educated and trained, they can be made competent to behave well in the society. The Reformatory theory is proved to be successful in cases of young offenders.

Expiatory Theory

Jurists who support this theory believe that if the offender expiates or repents, he must be forgiven. This theory believes in forgiving the offender if he has realized his fault.

The Indian Penal Code is a combination or compromise between the underlying principles of all these theories

The application of the theories in the modern world¹²

⁷ Indian penal code by BM Gandhi

⁸ Sir John Salmond a jurist and a legal scholar

⁹ www.legalserviceindia.com

¹⁰ www.lawnotes.com

¹¹ www.wikipedia.com

¹² Indian penal code by SN Misra



Generally the modern law condemn the applicability of corporal punishment. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. The non corporal punishment help to seclued of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism. Though this theory works stupendously for the correction of juvenilies. General the modern theories are based the principle of preventing and checking crimes without corporal or physical punishment. Rather tries to reform the behavior of the offender. Generally in the modern world all the theories applied except the theory of Retributive.

Conclusion

Punishments are generally provides to the offender if they are not abiding the law or breaking the rules and regulation of the society. Punishment is a method of inflicting of unpleasant circumstances over the offender. Their are certain theories of punishment but in modern generally the expiatory theory is followed as they believe in the the reform of the offender rather then awarding punishment. The corporal punishment have abolished in the modern society.

