

Ethical Perspective and Theories of Punishment in Criminal Justice

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Abstract: *This paper explores the ethical perspectives and various theories of punishment in the context of criminal justice. It discusses retributive, preventive, and reformatory theories, analyzing their implications and effectiveness. The study aims to provide a comprehensive understanding of how different punishment philosophies impact crime prevention and offender rehabilitation.*

Keywords: Crime, Punishment, Retributive theory, Reformatory and Preventive theory

1. Introduction

Before we embark on discussing crime and punishment, we should first understand what crime is:

A crime is a behaviour for an action or omission punishable by law. Criminal offences may be geared towards some individual or individuals but also towards a community, society or even the state.¹ It is a deliberate act that causes physically or psychological harm, damage or loss of property and is against law. A crime is an illegal action or activity for which a person can be punished by law. There are lots of different types of crime and nearly everyone will experience at the same point of their lives. The elements of a crime generally come from statutes, but may also be supplied by the common law in states where criminal law still carries force.

Purpose of the Article

The purpose of the article is to examine the ethical perspectives and various themes of punishment and justice evaluating their objectiveness and implications for crime prevention and offender rehabilitation.

Various types of Crimes 2

There are various types of crimes as enumerated below Violent crime, property crime, victimless crime and white-collar crimes which include corporal injury, robbery, organized crime, cybercrime. Property crimes in U. S. is much more than common than violent crimes. In 2022 the FBI reported a total No of 1954, 4 Property crimes per 1, 00, 000 people (24.4.24). Drinking under the influence of alcohol stalking, domestic violence, murder, crimes against property, hate crime Sexual assault, Rape, Forgery, Vandalism, anti - social behaviour, offence relating to document.

Amongst the most criminal offences are the atrocities of women, rape, murder burning against dowry etc. Unless these crimes which are more or less done under the intoxication of liquor be checked, it is difficult to control crime. Though Indian Government is trying to do a lot to do away with such crime offences but India is such a big and vast country that it is difficult to control it whereas in area America is number one is property crime.

We know very well that is because on non - moral actions we commit crime. Before going further, we must know the differences between moral and non - moral actions in

religion –

Man is the only religious animal as distinguished from animals. Man is finite - in finite being. From the time man opened his eyes on this planet, he has been desirous of knowing and being acquainted with the conscious power latent in nature. As and when he was compelled to face natural harshness and dangers, storms, floods, lightning, epidemics, famines, deluge, scarcity, dangerous animals etc man has looked up to some invisible power for assistance, motivation, strength & help. Thus, this religious tendency awoke in man when he was gripped sometimes by fear and at other times by curiosity. And man tried to realize the intangible power for reasons such as to obtain salvation from the sorrows and transience, death, birth and old a similarly man when he got fed up of the worldly sensual love, conceived God as the object of love in the supreme aesthetic idealistic forms. There is no relation which the man did not attach to God. People tried to attain God in the form of father, friend, husband, master, lover, beloved, verily in every form. In this way man, time and again, attempted to quench his urges in that power the search of which is religion.

Theories of Punishment

Before we go on to explain the ethical ways of punishment, we must first of all know what does ethics say about ethics postulates a moral order in the life of the individual and in that of the society. As one sows so shall he reap. If the Universe is a moral order, then good result show good and evil in evil. Thus, an offender should be punished. An offender violates laws knowingly. Thus, he is fully responsible for the infringement of the law and it is perfectly right to punish him. This is the moral basis of the punishment. But many thinkers do not support the theory upon the subject of punishment. For moral evaluation of punishment there are various theories.

Of all the various theories of punishment the following three are the most important and typical.

Retributive theory of Punishment

According to the retributive theory the purpose of punishment is to seek revenge. It is the theory described in the Old Testament as an eye for an eye and a tooth for a tooth. According to the German Philosopher Kant the offender should not be punished for the reason that it is the means to his or another's benefit for the simple reason that he has committed a crime. A court of law repays to one only which he has acquired. He has done crime and it is logical

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that the reward of his crime, the equivalent of his destructive value, be given to him. The punishment which the society confers upon him, does not deprive him of the right but gives to him that he has earned and deserves. According to Hegel and Aristotle, punishment is the negative reward for the criminal, who infringes upon the moral law.³ It is his award which he must receive. For this reason, when some offenders escape with lighter punishment than the merit of their crimes, they try to reap the reward of their misdeeds by penance. According to Broadly “We pay the penalty because we owe to it and for no reason, and if punishments inflicted for any other reason whatsoever, than or is merited by wrong, it is a gross immortality a crying injustice, punishment is inflicted for the sake of punishment”.⁴ In this view punishment is the reward of the violation of moral law. In the words of Sir James Stephen, “Criminal procedure is to resentment what marriage is to affection.⁵ Thus the purpose of punishment is to vindicate the superiority of moral law. By punishing the person who has perpetrated the crime the authority of moral law is indicated.

Bosanquet has enumerated two features of this theory – (i) It is a personal revenge and punishment coalesce (ii) It is having been recognized in this theory that punishment is quantitatively equal to the crime. Both these features are defective Mill and Stephen have laid great emphasis upon the elements of revenge in punishment.⁶

Mackenzie has said “If the aim of punishment is to vindicate the authority of the law, this will partly be alone in so far as the offender is reformed and in so far as similar acts are prevented. And indeed, neither reformation nor prevention is likely to be affected by punishment unless it is recognized that the punishment has been administered by the state or any foreign agency, that the criminal will repent. In practice it has been seen that a criminal becomes worse even after punishment. John Dewey has said quite correctly that “We are not relieved of his responsibility for the consequences of our procedure by the fact that the offender is guilty.”

Preventive Theory of Punishment

According to the preventive theory the aim behind punishment is to set an example to others and to prevent them from criminal tendencies. In this way the object of punishment is prevention. The theory is expressed by judge’s formulas, you are not punished for stealing sheep but in order that sheep may not be stolen. This theory does not invalidate upon capital punishment because there is no question of improvement in the criminal, the other people derive a lesson not to indulge in homicide.

Reformative Theory

According to the reformative theory, the aim of punishment is the improvement of the offender himself. The modern age seems generally to favour and apply the theory. In this theory, the behaviour directed at the criminal shows him the consideration due to an individual and not conduct analogous to treatment of objects and means. An offender is punished for his own benefit. This theory is supported by some major ones –

Criminal anthropology

The modern criminal anthropology propounds that crime is a

disease a pathological state or the state of inherited or acquired degeneration. Thus, it is necessary to treat a criminal instead of punishing him. Hospitals, lunatic asylums and welfare homes are better adapted to the execution of projects to decrease crimes than prisons. Crime is not the result of willful violation of moral law. The most usual causes of crime are mental and physical defects. For example, Kleptomania forces the patient to steal.

Criminal Sociology

Criminal Sociology emphasizes the responsibility of social circumstances for crime. Thus, it is more efficacious to induce improve more improvements in social and economic conditions, to remove inequalities and immoralities, than to punish the criminal. Crimes can be stopped not by punishment but by the organization human society on the basis of justice and equality.

Psychoanalysis

Psychoanalysis joins hands with criminal anthropology and sociology in supporting the reformative theory. According to Freud and his followers, crimes are caused by repressed complexes and tendencies of sex and jealousy caused by desires and frustrated sexual passions. Thus, education and psychoanalyst treatment are needed for preventing crimes instead of punishment. Crime is mental or neural disease which can be eliminated by searching out repressed unconscious complexes and transporting them to the conscious level, finding their causes and effecting their sublimation through means acceptable to society.

2. Observation

From the details furnished above it would be clear that in both the preventive and reformative theories there are defects. For example, the major defect in the preventive theory is that it does not affect any improvement in the culprit. He is made the means of the improvement of other. This theory is incorrect from the practical view point. Actually, everyone cannot become a criminal. People who know how to respect laws are in no need of any such exemplary exhibitions. On the other hand, those who have criminal tendencies can be prevented from crime by necessary preventions and the removal of conditions constituting the breeding ground of crime. To punish a criminal to convey a lesson to others is improper and inhuman. This theory is more defective than even the retributive theory. Further the major short coming of the criminal anthropology is that it assumes the causes of a limited number of crimes to be the causes of all crimes. If some persons steal due to kleptomania, he should undoubtedly be interned in a hospital rather than in a jail but the number of kleptomaniacs is negligible among the number of thieves. All crimes cannot be attributed to diseased conditions. Criminals who resort to illegal means due to mental or physical deformities form only a very small minority in the realm of criminals. Thus, people who commit crimes due to reasons other than these should be curbed by other means. Similarly, in criminal sociology it was seen that many people commit crimes while fully conscious of the fact. And especially the crimes of white collar cumans cannot be included in the explanation offered by criminal sociology. The psycho analytic suggestions to hold true only

in relation to particular criminals. Actually, this opinion is not universally true as was the case with criminal anthropology and criminal sociology. The purpose of this article is to examine the ethical perspectives and various theories of punishment in the context of criminal justice. It discusses the retributive punishment theories analyzing their implication and effectiveness. The study is of provide a comprehensive understanding how different punishment impact crime prevention offended rehabilitation.

Significance of the article

The study is significant as it provided insights into how different punishment philosophies can influence criminal behaviour and the justice system, offering a basis for policy recommendations and future research.

3. Summary

Summarizing the fact mentioned above it is very clear that all the theories of punishment relating to crime are in themselves full proof but are also opened to criticism and not fully sound, we have also seen that how crimes are committed according to sign and fraud by repressed unconscious complexes and transforming them to serious level. It is no wonder that putting them in jails is no solution. They cannot be reformed in such a way.

4. Conclusion

In conclusion, the reformatory theory of punishment stands out as the most humane and effective approach, aligning with modern humanitarian ideals. While it may not be applicable to all types of crime it offers a framework for rehabilitation and prevention. The integration of various theories can provide a more comprehensive approach to justice and crime reduction.

References

- [1] Definition of Crime.
- [2] Twenty four types of crimes.
- [3] According to Hegel and Aristotle punishment is the negative reward of the criminal.
- [4] According to Bradley punishment is inflicted for the sake of punishment.
- [5] According to James Stephen – Criminal procedure is to resentment what marriage is to affection.
- [6] Both Mill and Leslie Stephen have laid great emphasis upon the elements of revenge in punishment.
- [7] John Dewey's view point given.