

Definition of corporal punishment pdf

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Punishment, by definition, involves the intentional imposition of some deprivation or suffering on individuals against their wills.¹ Westmarck has stated, punishment is a suffering which is inflicted upon the offender in a way which is definite by or in the name of society of which he is a member, either permanent or temporary. It can be said that the purpose or the aim of any punishment is to neutralise the effect of the wrongful act of the offender. The concept of punishment has five theories, namely, The Deterrence Theory This theory suggests that the punishment which is awarded is to deter (stop) people from committing crimes. The Preventive Theory The purpose of the preventive theory is of preventing a crime by disabling the criminal. The preventive mode of punishment can be classified in the following manner; 1. By instilling the fear of punishment 2. By disabling the criminal, permanently or temporarily, from committing any other crime 3. By way of reformation and/or re-education Example: By awarding death penalty or by way of imprisonment. The Reformatory Theory The purpose of the reformatory theory is to strengthen the character of man as there exist a conflict between the character and motive of the man who has committed the crime. The preventive theory establishes punishment as curative. Example: Punishment by the method of rehabilitation Case: In the case of Musa Khan v. State of Maharashtra², it was held by the Supreme Court that the purpose of any social legislation and is to reform juvenile offenders. A reformatory system will prevent juvenile offenders from becoming hardened criminals. The Retributive Theory "An eye for an eye, a tooth for a tooth." This theory suggests that the criminal should pay for his or her crime. This theory further prevents private vengeance as the State inflicts pain or injury on the wrong-doer for the crime he has committed. The moral satisfaction obtained from the punishment is given importance. The Compensation Theory This theory establishes that the object of punishment should not only be to prevent crimes prospectively but to compensate the victim as well. Example: Fine as a form of punishment. Case: In the case of Hari Kisan,³ the Supreme Court awarded compensation of Rs. 50,000 as punishment. In another case of Hari Singh v. Sukhbir Singh,⁴ the Supreme Court observed that the power of Courts to award compensation is in addition and not ancillary to other sentences. This power is intended to reassure the victim that they are not forgotten in the justice system and is also to some extent a constructive approach to crimes. Brief history The concept of deterrence theory can be traced back to the works of philosophers such as Thomas Hobbes, Cesare Beccaria and Jeremy Bentham. These social contract thinkers provided the foundation for modern deterrence theory in criminology.⁵ Hobbes talked about the deterrence theory in context to his proposed theory of social contract, he stated that individuals are punished for violating the social contract and deterrence is the reason for it as it strikes a balance to the agreement made. Cesare Beccaria while discussing about punishments was of the view that the proportion of the crime and punishment should be equal for it to serve a deterrent purpose or have a deterrent value. Bentham was of similar view as Beccaria, he did not believe in excessive punishment as a method of deterrence. The theory of deterrence was further evolved during the period of the Cold War and during the 1970s when academicians started viewing the theory as a means to solve crime rather than as an explanation. The Deterrence Theory "The end of punishment, therefore, is no other than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence." Cesare Beccaria Of Crimes and Punishments To deter means to stop or to discourage. The deterrence theory of punishment suggests that punishment is awarded to stop crime. The key factor of deterrence theory of punishment can be said to be fear. The state aims at deterring crime by creating fear, the objective is to set an example for the individuals by punishing the criminal. In the case of State Of H.P v. Nirmala Devi⁶, it was observed that, the purpose of sentencing is that if a particular crime against the society is a heinous crime, then the theory of deterrence becomes more relevant as a rationale for punishing the offender. It becomes the duty of the State to punish the offender when the offences against the society. It was further stated that, when it comes to sentencing a person for committing a heinous crime, notwithstanding the other theories of punishment, the deterrence theory is more relevant in terms of a heinous crime as in such cases mercy, compassion and forgiveness becomes secondary. The theory of deterrence consists of three components, derived from the works of Hobbes, Beccaria, and Bentham. The three components are, severity, certainty, and celerity. a. Severity: Severity implies the degree of the punishment. Excessively severe punishments are unjust. If the punishment is too severe it may stop individuals from committing crimes. Beccaria was of the view that excessive severity of punishment will in contrast to the above statement, lead to an increase in crime. And if the punishments are not severe enough, they will not serve the purpose of deterring crime. b. Certainty: Punishment should exist whenever a crime is committed. Individuals will deter from committing crimes if they know their criminal acts will be punished appropriately. c. Celerity: The punishment for the crime must be given in a swift manner. The faster the punishment is awarded and imposed, the more effect it has in deterring crime. Hence, the classical theory suggests that punishments should be swift, certain, and proportionate to the crime so as to appropriately deter or stop individuals from violating the law which has been laid down.⁷ In the case of Phul Singh v. State of Haryana,⁸ a 22 year old man raped a 24 year old girl in broad day-light. Four years rigorous imprisonment was awarded to him by the Sessions Court. Further in appeal, the High Court confirmed the sentence given by the Sessions Court. But the sentence was reduced to two years rigorous imprisonment by the Supreme Court. The Supreme Court held that, incriminating company of criminals for a long period of time may be counter-productive. With this view the Supreme Court blended deterrence with correction, and reduced the sentence to rigorous imprisonment for two years rather than four years. General and Specific Deterrence The theory of deterrence can be classified into two categories, general and specific. General deterrence implies deterrence in context of the general public, who have not yet indulged in criminal activities. The deterrence theory serves as an example to the general public of the consequences of committing crime by creation of fear. Example: Capital punishment and corporal punishment can be examples of general deterrence. Specific deterrence as the name suggests, is deterrence for the specific individuals who have committed the crime. It stops criminals from committing any prospective crimes. The proportionality between pain and pleasure must be maintained for effective punishment. Frequently Asked Questions 1. What is the status of deterrence theory and capital punishment in context of India? Capital punishment implies death penalty which is a form of the deterrence theory; it inculcates both types of deterrence, general and specific. When death penalty is awarded to an individual, it sets an example by creating fear in the society and stops the individual from committing any prospective crime. In India, death penalty is awarded in the rare of the rarest cases. Though, a number of death penalties have been awarded, only 4 death row prisoners have been executed till date from the time of independence. Hence, it can be said that the theory of deterrence hence hasn't fulfilled its purpose in context of capital punishments in India. 2. Why does the deterrence theory believe that individuals are rational actors? One of the functions of the deterrence theory is to set an example in the minds of individuals by punishing the criminal and creating fear. The deterrence theory believes individuals in a society to be rational enough to inculcate the example of punishment to a criminal and not commit the same crime. 3. Does the theory of deterrence provide justice? The main objective of the theory is to stop or deter individuals from committing crime either generally or specifically. To deter the individuals from committing prospective crimes, punishments are awarded to the individuals. If the punishment is in proportion to the crime committed, justice is provided. 4. What are the two sides of severe deterrence? There has to exist a proportionality between the crime committed and the punishment awarded, which implies that the punishment awarded should not be less or more than the degree of crime. If the punishment for the crime committed is extremely severe or more severe than what is required, two situations may occur. The first situation may be that the theory of deterrence may be successful in inculcating fear by the way of extremely severe punishment. The second situation which may take place may be in complete contrast of the first, where the deterrence theory fails due to extremely severe punishment as extremely severe punishments may lead to an increase in crime. 5. Is the deterrence theory of punishment related to any jurisprudential school of thought? The theory of deterrence can be linked to the sociological school of jurisprudence. The sociological school establishes a relationship between the society and law. It states law to be a social phenomenon with a direct and/or indirect connection to society. One of the main objectives of the deterrence theory is to create an example for the individuals in the society by creating fear of punishment. Edited by Shikhar Shrivastava Approved & Published – Sakshi Rajee References 1. Scheid, D. 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