

CONCEPT OF CRIME AND THEORIES OF PUNISHMENT

*Neelam

Abstract

The concept of crime is of ancient origin. In ancient times there was a general presumption among people that a person commits crime only when he had some demonic possession over him. With the advancement of time, these superstitions and myths came to an end and brought a new concept of crime into picture. Crime is an act which is done against society or we can say that some actions which are prohibited by law is crime. Crime is a changing concept which is not easy to define in a single definition. The sanctions imposed by law against the crime is punishment. There are various modern theories of punishment under our criminal justice system like deterrence, retributive reformatory, preventive and expiatory. The researcher wants to discuss all these theories in detail in the paper with respect to their applicability in the present context.

Keywords: - *Demonic possession, Deterrence, Retributive, Expiatory, superstitions etc.*

Introduction

The concept of crime is basically concerned with the conduct of individuals in the society. It has been with us in varying degrees since time immemorial. This changing concept of crime is dependent upon the social evolution of the human beings in the world. In ancient times, the people living in primitive societies, don't even know the difference between tort and crime. They believed in theory of "Demonology" which means that only a person who had demonic possession' will commit crime otherwise not. In other words, we can say that if the actions of a person are controlled by some external power or force, only then he will commits crime. At that time, theory of mutual trust our belief prevailed. With the changing times, all these superstitions and myths came to an end. The entry of new crimes were came into picture. With the increasing greed of money, power, luxurious life etc. people stated committing crimes. Modernization, urbanization, and with new technological advancements, the crime is spreading all over the world. As our 21st century is also known as "Hi-Tech" World, so with the increasing use of computers, people also started committing computer related offences like cyber stalking, cyber-terrorism, cyber voyeurism, online sexual harassment. The one of the major factor responsible for the increasing of these cyber crimes is that the offender is

very difficult to be find out or traced by the investigative agencies & thus feel safe. No doubt information and Technology Act, was passed in 2000 for curbing down this evil. But still, a proper & strict implementation is required. One more challenge in front of institutions working for curbing down this menace is that a crime in one country may not be a crime in another. This easily gives a way to offenders from escaping their liability. It creates a serious problem and the real culprit is always for from fetters.

If we talk about the concept of punishment and how far it is helpful in eradicating crime from society, it is a question of great concern. A little effort has been made by the researcher in sought out this problem of crime with special reference to punitive approach.

Definition of Crime:

Crime is anti social act. It is not easy to define crime. In primitive societies, certain norms, beliefs, customs and traditions were followed by the people and accepted them as conducive to their well being and healthy development. The violations of these traditions and customs were termed as antisocial behaviour. Majority of philosophers have defined ‘crime’ in their own words and with their own perceptions. Crime, is any form of conduct which is declared to be socially harmful in a state and which is forbidden by the law under pain of some punishment.

In the words of Tappan :-

“Crime is an intentional act or omission in violation of criminal law, committed without any defence or justification and penalized by the law as felony or misdemeanor.”

In the words of Cross and Jones :

“Crime is a legal wrong the remedy for which is punishment of the offender at the instance of the state.”

In the words of Blackstone :

“A crime is an act committed or omitted, in violation of a public law either forbidding or commanding it.”

In the words of Halsbury :

“Crime is an unlawful act which is an offence against the public and the perpetrator of that act is liable to legal punishment.”

Characteristics of Crime :

Crime is a social phenomenon. There are some characteristics of crime which are as follows :-

- 1) There should be an act or omission to constitute a crime. Only guilty mind/intention is not punishable unless it is followed by some external act.
- 2) Mens-rea is one of the essential ingredients of crime. It may be direct or implied.
- 3) The act should be prohibited or forbidden under any existing law.
- 4) That act should also be punishable under any existing law of state.

Classification of Offences:-

- (i) Cognizable or non-cognizable offence
- (ii) Bailable or Non-Bailable offence

The ideology behind such classification of offences are given below :-

- (a) To determine whether police can arrest a person without warrant or not.
- (b) To determine whether an arrested person has a right to be released on bail or it is the discretion of the court to release the arrested person on bail.
- (c) To find out which court has jurisdiction to try the offence.

Concept of Punishment:

It is a primary function of all civil states to bring the offenders to justice. The important issue is whether a criminal is to be regarded by society as a nuisance to be abated or an enemy to be crushed or a patient to be treated or a refractory child to be disciplined? The criminal justice system is to protect the society against criminals by punishing them under the existing penal law. Punishment has the following features:-

- It involves the deprivation of certain recognized rights considered unpleasant.
- It is consequence of an offence.
- It is applied against the offender of the law.
- It is applied by an organ of the system that made the act an offence.

The punishment can be used a method of reducing the incidence of criminal behavior either by deterring the potential offenders or by preventing them from repeating the offence or by reforming them into law abiding citizens.

Modern Theories of Punishment:

It is a function of the State to punish Criminals. There were no strict rules for punishment and the quantum and extent of punishment mainly depends on the king or the ruler in the past. The kind of punishment to be imposed on the criminal depends or it influenced by the kind of society one lives in. The main aim of the different theories of punishment is to transform the law breakers into law abiders.

The different theories of punishment are as follows:-

- Deterrent Theory
- Retributive Theory
- Preventive Theory
- Reformatory Theory
- Expiatory Theory

Let us discuss all these theories in detail one by one.

(a) **Deterrent Theory:** The primitive methods of punishments believe in the fact that severe punishments inflicted on the offender, would deter him from repeating the crime. The term “Deter” means to abstain from doing an act. The ideology behind this theory is to prevent the criminals from doing the crime or repeating the same crime in future. This theory believes that to eradicate crime from the society, it is very important to create fear in the mind of criminal and society too. Those who commit a crime, it was assumed, derive a mental satisfaction or a feeling of enjoyment in the act. To neutralize this inclination of mind, punishment inflicts equal quantum of suffering on the offender so that it is no longer attractive for him to carry out such committal of crimes. Jermy Bentham as the founder of this theory believes that when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to the society. He also believes that the punishment inflicted on the individual becomes a source of security for all. Bentham’s theory of pain and pleasure firmly believes that while a person goes on seeking pleasure, he also takes steps to avoid pain. Deterrent theory believes in giving exemplary punishment through adequate penalty. This theory has proved effective in ancient times, even though it has certain defects.

(b) Retributive Theory: Mahatma Gandhi said that – “an eye for an eye would turn the whole world blind.” This theory of punishment is based on the principle- “An eye for an eye, a tooth for a tooth.” The most stringent and harsh of all theories, this theory believes to end the crime in itself. Retributive theory underlines the idea of revenge and vengeance rather than that of social welfare and security. By inflicting punishment on the criminal, it is a general perception among people, that it provides some kind of solace to the victim or to the family members of the victim. J.M. Finnis argues in favour of retributism by mentioning it as a balance of fairness in the distribution of advantages and disadvantages. Sir Walter Moberly said, “Punishment serves to express and to satisfy the righteous indignation which a healthy community treats as transgression. As such it is an end in itself.” Retribution could also be said to be the ‘natural justification’, in the sense that man thinks it quite natural and just that a bad person ought to be punished and a good person rewarded. However, in the present context, this theory is severely criticized by modern day penologists on the ground that this theory is not practicable on humanitarian grounds. It only takes revenge from the criminal but not supports the reformation of the criminal.

(c) Preventive Theory: This theory of punishment aims to prevent the crime rather than avenging it, unlike the former theories. It is assumed that while sending the criminals to the prisons, the society in turn trying to prevent the offender from doing any other crime and thus protecting the society from anti-social elements. Bentham supports this theory because of its humanizing effect on criminal law. The followers of crime by prisonisation. This theory recognizes imprisonment as the best mode of punishment because it serves as an effective deterrent as also a useful preventive measure. Preventive theory can be explained in the context of imprisonment as separating the criminals from society will automatically prevent the commission of crime by the criminals in future. However, the prison system of present context is fallout of this theory.

(d) Reformatory Theory: Reformatory theory is based on the principle of reforming the criminals or offenders. This theory did not consider criminals as inhuman and put forward the changing nature of the modern society. “Condemn the sin, not the

sinner”- this phrase is best suited to the reformatory theory as said by Mahatma Gandhi. This theory uses social economic, physical and psychological methods in bringing a change in the minds of the criminals.

The process of reformation is just like a surgeon operating on a person to remove his pain. This theory considers crime as a disease which can be cured only by treating it. The exponents of this theory believe that a wrongdoer stay in prison should be serve to re-educate him and to re-shape his personality in new mould. Thus, the main ideology is to try to bring about a change in the personality and character of the offender, so as to make him a good human being. However, this theory is not much practicable in a country like India, where in every second crimes are committed. It means that it is not possible to bring about a change in the behavior of the criminals where they consider crime as a part of their daily routine.

E) Expiation Theory: Expiation means ‘compensation’. The main ideology behind this theory is that the wrongdoer has to pay for his sin. If the wrongdoer expiates or repents, he must be forgiven. The penologists who believe in this theory are of the view that an offender of law should be reclaimed back to the society as good person by giving him the opportunity to reform from within at his own initiative. The concepts of compounding of offences under section 320 Cr. PC and plea Bargaining under section 265 Cr. PC are near to the principles of expiation theory.

The release of offender after admonition, release on probation, sentence of community service, provisions relating to compensation to the victims of crime out of the wages earned by the offender by working in the prisons and imposing of fines on the offenders are some of the tools of expiation theory. However, this theory is practicable and sounds effective in petty offences. In severe offences, compensation did not provide justice to the victim or family members.

Conclusion: After discussing the concept of crime and theories of punishment in detail, the researcher came to the conclusion that crime and punishment both are related with each other. If crime is committed by a criminal, then punishment should also be inflicted on him. Basically, the criminal Justice system of India adopts the concept of punishment as enshrined under various provisions of Penal Code. Various types of

punishments are given under Indian Penal Code, 1860. Death penalty, Life Imprisonment, Imprisonment of some years, imposition of fine etc. are some of the punishments to be inflicted on the offender. However, Death penalty is inflicted only in rarest of rare case as like in rape cases, brutal murder etc. The reason for this is that our criminal justice system is based on the view that punishment should fit to the crime and criminal too. On humanitarian grounds, it is generally believed that infliction of punishment is not for torturing a human being, but to create a deterrence in the mind of criminal and society or to reform the offender or to prevent the reoccurrence of crime. Our Indian criminal Justice system inflicts punishment on the offender so that there should be peace and harmony in the society. It is a common perception that some kind of sanctions should be imposed in case of violation of law. These sanctions are also known as punishment. Our constitution firmly believes in guarnting certain rights to all but, it doesn't mean that while exercising your rights, you violates the rights of others. Rights and duties are to be followed simultaneously. It 'A' has right to life, simultaneously law imposed a duty on A to protect other's life too. If he fails, then punishment should be inflicted on him. At last, the researcher concluded that various theories of punishment like Deterrence, Retributive, preventive, reformative, expiation are of limited application in the present era in totality and our criminal justice system is basically based on the approach taken in the preventive, reformative theories and in some cases like compounding of offence expiation theory too.

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