



**FACULTY OF JURIDICAL SCIENCES**

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# Lecture-9



## Deterrent Theory of punishment

In Deterrent theory of punishment, the term “DETER” means to abstain from doing any wrongful act. The main aim of this theory is to “deter” (to prevent) the criminals from attempting any crime or repeating the same crime in future. So, it states that deterring crime by creating a fear is the objective; to set or establish an example for the individuals or the whole society by punishing the criminal. That simply means, according to this theory if someone commits any crime and he/she is punished by a severe punishment, then, it may result maybe that the people of the society will be or may be aware of the severe punishments for certain kinds of crimes and because of this fear in the minds of the people of the society, the people may stop from committing any kind of crime or wrongful act. Here I used the phrase “*may stop*” instead of “*will stop*”. That means, there is a probability of committing any crime or repeating the same crime.

The deterrent theory of punishment is utilitarian in nature. For a better understanding we can say like, ‘The man is punished not only because he has done a wrongful act, but also in order to ensure the crime may not be committed.’ It is best expressed in the word of Burnett, J who said to a prisoner:

*“Thou art to be hanged not for having stolen a horse, but in order that other horses may not be stolen”.*

Through making the potential criminals realize that it doesn't pay to commit a crime, the deterrent theory hopes to control the crime rate in the society.

Jurisprudential School of Thought:

The deterrent theory can be related to the sociological school of Jurisprudence. The sociological school creates a relationship between the society and law. It indicates law to be a social phenomenon, with a direct and/or indirect connection to society. One of the main aim of the deterrence is to establish an example for the individuals in the society by creating a fear of punishment.

*Now most important question is arrived at; "Who established this deterrent theory of punishment?"*

The concept of deterrent theory can be simplifying to the research of philosophers such like Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794), Jeremy Bentham (1748-1832). These social contract thinkers provided the foundation of modern deterrence in criminology.

In the *Hobbesian* view, people generally pursue their self-interests, such as material gain, personal safety and social reputation and make enemies, not caring if they harm others in the process. Since people are determined to achieve their self-interests, the result is often conflict and resistance without a fitting Government to maintain safety. To avoid, people agree to give up their egocentricity as long as everyone does the same thing, approximately. This is termed as "Social Contract". According to this social contract, he stated that individuals are punished for violating the social contract and deterrence is the reason for it to maintain the agreement between the State and the people, in the form of a social contract workable.

According to *Cesare Beccaria*, while discussing about punishments, the proportion of the crime and punishments should be equal for it to serve as a deterrence or have a deterring value.

According to *J. Bentham*, who is known as the founder of this theory, a hedonistic conception of man and that man as such would be deterred from crime if punishment were applied swiftly, certainly, and severely. But being aware that punishment is an evil, he says, if the evil of punishment exceeds the evil of the offence, the punishment will be unprofitable; he would have purchased exemption from one evil at the expense of another.

From the deterrent theories of Thomas Hobbes, Cesare Beccaria and J. Bentham, we came to know that the theory of deterrence consists of 3 major components. They are as follows:

- *Severity*: It indicates the degree of punishment. To prevent crime, criminal law must emphasize penalties to encourage citizen to obey the law. Excessively severe punishments are unjust. If the punishment is too severe it may stop individuals from committing any crime. And if the punishment is not severe enough, it will not deter criminals from committing a crime.
- *Certainty*: It means making sure that punishments must happen whenever a criminal act is committed. Philosopher Beccaria believed that if individuals know that their undesirable acts will be punished, then they will refrain from offending in the future.
- *Celerity*: The punishment for any crime must be swift in order to deter crime. The faster the punishment is awarded and imposed, it has more effect to deter crime.

Therefore, deterrence theorists believed that if punishment is severe, certain and swift, then a rational person will measure the gain or loss before committing any crime and as a result the person will be deterred or stopped from violating the law, if the loss is greater than the gain.

According to Austin's theory, "Law is the command of the Sovereign". In his imperative theory, he clearly declared three important things, which are as follows:

1. Sovereign.
2. Command.
3. Sanction.

Austin's question is that 'Why do people follow the rule?'. He believes that people will follow the law because people have a fear of punishments. On the basis of his beliefs, we can see a small example over here: When people are biking, they wear a helmet as per biking rules. Now, we can assume that some people wear helmets genuinely to save themselves from road accidents but on the other hand, some people wear helmets because of escaping fines or in fear of cancellation of their biking licence. So, in that case, they know that if they bike rashly or disobey the biking rules they will be punished by giving huge a amount of fine or their biking licence will be cancelled. So here we can say that the purpose of the deterrent theory is successful and applied also.

Now, if we go back a little earlier in time, in our *Hindu Scriptures* we also see that there were several punishments like public hanging, not only that but also people were immersed in hot oil or water. Most penal systems made use of deterrent theory as the basis of sentencing mechanism till early 19th century.

- In England, punishments were more severe and barbaric in nature to restrict same crime in the future. At the time of 'Queen Elizabeth I', deterrent theory of punishment was applied for restricting future crimes, even for too little crimes like 'pickpocketing'.
- In India also, inhuman punishments are granted.

But, if we discuss or follow this theory in today's context, then, it will be very clear that "deterrent theory" is not applicable at all or it may not be useful enough to prevent or to deter crimes by creating a fear in the minds of people. We have a very recent example of why deterrent theory is not successful in the case of "Nirbhaya Rape Case, 2012". This case is the foremost case to be mentioned while talking about deterrent theory of punishment. In this judgement, the Supreme Court sentenced four out of six offenders involved in the extremely heinous Delhi gang rape case to death. Now, the most important questions are-

- Whether the death sentence to the culprits will act as a deterrent?
- Will the number of crimes against women in our society drop down permanently?
- Specifically, in Nirbhaya judgement, is the aim of deterrent theory fulfilled?

The answers are 'no'. According to deterrent theory, the main objective is 'to deter crime, by creating a fear or establishing an example to the society.' Now, death penalty is a severe punishment. In the Nirbhaya case, the Court gave death sentence to the four convicts for committing gang rape. We can say that it is a great example for future offenders who will think about committing a crime like rape in future. So, according to this theory, after Nirbhaya judgment crimes like rape should not happen. But they are happening till now. Day-by-day, rape cases are increasing in our society.

In Nirbhaya gang rape judgement, it's being suggested that justice has finally been served to "India's Daughter" and though the decision came after a staggering seven years, it will help to secure the safety of women and prevent rape cases in the future. But it seems to further, as starting of the year 2020 has seen a slew of rape cases continue unabated. As an example, we can see for a recent gang rape case which was happened at Hathras, Balrampur, on 1st October 2020. So, simply we can see that there is no improvement through severe punishments also. "Death penalty does not act as a deter to rape cases"- This is the actual message we have understood. So

that's why we can say that in today's generation there is no major implication of 'Deterrent Theory of Punishment'.