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# Lecture-10



## Preventive Theory of punishment

Preventive theory of punishment seeks to prevent prospective crimes by disabling the criminals. Main object of the preventive theory is transforming the criminal, either permanently or temporarily. Under this theory the criminals are punished by death sentence or life imprisonment etc.

### Philosophical View of Preventive Theory:

Utilitarian's such as Bentham, Mill and Austin of England supported the preventive theory of punishment due to its humanizing nature. Philosophy of preventive theory affirms that the preventive theory serves as an effective deterrent and also a successful preventive theory depends on the factors of promptness. The proponent of this theory held that the aim of punishment is to prevent the crimes. The crimes can be prevented when the criminal and his notorious activities are checked. The check is possible by disablement. The disablement may be of different types. Confining inside the prison is a limited form of disablement, that is temporary and when it is an unlimited form of disablement, that is permanent. It suggests that imprisonment is the best mode of crime prevention, as it seeks to eliminate offenders from society, thus disabling them from repeating the crime. The death penalty is also based on this theory. This theory is another form of deterrent theory. One is to deter the society while another is to prevent the offender from committing the crime. From an overall study, we came to know that there are three most important ways of preventive punishment, they are as follows:

- By creating the fear of punishment.
- By disabling the criminal permanently or temporarily from committing any other crime.
- By way of reformation or making them a sober citizen of the society.

#### Case Laws:

1. Dr. Jacob George v state of Kerala: In this case, the Supreme Court held that the aim of punishment should be deterrent, reformatory, preventive, retributive & compensatory. One theory preferred over the other is not a sound policy of punishment. Each theory of punishment should be used independently or incorporated on the basis of merit of the case. It is also stated that “every saint has a past & every sinner has a future”. Criminals are very much a part of the society so it is a responsibility of the society also to reform & correct them and make them sober citizens of the society. Because the prevention of crime is the major goal of the society and law, both of which cannot be ignored.
2. Surjit Singh v State of Punjab: In this case, one of the accused, a policeman entered the house of the deceased with the intention to commit rape but failed to do so as the sons of the deceased shouted for help. Another accused suggested the policeman to kill the deceased. The accused was held liable under section 450 of the Indian Penal Code. While on the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

#### Reformatory Theory of punishment

The idea of the Reformatory Theory is hypothesis. As per this hypothesis, the object of discipline ought to be the change of the crook, through the strategy for individualization. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, he doesn't stop to be a person. In this way, an exertion ought to be made to change him/her during the time of his/her detainment. For example, he may have executed bad behaviour under conditions which may never happen again. Hence an effort should be made to transform him during the hour of his confinement. The object of order should be to accomplish the moral difference in the liable party. He ought to be told and perform some craftsmanship or industry during the hour of his confinement with the objective that he may have the alternative to start his life again after his conveyance from jail.

#### History of the Theory:

The human development has consistently been administered under the standard of an incomparable force. The job and type of pre-eminent force has changed throughout a long term. Beginning from the primitive type of Government to the present just, republican and different types of Governments, the obligation of the incomparable authority has changed a lot. The idea of discipline has additionally changed like the idea of State duty throughout the long term. The idea of discipline relied upon the premise of religion and the organization of the Kings. During old occasions, the idea of discipline was retributive premise, where the hoodlums were given uncouth type of discipline. Afterward, over the entry of ages, the significance of common liberties expanded which in essence cleared path for the replacement of Retributive hypothesis by Reformatory and Rehabilitative hypotheses. Under the Reformatory and Rehabilitative hypotheses, the blamed are given such structures for discipline which would change them and keep them from perpetrating such wrongdoings.

The theory of punishment being followed in India with the goal to change the crooks as opposed to rebuffing them isn't that compelling in avoidance of the event of violations in India. The

essential idea of law isn't to be static, but to be dynamic in nature. At exactly that point the law will have the option to be successful in all fields of the general public.

#### The Main Purpose Reformatory Theory:

The reason for this hypothesis of discipline is to make the criminal languish over his bad behaviour. Here the motivation behind the discipline is profoundly customized and rotates around the mental outlet of the person in question or his family. The primary reason might be accomplished to parole and probation, which have been acknowledged as current procedures of improving the guilty parties all around the globe. Consequently, the backers of this hypothesis legitimize imprisonment not exclusively to separate hoodlums and kill them from society. Not many of the advanced reformatory procedures of discipline are essentially concocted for the treatment of guilty parties as per their mental attributes, for example, probation, parole, uncertain sentence, exhortation and pardon. The reformatory techniques have demonstrated to be valuable in the event of adolescent misconduct, first wrongdoers and ladies. Sex cases additionally appear to react well to the reformatory strategy for discipline. All the more as of late, the reformatory hypothesis is in effect widely utilized as a technique for treatment of intellectually denied wrongdoers.

#### Criticism:

1. Reformatory theory anticipates better framework and offices in jail, legitimate co-appointment between various control and diligent exertion on their part to shape criminals. It requires gigantic ventures which poor nation can't bear the cost of.
2. A great many guiltless individuals who have high respects for law are finding hard to get fundamental courtesies hypothesizes moral avocation for giving better offices inside jail.

3. Also, the soundness of the hypothesis is more towards motivators for the commission of wrongdoing instead of counteraction.
4. Transformation can work out on those individuals who can be improved, there are individuals who can't be changed like bad-to-the-bone lawbreaker, profoundly instructed and proficient hoodlums.
5. This theory disregards possible wrongdoers and people who have submitted wrongdoing however not inside the arms of law. Further, it ignores the cases of survivors of violations.
6. Degenerate social ecological is liable for wrongdoing yet not person duty, is the way of thinking of reformative which is difficult to process. In any case, it is out of line to excuse the honourable idea of reconstruction as a complete disappointment. All know about the occasions where untalented, uninformed and evidently hopeless lawbreakers have created aptitudes in jail, which have changed them into profoundly valuable people.

### Utilitarian Theory of punishment

The utilitarian hypothesis of discipline tries to rebuff guilty parties to debilitate, or “hinder,” future bad behaviour. Under the utilitarian philosophy, laws ought to be utilized to amplify the joy of society. Since wrongdoing and discipline are conflicting with bliss, they ought to be kept to a base. Utilitarian's comprehend that a wrongdoing-free society doesn't exist, yet they attempt to incur just as much discipline as is needed to forestall future violations.

The utilitarian hypothesis is “consequentialist” in nature. It perceives that discipline has ramifications for both the wrongdoer and society and holds that the all-out great created by the discipline ought to surpass the absolute malevolence. At the end of the day, discipline ought not be boundless. One delineation of consequentialism in discipline is the arrival of a jail detainee

experiencing an incapacitating sickness. In the event that the detainee's demise is fast approaching, society isn't served by his proceeding with restriction since he is not, at this point fit for carrying out wrongdoings.

Under the utilitarian way of thinking, laws that indicate discipline for criminal leads ought to be intended to dissuade future criminal direct. Discouragement works on a particular and an overall level. *General discouragement* implies that the discipline ought to keep others from carrying out criminal acts. The discipline fills in as an illustration to the remainder of society, and it advises others that criminal conduct will be rebuffed. *Explicit discouragement* implies that the discipline ought to keep similar individual from perpetrating violations. Explicit prevention works in two different ways. Initially, a guilty party might be placed in prison or jail to truly keep her from perpetrating another wrongdoing for a predefined period. Secondly, this crippling is intended to be undesirable to such an extent that it will demoralize the guilty party from rehashing her criminal conduct.

Does Utilitarian Theory Support Death Penalty:

The apparent seriousness of capital punishment, there has been an exceptional debate encompassing the issue. Rivals of capital punishment pronounce that it is savage and harsh thus the administration ought to get rid of it. Then again, its allies keep up that capital punishment is a fundamental type of discipline that ought to be utilized on the most horrible guilty parties in the public eye. The exceptionally captivated discussion on capital punishment has kept on existing for quite a long time. Moral hypotheses can be utilized to concoct an answer for this exceptionally dubious issue. Morals figure out what is the correct strategy in a given circumstance. Various strong moral hypotheses have been proposed by researchers and scholars throughout the long term. This paper will utilize one of the most broadly applied moral hypotheses, which is utilitarianism, to exhibit that capital punishment is for sure legitimized.



## Review of the Utilitarian Theory:

From a utilitarian viewpoint, activities that advance the satisfaction of the larger part in the public arena ought to be sought after while those that prevent this bliss ought to be evaded. The utilitarian hypothesis can be applied to the issue of the death penalty since this type of discipline produces both positive and negative results.

## Net Benefits:

The principal significant advantage offered by capital punishment is that it assumes a huge discouragement job. The most significant objective of the criminal equity framework is to debilitate individuals from taking part in wrongdoing.

This is accomplished by joining disciplines to violations with the goal that an individual sees the benefits of taking part in unlawful activities as being exceeded by the results. In that capacity, an ideal society would be one where nobody is rebuffed since the danger of discipline shields everybody from taking part in wrongdoing. Capital punishment is the most extreme discipline and its accessibility is probably going to dissuade individuals who probably won't be frightened by long jail sentences.

From a utilitarian point of view, the prevention job is moral since it adds to the general satisfaction of the general public. At the point when crooks are deflected from participating in wrongdoing, the general public is more secure and individuals appreciate the harmony and security in their networks.

Another huge advantage offered by capital punishment to the general public is that it prompts the perpetual debilitation of the indicted individual. Not at all like different types of discipline which

just confine a portion of the opportunities of the guilty party, capital punishment removes his life.

## Conclusion

Thus, we saw the different Theories of Punishments in detail. We understood what are the guiding principles behind them, how are they different from one another and some very important Case Laws pertaining to the same. However, we need to understand very clearly that punishment is something which should be inflicted very carefully. As the famous saying goes that *'Let go of a hundred guilty, rather to punish an innocent'*, we need to understand that inflicting a punishment upon someone changes his mental, physical and social status drastically. It has a very grave impact upon him and his being. Thus, while administering criminal justice, utter carefulness has to be executed, or else the very principles of justice would go for a toss.