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Concept of Deterrent Theory

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ABSTRACT

The article is about the concept of the Deterrent theory of Punishment. It means that severe punishment should be set for a crime so that it put fear in the minds of the people so the crime is not repeated again. It helps in deterring/reducing the attempt of committing any crime. This concept is simplified by authors like Thomas Hobbes, Cesare Beccaria, and Jeremy Bentham. All the different theories and introductions given by these philosophers 3 components came into knowledge namely Severity, Certainty, and Celerity. This theory is divided into three categories called General deterrence, Specific Deterrence, and Incapacitation. Case laws like the Nirbhaya gang rape case, Phul Singh v. State of Haryana, Ballo alias Balveer v. the State of Rajasthan, and State of HP v. Nirmala Devi. I have read all theories of punishment and to know more and understand this particular theory I have researched and wrote this article. After reading several articles and research papers and reading about these tough and severe punishments used in different countries, I found out that this theory has no implication in this modern world. Just because of the laws of different countries many innocents are punished with the guilty ones.

I. INTRODUCTION

In the Deterrent theory of punishment, the term “deter” means to abstain from doing any wrongful act. The main aim of this theory is to “deter” the criminals from attempting any crime or repeating the same crime in the future. So, it states that deterring crime by creating 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 with severe punishment, then, it may result 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.²

The deterrent theory of punishment is utilitarian in nature. We can say, ‘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:

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² Theories of punishment- a thorough study, <https://blog.ipleaders.in/theories-of-punishment-a-thorough-study/>

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

This theory says that people don't commit crimes because they are afraid of getting caught - instead of being motivated by some deep moral sense. According to deterrence theory, people are most likely to be dissuaded from committing a crime if the punishment is swift, certain, and severe.³ For example - John broke into someone's car at the mall and stole all of the electronics out of it. He is convicted of the crime by a jury, and sentenced to lose his right hand by amputation. Marcus – who has stolen from vehicles before – hears of John's severe punishment, and decides it is simply not worth it to steal things, for fear of receiving the same punishment.

II. HISTORY

The concept of the deterrent theory is simplified by philosophers like Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794), and Jeremy Bentham (1748-1832). An essay, *On Crimes and Punishments (On Crimes)*, written in 1764 by the Enlightenment philosopher Cesare Beccaria, and Jeremy Bentham's *An Introduction to the Principles of Morals and Legislation (Introduction to the Principles)*, published in 1789. Although Beccaria is often cited as the founder of the classical school of criminology, *On Crimes* does not really contain a fully developed theory of crime as much as Bentham's does.

In Thomas Hobbes's 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 this, people agree to give up their egocentricity as long as everyone does the same thing, approximately. This is termed a “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 maintaining the agreement between the State and the people, in the form of a social contract workable.⁴

Beccaria's *On Crimes* is best thought of as a collection of principles that an enlightened ruler might use to make the administration of his legal system more systematically rational and therefore, Beccaria would argue, efficient. Nevertheless, the essay does contain discussions about the characteristics of punishment that form the foundation of deterrence theory. According to Cesare Beccaria, while discussing punishments, the proportion of the crime and

³ <https://study.com/academy/lesson/deterrence-theory-of-punishment-definition-effect-on-law-obedience.html>

⁴ Thomas Hobbes's Theory of Crime and Punishment,

https://qmro.qmul.ac.uk/xmlui/bitstream/handle/123456789/23267/Gutnick_Allen_S_PhD_final_300816.pdf?sequence=1&isAllowed=y

punishments should be equal for it to serve as deterrence or have a deterring value. In *On Crimes and Punishment*, Chapter 41 is entitled “How to Prevent Crimes,” and Beccaria began this chapter with the observation that “it is better to prevent crimes than to punish them.” In the first forty chapters, he had already fully explained how crimes can be prevented. Crime can be deterred by the threats provided by an analytical and adequate legal system of punishment, the structure of which makes up the first forty chapters of *On Crimes*.

Bentham’s *Introduction to the Principles* contains a more fully articulated theory of crime that provides a better foundation for a rational choice theory of crime. 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 evil, he says, if the evil of punishment exceeds the evil of the offense, the punishment will be unprofitable; he would have purchased an exemption from one evil at the expense of another.

In Chapter 7, he explained that “the general tendency of an act is more or less pernicious, according to the sum total of its consequences: that is, according to the difference between the sum of such as are good, and the sum of such as are evil.”

In subsequent chapters, Bentham discussed the characteristics of pleasure and pain and, in the process, developed a theory much broader in scope than a strict version of deterrence theory. Utility for individuals, then, is the net difference between the benefits and costs of actions; among alternative courses of action, the individual will choose that which has the greater sum of benefits over costs. —a theory that resembles what a century later would be called rational choice theory in criminology. He stated in the third chapter, that there are four general sources of pleasure and pain: physical, political, moral or popular, and religious. As one can see, in discussing this very diverse variety of pleasures and pains that ultimately determine the utility of one’s actions, Bentham developed a substantially more general theory of behaviour in *Introduction to the Principles* than Beccaria did in *On Crimes*. In addition to the pains presented by legal punishments, Bentham’s theory includes a host of informal sanctions, imposed by the self and social others, in addition to a wide consideration of the specific pleasures that can be experienced by criminal behaviour, not under the direct control of legal authorities. With respect to crime, an example of physical pleasure would be the feeling of exhilaration or “high” one gets from using drugs; an example of physical pain would be getting shot by a homeowner when trying to break into her house at night. Political pain would include the stock of legal sanctions used by authorities. Examples of the moral or popular pleasure and pain of criminal conduct include, respectively, the sense of prestige and reputation that one might get from some as a

result of being involved in crime and the blast of censure and approbation received from more conventional others. Religious pleasure consists of the sense of a rewarded afterlife for good conduct, and pain consists of the anticipation of damnation.⁵

III. COMPONENTS OF DETERRENT THEORY

From different Deterrent theories of different philosophers, it was seen that the theory of deterrence consists of 3 major components.

- **Severity:** It indicates the degree of punishment. To prevent crime, criminal law must emphasize penalties to encourage citizens 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. In Singapore, Indonesia, Malaysia, and some African countries caning can be ordered for those who have committed kidnapping, robbery, drug abuse, vandalism, rioting, and sexual abuse. The pain is beyond excruciating.

- **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. For example, in 2016 when a 14-year-old schoolgirl was gang raped in Indonesia, President Joko Widodo introduced a series of tough punishments for child sex offenders. Like the death penalty and chemical castration and electronic tracking after the release of the convicts.

- **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 the effect on deterring crime.⁶

There is a widely-held assumption in the literature that the three deterrence elements have differential effects on the expected cost of punishment. Many existing empirical deterrence studies allow us to draw the inference that the magnitude of the effect of the certainty of punishment, particularly the probability of arrest, is greater than that of the effect of the severity of punishment (Eide, 1994; Witte, 1983).

The disagreement regarding the differential roles of certainty and the severity of punishment divides scholars into three general groups. At one extreme, there are deterrence analysts who would have us believe that the severity of punishment is of little consequence (Eide, 1994; Decker and Kohfeld, 1990; Witte, 1983).

⁵ How Much Do We Really Know About Criminal Deterrence?

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7363&context=jclc>

⁶ Theories of punishment, <https://blog.iplayers.in/theories-of-punishment-a-thorough-study/>

In the middle, there are theorists and analysts who tell us that severity is relatively less important than the certainty of punishment (e.g., Becker, 1968; Ehrlich, 1973). At the other extreme, there are those scholars who believe the elements should be equally important (e.g., Chambliss, 1966; Tittle, 1969; Gibbs, 1968; Gray and Martin, 1969; Antunes and Hunt, 1973; Logan, 1972; Grasmick and Bryjak, 1980; Mendes and McDonald, 2001).

Among the authors of this last group is Gordon Tullock (1974, p.107), who questions “whether the severity of the sentence or the likelihood that it will be imposed is more important in deterring crime.”⁷

IV. CATEGORIES

Deterrence is divided into three different categories.

❖ **General Deterrence:** - The approach based on general deterrence aims to dissuade others from following the offender’s example. It is also referred to as “indirect deterrence,” which focuses on the prevention of the crime itself, rather than on the individuals who have committed it. General deterrence theory is rooted in the idea that the public can be discouraged from committing crimes by preying on their fears. People are afraid of breaking the law because they fear the consequences they will suffer as a result. More specifically, when an example is made of someone who has committed a crime, those who fear receiving a similar punishment will be discouraged from doing the same thing.

❖ **Specific Deterrence:** - Specific deterrence focuses more on the individual who committed the crime, rather than on the crime itself. It is directed at the person being punished: it aims to teach him not to repeat the behaviour. The aim of specific deterrence is to discourage the individual from committing crimes in the future. This is done by imparting to him an understanding of the consequences that will undoubtedly obstruct his illegal activity. When it comes to sentencing an individual, a judge will ideally impose a sentence that will achieve the goals of both specific deterrence and general deterrence. That way, the punishment will not only discourage the individual from committing another crime in the future, but it will also discourage others from committing the same or a similar crime.⁸

❖ **Incapacitation:** - Incapacitation refers to the act of making an individual “incapable” of committing a crime—historically by execution or banishment, and in more modern times by execution or lengthy periods of incarceration. Incapacitation focuses less on rehabilitating the individual who committed the crime, and more on taking away his capability to commit another

⁷ Certainty, Severity, and their Relative Deterrent Effects: Questioning the Implications of the Role of Risk in Criminal Deterrence Policy

⁸ <https://legaldictionary.net/general-deterrence/>

crime in the future. Most instances of incapacitation involve offenders who have committed repeated crimes (multiple recidivists) under what is known as habitual offender statutes, which permit longer-than-normal sentences for a given offense.⁹

V. CASE LAWS

Phul Singh v. State of Haryana¹⁰: In this case, 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 an 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.

Nirbhaya gang rape¹¹: In this case, the Court gave the death sentence to the four convicts for committing gang rape. 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. We can say that it is a great example of future crimes like this. So, according to this theory, after Nirbhaya's judgment crimes like rape should not have happened. But they are happening till now. Every day we hear a new rape case happening around us, increasing the rate in our society.

Ballo alias Balveer v. State of Rajasthan¹²: here, the high court observed that a sentence or pattern of a sentence which fails to take the gravity of the offense into due account can seriously undermine the respect for the law. The sentence should not be too lenient or disproportionately severe. If the sentence is lenient, it will be a temptation for the criminals to commit more crimes and if the punishment is too harsh it won't, remain a deterring factor.

State Of H.P v. Nirmala Devi¹³: It was observed that the purpose of sentencing is that if a particular crime against 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 offense is against society. It was further stated that, when it comes to sentencing a person for committing a heinous crime, however the other theories of punishment, the deterrence theory is more relevant in terms of a heinous crime as in such cases mercy,

⁹ <https://www.britannica.com/topic/punishment/General-deterrence>

¹⁰ 1980 AIR 249, 1980 SCR (1) 589

¹¹ Mukesh & Anr v. State for NCT of Delhi & Ors. (2017) 6 SCC 1

¹² (1988) 1 SCC 696

¹³ CrI. Appeal No. 667/2017

compassion, and forgiveness become secondary.

VI. CONCLUSION

This theory is the act of punishing an individual who has committed a crime in such a manner as to warn others not to do the same, else they too will receive a similar punishment. Deterrence theory makes assumptions like knowing what the penalties for crime are, having control over their actions, thinking through, and having logical behaviour. Lots of the time, tough and severe punishment are used on innocent people. For example, in Somalia, a 13-year-old girl was buried up to her neck and stoned to death by 50 men in a stadium with 1000 spectators. After her death it was revealed, that she had been raped by three men and she was arrested after trying to report the rape to militants who controlled the city. So, at last, we can see through all these cases that the use of deterrent theory does not act as a deterrent 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 the 'Deterrent Theory of Punishment'.
