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In the Mohammedan Criminal Law, this type of punishment is called 'QISAS' or 'KISA'. Majority or Jurists, Criminologists, Penologists and Sociologists do not support this theory as they feel it is brutal and barbaric. Preventive Theory. The idea behind this theory is to keep the offender away from the society.

Theories and objectives of punishment Punishment has been a subject of debate among philosophers, political leaders, and lawyers for centuries. Various theories of punishment have been developed, each of which attempts to justify the practice in some form and to state its proper objectives. Modern punishment theories date from the 18th century, when the humanitarian movement in Europe emphasized the dignity of the individual, as well as his rationality and responsibility. The quantity and severity of punishments were reduced, the prison system was improved, and the first attempts were made to study the psychology of crime and to distinguish between classes of criminals. During most of the 19th and 20th centuries, individuals who broke the law were viewed as the product of social conditions, and accordingly punishment was considered justified only insofar as 1 it protected society by acting as a deterrent or by temporarily or permanently removing one who has injured it or 2 it aimed at the moral or social regeneration of the criminal. Retribution The retributive theory of punishment holds that punishment is justified by the moral requirement that the guilty make amends for the harm they have caused to society. Retributive theories generally maintain, as did the Italian criminologist Cesare Beccaria â€”94 , that the severity of a punishment should be proportionate to the gravity of the offense. Some retributive theories hold that punishment should never be imposed to achieve a social objective such as law-abiding behaviour in the future by the offender or by others who witness his example , while others allow social objectives to be pursued as secondary goals. Many but not all retributive theories also claim that punishment should not be inflicted on a person unless he is found guilty of a specific offense thus, they would prohibit collective punishment and the taking of hostages from the general population. Although retributive theorists do not base their justification of punishment on its possible deterrent or reformative effects, many of them agree that punishment can perform a salutary educational function. Citizens whose moral values are reinforced by court judgments may feel more strongly committed to them than previously; by contrast, they may question or feel less constrained by values that the courts visibly ignore. Without this kind of reinforcement, some retributivists argue, the legitimacy of the legal system itself may be undermined, leading eventually to general moral decline and the dissolution of society. A variation of this idea is that punishment is a kind of expiation: Utilitarian theories According to utilitarian theories, punishment is justified by its deterrence of criminal behaviour and by its other beneficial consequences for individuals as well as for society. Among several utilitarian theories recognized by criminologists, some stress general deterrence and some individual deterrence. Less concerned with the future behaviour of the offender himself, general deterrence theories assume that, because most individuals are rational, potential offenders will calculate the risk of being similarly caught, prosecuted, and sentenced for the commission of a crime. Deterrence theory has proven difficult to validate, however, largely because the presence of many intervening factors makes it difficult to prove unequivocally that a certain penalty has prevented someone from committing a given crime. Nevertheless, there have been occasional examples showing that some sentences can have a strong deterrent effect. Laws designed to prevent driving under the influence of alcohol e. Proponents of capital punishment have claimed that it serves as an effective deterrent against murder see homicide. Research in the United States , however, has shown that some jurisdictions that use the death penalty have higher murder rates than those that do not. There are several interpretations of this pattern. Some argue that use of the death penalty is a response to, but not a cause of, high murder rates, while some maintain that it has a brutalizing effect on society that increases the incidence of murder by instilling a lower regard for human life. See below Effectiveness of punishment. Another form of deterrence, known by the term denunciation, utilizes public condemnation as a form of community moral education. In this approach, a person found guilty of a crime is denouncedâ€”that is, subjected to shame and public criticism. Although denunciation is closely associated with general deterrence through fearâ€”and many courts have imposed

sentences designed to achieve both objectives simultaneouslyâ€”there is an important distinction between them. Education through denunciation is generally aimed at discouraging law-abiding citizens from committing criminal acts. Its object is to reinforce their rejection of law-breaking behaviour. Most people do not steal because they believe that stealing is dishonest; a sentence imposed on a thief reinforces that view. General deterrence through fear is aimed at those who avoid law-breaking behaviour not on moral grounds but on the basis of a calculation of the potential rewards and penalties involved. Individual deterrence Individual deterrence is directed at the person being punished: It is also the rationale of much informal punishment, such as parental punishment of children. Theoretically, the effectiveness of individual deterrence can be measured by examining the subsequent conduct of the offender. Such studies often have been misleading, however, because in most cases the only basis for proving that the offender repeated his crime is a further conviction. Because a high proportion of crimes do not result in convictions , many offenders who are not reconvicted after being punished may have committed additional crimes. Theories of deterrence and retribution share the idea that punishments should be proportionate to the gravity of the crime, a principle of practical importance. If all punishments were the same, there would be no incentive to commit the lesser rather than the greater offense. The offender might as well use violence against the victim of a theft if the penalty for armed robbery were no more severe than that for larceny. Most instances of incapacitation involve offenders who have committed repeated crimes multiple recidivists under what are known as habitual offender statutes, which permit longer-than-normal sentences for a given offense. Incapacitation is also utilized, for example, in cases involving offenders who are deemed dangerous such as those guilty of murder and likely to commit grave and violent crimes unless restrained. Given the difficulty of identifying such offenders with certainty, the principle of incapacitation is controversial. It has also been difficult to reconcile with other principles, especially those advocating equal retribution. In the U. The results were mixed, however, as the drug therapies achieved their intended purpose principally when they were used on a voluntary basis in connection with psychological treatments intended to help the offender understand and control his actions. Rehabilitation The most recently formulated theory of punishment is that of rehabilitationâ€”the idea that the purpose of punishment is to apply treatment and training to the offender so that he is made capable of returning to society and functioning as a law-abiding member of the community. Established in legal practice in the 19th century, rehabilitation was viewed as a humane alternative to retribution and deterrence, though it did not necessarily result in an offender receiving a more lenient penalty than he would have received under a retributive or deterrent philosophy. In many cases rehabilitation meant that an offender would be released on probation under some condition; in other cases it meant that he would serve a relatively longer period in custody to undergo treatment or training. One widely used instrument of rehabilitation in the United States was the indeterminate sentence , under which the length of detention was governed by the degree of reform the offender exhibited while incarcerated. At issue were cases in which this authority led to gross abuses, such as the lengthy detention of an offender guilty of only a minor crime, simply because of his inability or refusal to adopt a subservient attitude toward prison officials or other persons in positions of authority. Theories in conflict In the practical operation of a sentencing or penal system, theories of punishment often come into conflict. The operation of any sentencing system requires officials to choose between different theories in different cases; no single theory provides a system suitable for all cases. Punishment in non-Western societies Punishment in Islamic law Starting in the 19th century, most Muslim countries adopted Western criminal codes patterned after French, Swiss, or English systems of justice. In practice, however, many such punishments are mitigated by social and political constraints. Thus, a person who is caught stealing might negotiate a lenient punishment by offering to pay for the item in question, often at a much higher price. The imposition of fines is a traditional punishment that has grown more common in some areas. Murder within Islamic societies has traditionally been treated not as a crime against the people but as a dispute between family or tribal groups. Such arrangements reflect the general belief in Islamic societies that the life of the individual belongs to the group rather than to the individual himself or to society as a whole. Within many Islamic countries the extra-judicial killing of persons by members of their own families for real or perceived moral infractions has been relatively common. Murders of this type are seldom punished, particularly when they involve the alleged sexual transgressions of a female,

but when punishment is mandated , the sentences are generally light. Asia After the communists took power in China in , the chief goal of criminal punishment in the country became reform. This policy was founded, according to authoritative Chinese criminal-law textbooks, on the historical mission of the proletariat to reform society and humanity. The notion that an offender incurs a debt to society that can be paid merely by serving a prison term was alien to Chinese penology. The primacy of reform over deterrence changed in the s, when China began to decentralize sectors of its economy. The resulting economic liberalization was accompanied by substantial increases in crime, to which the government responded with a series of deterrence campaigns based on swift, certain, and public punishments. The country applied the death penalty widely, executing thousands of people every yearâ€”far more than the combined annual sum of executions occurring in other countries. Other Asian countries exhibited very different patterns. Japan maintained a very low crime rate and one of the lowest imprisonment rates in the world, though some moderate increases in the severity of punishments, including incarceration, created conditions of overcrowding in its prisons starting in the s. Singapore maintained a severe criminal code and a very high imprisonment rate despite having a very low crime rate. Indonesia, the most populous country in Southeast Asia , also imposed harsh penalties for many crimes, including the death penalty for drug trafficking. South Korea had a low crime rate and a moderate imprisonment rate, and it placed some emphasis on thought reform in its prisons. In the early 21st century Hong Kong was unique in housing the largest proportion of female prisoners worldwide: Officers of the Metropolitan Police Department in Tokyo, Japan, checking for unlawful activities such as the use of a mobile phone while driving. For example, most researchers have failed to find any systematic relationship between crime rates and imprisonment rates: Even the death penalty, as noted above, appears to do little to reduce murder rates, since most jurisdictions that use it including several U. Among Western industrialized countries, the United States has the highest murder rate and is virtually alone in using the death penalty. The state of Texas accounts for a very high proportion of all executions within the country roughly half in the early years of the 21st century , yet it has continued to experience relatively high rates of murder and violent crime. In general, criminologists believe that severe punishments are not particularly effective in reducing high crime rates. A group of people in the U.

Chapter 2 : Theories of Punishment - Overview

Governments have several theories to support the use of punishment to maintain order in society. Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory of punishment seeks to punish offenders to discourage, or "deter," future wrongdoing.

Manu and Chanakya maintained that punishment is the basis of the state. Where there is no punishment, thieves and dacoits rule supreme there. So law breakers are convicted, tried and punished in the state. Peace, law and order are maintained in the state only because of punishment. In the absence of punishment, there will be chaos, confusion and disorder in the state and the weak will be exploited and victimized by the strong. Process of punishment is essential for the smooth running of society. Following are the theories of punishment: Blood for blood is the basis of this theory. Now this right of taking revenge has been taken back by the state. In ancient times, if somebody was murdered, his relatives used to find out the murderer and kill him and thus took revenge on him. The feeling of revenge was nourished by the people from generation to generation. The relatives of the murdered persons thought it their right to take revenge and avenge his murder. The maxim blood for blood was popular in the ancient time. Such maxims are still popular in some of the tribes living in border areas between Afghanistan and Pakistan. This theory of punishment is very cruel and inhuman. It does not seem to be fit for human beings. It is fit only for uncivilized people or for animals. These days no individual enjoys the right to avenge the murder of his relative. The state conducts the trial and permits the relative to put forward their arguments and imparts justice by punishing the criminal. By this process of holding a trial and then punishing the criminal, the state attempts to appease the desire of revenge lurking in the heart of the relatives. If the individual is permitted to take revenue, this doctrine wills bad him to barbarism. Anarchy and chaos will prevail in the state. This is the reason why the state has taken this right back from the individual. Preventive and Deterrent Theory: The supporters of this theory maintain that state should give such type of punishment as will prevent crimes and teach a lesson to other criminals. Keeping this idea in view in olden times, hands and feet of the thieves and decoits were severed and they were made disabled so as not to repeat those crimes. According to this theory, the state should not take revenge but create so much terror in the mind of the criminal that others also start shunning sue ghastly and despicable crimes. This sentence makes it very clear that this theory aims at giving heavy punishment in the form of a warning to others. The supports of Reformative Theory maintain that crime is a kind of disease and the criminal should be treated well so that he may be able to recover from this disease. They maintain that just as a disease is diagnosed before the actual treatment, so crime should be diagnosed and then Proper treatment should be given to the criminal. Many writers on this subject are of the opinion that a person commits a crime only because he was not taught moral Lessons in his childhood, or he is extremely poor, he does not have square meals or lives or had to live in the polluted social environment or had been living in the company of bad person like thieves, dacoits and gamblers and drunkards or is suffering from some mental disease. The supporters of Reformative theory opine that the government should adopt measures to remove such bad conditions and thus prevent crime. Modern Theory of Punishment: Modern Theory of Punishment is a combination of all the three theories discussed above. Retributive Theory is applied in the civil courts. In other words, the monetary loss of the sufferer is compensated and the criminal has to compensate for the loss. Preventive and Deterrent Theory is applied to the old and habitual criminals so that they feel harassed and terrified enough not to repeat the crimes. If the old and habitual criminals are not given severe punishment, law and order cannot be maintained in the state and there will be a rapid increase in the number of criminals. Therefore, it is wise to punish such criminals severely. By so doing the sufferers are also appeased and the other criminals are warned. Reformative Theory is applied only to the new criminals and juvenile delinquents. These days education is given to criminals and they are taught the lessons of morality in jails. Not only this they are taught various crafts. In addition to this, it is also necessary that the state should give punishment according to the degree of crime. If it happens to be a gravest crime, severest punishment should be given, otherwise in case of ordinary crimes mild punishment should be awarded. There should be separate jails for

juvenile delinquents and more comforts should be given to them. Justice should not be delayed and the conditions of jails should be improved. Dark cells should be demolished in order to keep the prisoners in good health. The state should run dispensaries and reformative schools. While giving punishment to the criminal, his age, personal record and his social and economic conditions should be kept in mind. In addition to this, the judge should keep it in his mind very well, what effect the punishment, which is to be awarded to him, will leave on the dynasty of the criminal and on the law and order situation in the state. Provision for the Borstal Jail should be made for the juvenile delinquents. The aim of these jails is not to punish but to educate the delinquents. Locke maintained that punishment should have certain aims: They are as follows: Severest punishment should be given for the gravest crime and light punishment for a light crime; b The injured persons should be treated well; c Punishment should aim at preventing the criminal from repeating the crime; d Punishment should prove a sort of warning to others. Green regards man as an ethical being who seeks good life, as a member of a Punishment is the only means to enable the individual to achieve this end. The deterrent punishment, if it is not unnecessarily harsh, can lead to this effect indirectly. It can shock the criminal into realizing the anti-social character of his the importance of the rights of others. An offender may be reformed not only by awakening his consciousness but also by making him fear the coercive power of the state. In the opinion of Kant, punishment should aim at justice. According to Bentham, the aim of punishment is to maintain peace, law and order. Is the State empowered to give punishment? The state is quite empowered to give punishment because the state is sovereign. The state frames laws in order to maintain peace, law and order in the state. The state punishes law-breakers. If the state fails to punish the law-breakers, there will be no law and order and no peace in society. Evils and crimes will be given impetus and thieves, dacoits, robbers and bandits will rule supreme. Being afraid of punishment, thieves, robbers, bandits and dacoits hesitate to commit crimes. In the absence of punishment, the big fish will swallow the small fish and the weak will be exploited by the strong. Only punishment ensures the security of individual liberty.

Chapter 3 : Theories of Punishment- A Socio-Legal View

CHAPTER 4 CRIME AND THEORIES OF PUNISHMENT CRIME In ordinary language, the term crime denotes an unlawful act punishable by the state.

Features of Criminal Law The life of the criminal law begins with criminalization. On this view, we are not invited to commit crimesâ€"like murder, or driving uninsuredâ€"just as long as we willingly take the prescribed legal consequences. As far as the law is concerned, criminal conduct is to be avoided. This is so whether or not we are willing to take the consequences. It is possible to imagine a world in which the law gets its wayâ€"in which people uniformly refrain from criminal conduct. Obviously enough this is not the world in which we live. These powers and permissions exist ex anteâ€"prior, that is, to the commission of crime. We can add those that exist ex postâ€"once crime has been committed. By the time cases reach the courts those accusers are typically state officials or those to whom the state has delegated official power. Some legal systems do make space for private prosecutions. But such prosecutions can be discontinued or taken over by state officials and their delegates. In this way, the state exercises a form of control over criminal proceedings that is absent from legal proceedings of other kinds Marshall and Duff It may seem from the above that criminal proceedings are tilted heavily in favour of the accusing side. These typically include the right to be informed of the accusations in question, the right to confidential access to a lawyer, and the privilege against self-incrimination. At least on paper, the procedural protections on offer in criminal proceedings are more robust than those available to the accused in legal proceedings of other kinds. This is explained in large part by the consequences of criminal conviction. This is to say nothing of criminal sentences themselves. Those sentences are typically punishments: This is not to say that suffering or deprivation must be the ultimate end of those who punish. What it cannot be is a mere side-effect. This is one thing that distinguishes criminal sentencesâ€"at least of the punitive kindâ€"from the reparative remedies that are standard fare in civil law. But we can imagine cases in which this is not so: The award may remain a reparative success. It cannot be anything other than a punitive failure Boonin , 12â€"17; Gardner Obviously suspicions are sometimes misplaced. So it is no surprise that the most destructive powers and permissions are jealously guarded by the criminal law. But a moot court has no power to detain us in advance, to require us to appear before it, or to sentence us to imprisonment. Force used to achieve any of these things would itself be criminal, however proportionate the resulting punishment might be. As this example shows, criminal law is characterised by an asymmetryâ€"it bestows powers and permissions on state officials and delegates which are withheld from private persons, such that the latter are condemned as vigilantes for doing what the former lawfully do Thorburn a, 92â€"93; Edwards forthcoming. This remains the caseâ€"often to the great frustration of victims and their supportersâ€"even if the official response, assuming it comes at all, will be woefully inadequate. Functions of Criminal Law Few deny that one function of criminal law is to deliver justified punishment. Some go further and claim that this is the sole function of criminal law Moore , 28â€" Call this the punitive view. Rules of criminal procedure and evidence, on this view, help facilitate the imposition of justified punishment, while keeping the risk of unjustified punishment within acceptable bounds. Rules of substantive criminal law help give potential offenders fair warning that they may be punished. Both sets of rules combat objections we might otherwise make to laws that authorize the intentional imposition of harm. To combat objections, of course, is not itself to make a positive case for such laws. That case, on the punitive view, is made by the justified punishments that criminal courts impose. This is not to say anything about what the justification of punishment is. It is merely to say that criminal law is to be justified in punitive terms. Some object that this focus on punishment is misplaced. The central function criminal law fulfills in responding to crime, some say, is that of calling suspected offenders to account in criminal courts Gardner , 80; Duff c, This view puts the criminal trial at the centre, not just of criminal proceedings, but of criminal law as a whole Duff a, Trials invite defendants to account for themselves either by denying the accusation that they offended, or by pleading a defence. The prospect of conviction and punishment puts defendants under pressure to offer an adequate account. Call this the curial view. It differs from the punitive view in two ways. First, part of the

positive case for criminal law is independent of the imposition of punishment. Second, part of the positive case for imposing criminal punishment is dependent on the punishment being part of a process of calling to account. The following two paragraphs expand on both these claims. As to the first, we often have reason to account for our actions to others. We can leave open for now the precise conditions under which this is so. But it is plausible to think that if Alisha steals from Bintu she has reason for account for the theft, and that if Chika intentionally kills Dawn she has reason to account for the killing. Defenders of the curial view argue that criminal proceedings are of intrinsic value when defendants are called to offer accounts of themselves that they have reason to offer in criminal courts Gardner , â€"; Duff c, 15â€" Imagine Alisha stole from Bintu because she was under duress. Imagine Chika intentionally killed Dawn to defend herself or others. Neither of these defendants, we can assume, is justifiably punished. On the curial view, things are different. Alisha and Chika both have reason to account for their behaviourâ€"to explain what they did and why they did it. Criminal proceedings invite each to provide that account and put each under pressure to do so. Assuming Alisha and Chika have reason to account in a criminal court, proceedings in which they are called to do so are of intrinsic value. To endorse the curial view is not, of course, to say that we should do away with criminal punishment. But it is to say that the connection between trial and punishment is not merely instrumental. Some think that the facts that make punishment fittingâ€"say, culpable wrongdoingâ€"obtain independently of criminal proceedings themselves Moore , The fitting way to respond to criminal wrongdoing, on this view, is to call the wrongdoer to account for her wrong. We can see the implications of this view by imagining a world in which trials are abolished, because some new-fangled machine allows us to identify culpable wrongdoers with perfect accuracy. On the curial view, the punishments we impose are inherently defective: Though our new-fangled machine might justify doing away with trialsâ€"once we factor in how expensive they can beâ€"we would lose something of value in doing away with them. If criminal law does have a particular function, we can ask whether that function is distinctive of criminal law. We can ask, in other words, whether it helps distinguish criminal law from the rest of the legal system. It has been claimed that criminal law is distinctive in imposing punishment Moore , 18â€"30; Husak , One might also claim that criminal law alone calls defendants to account. But punishments are imposed in civil proceedingsâ€"exemplary damages are the obvious case. And it is arguable that civil proceedings also call defendants to accountâ€"that they too invite defendants to offer a denial or plead a defence; that they too use the prospect of legal liability to put defendants under pressure to account adequately Duff a. In response, one might try to refine the function that is distinctive of criminal law. What we should make of this proposal depends on what a public wrong is Lamond ; Lee ; Edwards and Simester To make progress, we can distinguish between primary dutiesâ€"like duties not to rape or robâ€"and secondary dutiesâ€"like duties to answer, or suffer punishment, for rape or robbery. We incur duties of the latter kind by breaching duties of the former. Many wrongs are both crimes and torts. So the two bodies of law often respond to breaches of the same primary duty. A more promising proposal looks to secondary duties. Perhaps the function of civil law is to respond to wrongs on behalf of some of usâ€"to discharge secondary duties owed to particular individuals. This might be thought to explain why criminal proceedings, unlike civil proceedings, are controlled by state officials: The view described in the previous paragraph conceives of criminal law as an instrument of the communityâ€"a way of ensuring that the community gets what it is owed from wrongdoers. Call it the communitarian view. If we combine this with the curial view, the distinctive function of criminal law is to seek answers owed to the community as a whole. One might doubt that the functions of criminal and civil law can be so neatly distinguished. More importantly, one might claim that in the case of paradigmatic crimesâ€"like robbery, rape, or batteryâ€"criminal law responds to wrongs on behalf of particular individualsâ€"on behalf of those who have been robbed, raped, or battered. Those who reject the communitarian view might be thought to face the following difficulty: First, we should not always require the wronged to have to pursue those who have wronged them. Second, we should not always support those who think themselves wronged in pursuing alleged wrongdoers. As to the first point, some are trapped in abusive relationships with those who wrong them. Others are susceptible to manipulation that serves to silence their complaints. Some wrongdoers can use wealth and social status to stop accusers in their tracks. As to the second point, the temptation to retaliate in the face of wrongdoing is often great. It is all

too easy for the pursuit of justice to become the pursuit of revenge, and for the perceived urgency of the pursuit to generate false accusations. Official control can help vulnerable individualsâ€”like those described aboveâ€”to get what they are owed. And it can mitigate the damage done by those trying to exact vengeance and settle scores Gardner , â€” It can ensure that those in positions of power cannot wrong others with impunity, and reduce the likelihood that vindictiveness begets retaliation, which begets violent conflict from which all lose out Wellman , 8â€”

Chapter 4 : Theories of Criminal Law (Stanford Encyclopedia of Philosophy)

punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Kenny wrote: " it cannot be said that the theories of criminal punishment.

They are as follows: According to this theory punishment is awarded with a view to prevent the offender from repeating the offence in future. In older days the prevention was secured by disabling the offender permanently For example, for the offence of theft the hands of the offender were cut away. The death sentence is the most effective mode of preventing the offences by an offender. It is awarded only in those offences which are of very grave nature such as murder and treason. Now-a-days some other measures are adopted in order to secure prevention. Some such measures are forfeiture of office, suspension or cancellation of licences etc. Further preventive detention and security also are adopted to prevent the offence though these are not punitive. This theory says that punishment to the wrong-doer must not only create an awe, not only in the mind of wrong-doer but in the minds of others also, so as to deter them from committing the crime. In olden days execution in the public was done only with this view. The origin of this theory lies in the primitive notion of vengeance against the wrong-doer. When the society progressed, crimes were considered as a wrong against the whole of the society and not only against a particular individual. Now the State was substituted at the place of the individual and as such the State indicates the proceedings against the criminal, and is also a party in such proceedings. Now, the punishment gratifies the instinct of revenge not only of a single individual against whom the wrong has been committed but of the whole of the society because if a wrong of a criminal nature is committed against an individual the extension of social sympathy in his favour makes it a wrong against the whole of the society. Therefore, the society is interested in the punishment of the wrong-doer, and thus, the punishment satisfied a social instinct. This theory considers punishment as an end in itself. It aims at restoring the social balance disturbed by the offender. The offender should receive as much pain and suffering as inflicted by him on his victim to assuage the angry sentiments of the victim and the community. This theory proceeds on practical grounds, and therefore, it concentrates upon the moral culpability of the wrong-doer. In modern times though retribution has an important place yet there is a growing tendency to regard punishment as a means to an end and not an end in itself. This theory says that by undergoing punishment the crime is expiated. Ancient Hindu Law-givers like Mann and some western philosophers also, like Hegal, say that the punishment makes the criminal to expiate for the wrong-doer. This theory is based on morals. According to this theory the purpose of punishment should be to reform the criminal and to make him a good citizen. The State has to rehabilitate rather than avenge. The subculture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human body views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. Similarly in Bhagirath v. Delhi Administration the Supreme Court observed thus: Punishments are no longer retributory. For example reformative measures are adopted in case of juvenile offenders. The classification of offenders on the basis of age for the purposes of criminal law is now beyond reproach. This does not, however, imply that deterrent punishments have become out of context. As observed by Krishna Iyer,J. In suitable cases the extreme penalty may be the only appropriate punishment for the purpose. The case of Asharfi Lai v. Appellants were convicted for the brutal murder of their two nieces aged 14 and 20 respectively to wreck their personal vengeance over the dispute they had with regard to property with the mother of the victims. On the time of occurrence, the mother and the daughters were sleeping on different cots. The first appellant was found perched over the lower part of the body of the younger daughter pressing down her legs while the other repeatedly struck her with a gandasa and severed her neck. Similarly, the other daughter was attacked with a banka by one of the appellant while the other chopped of the right hand of the girl with a gandasa. When she shrieked one appellant struck her on the face and upper part of the body with a gandasa. She ran from her house through the village abadi and fell down near a house

and died soon thereafter. The Supreme Court observed thus that the appellants were guilty of a heinous crime out of greed and personal vengeance and deserved the extreme penalty. State of Punjab, and was further elaborated in the later case of Machlii Singh v. These were cold blooded murders in which two innocent girls lost their lives. The extreme brutality with which the appellants acted shocks the judicial conscience. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a means of social necessity and also as a means of deterring other potential offenders the sentence of death is confirmed. State of Rajasthan, wherein the entire family consisting of mother, father, son and five daughters were done to death when they were fast asleep. The Supreme Court said: The manner in which the entire family was eliminated indicates that the offence was deliberate and diabolical. It was predetermined and cold blooded. The innocent children were done to death with lethal weapons when they were fast asleep. The sentence of death awarded cannot, therefore, be said to be inappropriate. A synthesis emerged in Bachan Singh v. The guidelines laid down in this case have since been followed in a number of cases, some of which have been referred to earlier. In two cases the Supreme Court has had again to face the problem of converting death sentence to one of life imprisonment and both of them emphasise the necessity of imposing extreme penalty. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. State of Tamil Nadu. This is a case of accused persons committing murders of young boys for gain as a means to living. They were awarded death sentence. In response to convert the death sentence into life imprisonment on the ground that the accused persons were young men and bread-winners of the family consisting of a young wife, minor children and aged parents, the Supreme Court categorically stated thus: They adopted the crime of murder for gain as a means to living we find no force in their being bread-winners etc. These compassionate grounds would always be present in most cases and are not relevant for interference. Thus, we find no infirmity in the death sentence awarded by the High Court warranting no interference. Security of persons and property of the people is an essential function of the State. It can be achieved through instrumentality of criminal laws. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law a corner stone of the edifice of order should meet the challenges confronting the society. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for the commission of the crime, the conduct of the accused and all other attending circumstances are all relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. It has also been held in the instant case that the doctrine of benefit of doubt does not enter in the area of consideration of imposing sentence.

Chapter 5 : Theories of Punishments - blog.quintoapp.com

Theories of Punishment (kinds of Punishment under Criminal Law) SYNOPSIS-1) INTRODUCTION. 2) THEORIES OF PUNISHMENT. 1) INTRODUCTION - A Punishment is a consequence of an offense. Punishments are imposed on the wrong doers with the object to deter them to repeat the same wrong doing and reform them into law- abiding citizens.

Reformative theory Expiation theory Of these aspects the first is the essential and the all-important one, the others being merely accessory. Punishment before all things is deterrent, and the chief end of the law of crime is to make the evil-doer an example and a warning to all that are like-minded with him. The object of punishment is not only to prevent the wrong-doer from doing a wrong a second time, but also to make him an example to other persons who have criminal tendencies. Salmond considers deterrent aspects of criminal justice to be the most important for control of crime 3. The chief aim of the law of crime is to make the evil-doer an example and a warning to all that are like minded. One of the primitive methods of punishments believes in the fact that if severe punishments were inflicted on the offender would deter him form repeating that crime. Those who commit a crime, it is assumed, derive a mental satisfaction or a feeling of enjoyment in the act. To neutralize this inclination of the 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. Pleasure and pain are two physical feelings or sensation that nature has provided to mankind, to enable him to do certain things or to desist from certain things, or to undo wrong things previously done by him. The basic idea of deterrence is to deter both offenders and others from committing a similar offence. In earlier days a criminal act was considered to be due to the influence of some evil spirit on the offender for which he was unwillingly was made to do that wrong. Thus to correct that offender the society retorted to severe deterrent policies and forms of the government as this wrongful act was take as an challenge to the God and the religion. But in spite of all these efforts there are some lacunae in this theory. This theory is unable to deter the activity of the hardcore criminals as the pain inflicted or even the penalties are ineffective. The most mockery of this theory can be seen when the criminals return to the prisons soon after their release, that is precisely because as this theory is based on certain restrictions, these criminals are not effected at all by these restrictions rather they tend to enjoy these restrictions more than they enjoy their freedom. The person wrongdoer was allowed to have revenge against the wrong doer. The principle of an eye to eye, a tooth to tooth, a nail to nail, limb for limb was basis of criminal administration 5. The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory underlines the idea of vengeance and revenge rather than that of social welfare and security. Punishment of the offender provides some kind solace to the victim or to the family members of the victim of the crime, who has suffered out of the action of the offender and prevents reprisals from them to the offender or his family. This theory is based on the same principle as the deterrent theory, the Utilitarian theory. To look into more precisely both these theories involve the exercise of control over the emotional instinctual forces that condition such actions. Thus the researcher concludes that this theory closely related to that of expiation as the pain inflicted compensates for the pleasure derived by the offender. Though not in anymore contention in the modern arena but its significance cannot be totally ruled out as fear still plays an important role in the minds of various first time offenders. But the researcher feels that the basis of this theory i. This theory has been severely criticized by modern day penologists and is redundant in the present punishments. Object of punishment is prevention or disablement offenders are disabled from repeating the offences by awarding punishment, such as death, exile or forfeiture of an office. Unlike the former theories, this theory aims to prevent the crime rather than avenging it. Looking at punishments from a more humane perspective it rests on the fact that the need of a punishment for a crime arises out of mere social needs i. Thus one an easily say that preventive theory though aiming at preventing the crime to happen in the future but it still has some aspects which are questioned by the penologists as it contains in its techniques which are quite harsh in nature. The major problem with these type of theories is that they make the criminal more violent rather than changing him to a better individual. The last theory of punishment being the most humane of all looks into this aspect. According to the reformative theory, the objective of punishment is the reformation of

criminals. But that is the beginning of a new story, the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life. It emphasizes on the renewal of the criminal and the beginning of a new life for him. The most recent and the most humane of all theories is based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crimes. Though it may be true that there has been a greater onset of crimes today than it was earlier, but it may also be argued that many of the criminals are also getting reformed and leading a law-abiding life all-together. Reformative techniques are much close to the deterrent techniques 7. This theory aims at rehabilitating the offender to the norms of the society i. This theory condemns all kinds of corporal punishments. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. These prisons or correctional homes as they are termed humanly treat the inmates and release them as soon as they feel that they are fit to mix up with the other members of the community. Expiation Theory Expiation Theory states that compensation is awarded to the victim from the wrong-doer, awarding compensation from the accused, accused is not physically punished. This also becomes a lesson to the remaining public. Purpose of this theory is generally, in other system of punishment, the victim is not taken into consideration. The present criminal justice system concentrates only on punishing the criminal. The Courts are not in position to point out the grievance of the victim or his family members. In case of State vs. Sayyaduddin 8 , Justice Motilal Naik observed: The victim or his family members satisfy with the money and can lead their remaining life safely. It also creates repentance in the minds of the criminals. Modern criminologists, jurists, penologists, jurisprudents, sociologists, etc. Current position and Problems: Authors view One of the major problem which comes out in counter of deterrent theory, is that as one of the major function of the criminal administration is for sending a message to society or like mind people by the conviction of a criminal in order to make them aware that same will happen to them also in case same criminal act will be performed by them in similar situation or different situation. But looking it to current system of judicial administration for criminal case, judiciary is not meeting the expectation of deterrent as due to backlog of case, sometime even trial court took more than years for its completion of trial proceedings. And this happens in most of the cases and then appeal for it and sometime further appeal and mercy petition is also in the same row. What we can do any in order to make this theory work as per as its meaning, making judicial system work with the concept of speedy trial. One of the good examples of such case is that of Rajiv Gandhi assassination case. Secondly, important problem is with the preventive theory of punishment as this theory is prevention or disablement offenders are disabled from repeating the offences by awarding punishment, such as death, exile or forfeiture of an office. Unlike the former theories, this theory aims to prevent the crime rather then avenging it. If this system of capital punishment will followed then objective of preventive theory will not be obtained as convicts of capital punishment will not be given with chance to come in to mainstream and no chance to improve themselves. According to me capital punishment should be abolished. Everyone have equal right to live in this world and country like India gives freedom to live in its constitution should never go for capital punishment. So if the person does any criminal activities and may be that it may be heinous but is giving death penalty is the only solution to curb out the crime from the country. And if death penalty is awarded to any murderer then what is the difference between that murderer and the judge except for that that judge has been given the right to award death penalty and the murderer has been not. We need to remove the crime first; other thing will be done automatically. Institute of hindu law translated by Haughton,G. Indian Penal Code Hindi 2 Vols:

Chapter 6 : Theories of Punishment - SRD Law Notes

Governments have several theories to support the use of punishment to maintain order in society. Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory of punishment seeks to punish offenders to discourage, or "deter," future.

Legal Punishment and its Justification The central question asked by philosophers of punishment is: What can justify punishment? More precisely, since they do not usually talk much about punishment in such contexts as the family or the workplace but see Zaibert ; Bennett Part II , their question is: What can justify formal, legal punishment imposed by the state on those convicted of committing criminal offences? We will also focus on legal punishment here: What then are we to justify in justifying punishment? The search for a precise definition of punishment that exercised some philosophers for discussion and references, see Scheid ; Boonin Two points are worth particular notice here. First, punishment involves material impositions or exactions that are in themselves typically unwelcome: What distinguishes punishment from other kinds of coercive imposition, such as taxation, is that punishment is precisely intended to â€¦: Some would say that punishment is intended to inflict pain or suffering: Others would say that punishment is intended to cause harm to the offender â€” adding, if they are careful see Hanna It is safer to say that punishment must be intended to be burdensome, and that is how punishment will be understood in what follows. Penalties, such as parking tickets, might be imposed to deter the penalised conduct or to recoup some of the costs that it causes without being intended to express societal condemnation. But even if a primary purpose of punishment is deterrence see ss. These two features, that punishment is intentionally burdensome and condemnatory, make the practice especially normatively challenging. We should not assume, however, that there is only one question of justification, which can receive just one answer. As Hart famously pointed out Hart Second, who may properly be punished: Third, how should the appropriate amount of punishment be determined: One dimension of this third question concerns the amount or severity of punishment; another, which is insufficiently discussed by philosophers, concerns the concrete modes of punishment that should be available, in general or for particular crimes. It might of course turn out that answers to all these questions will flow from a single theoretical foundation â€” for instance, from a unitary consequentialist principle specifying the good that punishment should achieve, or from some version of the retributivist principle that the sole proper aim of punishment is to impose on the guilty the punitive burdens they deserve. But matters might not be as simple as that: But it is an illegitimate assumption: The abolitionist claim is not merely that our existing penal practices are unjustified: For those who think that punishment can in principle be justified, this means simply and hardly surprisingly that our penal practices need radical reform if they are to become justified: We will attend to some abolitionist arguments in what follows. Even if those arguments can be met, even if legal punishment can be justified, at least in principle, the abolitionist challenge is one that must be met, rather than ignored; and it will help to remind us of the ways in which any practice of legal punishment is bound to be morally problematic. Punishment, Crime, and the State Legal punishment presupposes crime as that for which punishment is imposed, and a criminal law as that which defines crimes as crimes; a system of criminal law presupposes a state, which has the political authority to make and enforce the law and to impose punishments. A normative account of legal punishment and its justification must thus at least presuppose, and should perhaps make explicit, a normative account of the criminal law why should we have a criminal law at all? How far it matters, in this context, to make explicit a political theory of the state depends on how far different plausible political theories will generate very different accounts of how punishment can be justified and should be used. We cannot pursue this question here for two sharply contrasting views on it, see Philips , Davis ; for more recent contributions showing the importance of political theory, see Pettit ; Matravers ; Dolovich ; Garvey ; Dagger ; Brettschneider ; Sigler ; Markel ; Chiao ; Flanders , save to note one central point. For any political theory most obviously any version of liberalism or republicanism that takes seriously the idea of citizenship as full membership of the polity, the problem of punishment takes a particularly acute form, since we have now to ask how punishment can be consistent with citizenship how citizens can

legitimately punish each other: Before we tackle such theories of punishment, however, we should look briefly at the concept of crime, since that is one focus of the abolitionist critique of punishment. On a simple positivist view of law, crimes are kinds of conduct that are prohibited, on pain of threatened sanctions, by the law; and for positivists such as Bentham, who combine positivism with a normative consequentialism, the questions of whether we should maintain a criminal law at all, and of what kinds of conduct should be criminalised, are to be answered by trying to determine whether and when this method of controlling human conduct is likely to produce a net increase in good. Such a perspective seems inadequate, however: For the criminal law portrays crime not merely as conduct which has been prohibited, but as a species of wrongdoing: Crimes are, at least, socially proscribed wrongs â€" kinds of conduct that are condemned as wrong by some purportedly authoritative social norm. Tort law, for instance, deals in part with wrongs that are non-private in that they are legally and socially declared as wrongs â€" with the wrong constituted by libel, for instance. She must decide to bring, or not to bring, a civil case against the person who wronged her; and although she can appeal to the law to protect her rights, the case is still between her and the defendant. By contrast, a criminal case is between the whole political community â€" the state or the people â€" and the defendant: But such accounts distract our attention from the wrongs done to the individual victims that most crimes have, when it is those wrongs that should be our central concern: Some abolitionists, however, argue that we should seek to eliminate the concept of crime from our social vocabulary: One can of course count a criminal conviction as a kind of punishment: More plausibly, the abolitionist claim could be that rather than take wrongdoing as our focus, we should focus on the harm that has been done, and on how it can be repaired; we will return to this suggestion in s. Now it is a familiar and disturbing truth that our existing criminal processes â€" both in their structure and in their actual operations â€" tend to preclude any effective participation by either victims or offenders, although an adequate response to the criminal wrong that was done should surely involve them both. Such an insistence on the need for a public criminal process reflects two aspects of the concept of crime: Faced, for instance, by feuding neighbours who persistently accuse each other of more or less trivial wrongs, it might indeed be appropriate to suggest that they should forget about condemning each other and look for a way of resolving their conflict. So we must turn now to the question of what could justify such a system of punishment. Consequentialist Accounts Many people, including those who do not take a consequentialist view of other matters, think that any adequate justification of punishment must be basically consequentialist. For we have here a practice that inflicts, indeed seeks to inflict, significant hardship or burdens: However, when we try to flesh out that simple consequentialist thought into something closer to a full normative account of punishment, problems begin to appear. A consequentialist must justify punishment if she is to justify it at all as a cost-effective means to certain independently identifiable goods for two simple examples of such theories, see Wilson ; Walker Whatever account she gives of the final good or goods at which all action ultimately aims, the most plausible immediate good that a system of punishment can bring is the reduction of crime. A rational consequentialist system of law will define as criminal only conduct that is in some way harmful; in reducing crime we will thus be reducing the harms that crime causes. It is commonly suggested that punishment can help to reduce crime by deterring, incapacitatiing, or reforming potential offenders though for an argument that incapacitation is not a genuinely punitive aim, see Hoskins There are of course other goods that a system of punishment can bring. It can reassure those who fear crime that the state is taking steps to protect themâ€"though this is a good that, in a well-informed society, will be achieved only insofar as the more immediate preventive goods are achieved. It can also bring satisfaction to those who want to see wrongdoers suffer â€" though to show that to be a genuine good, rather than merely a means of averting vigilantism and private revenge, we would need to show that it involves something more than mere vengeance, which would be to make sense of some version of retributivism. It is a contingent question whether punishment can be an efficient method of reducing crime in any of these ways, and some objections to punishment rest on the empirical claim that it cannot be â€" that there are other and more efficient methods of crime reduction see Wootton ; Menninger ; Boonin Our focus here, however, will be on the moral objections to consequentialist accounts of punishment â€" objections, basically, that crime-reductive efficiency does not suffice to justify a system of punishment. The most familiar line of objection to

consequentialist penal theories contends that consequentialists would be committed to regarding manifestly unjust punishments the punishment of those known to be innocent, for instance, or excessively harsh punishment of the guilty to be in principle justified if they would efficiently serve the aim of crime reduction: There are some equally familiar consequentialist responses to this familiar objection. Another is to argue that in the real world it is extremely unlikely that such punishments would ever be for the best, and even less likely that the agents involved could be trusted reliably to pick out those rare cases in which they would be: Retributivist Accounts Whereas consequentialist accounts regard punishment as justified instrumentally, as a means to achieving some valuable goal typically crime reduction , retributivist accounts contend that punishment is justified as an intrinsically appropriate, because deserved, response to wrongdoing but see Berman for an argument that some recent versions of retributivism actually turn it into a consequentialist theory. Penal desert constitutes not just a necessary, but an in-principle sufficient reason for punishment only in principle, however, since there are very good reasons â€" to do with the costs, both material and moral, of punishment â€" why we should not even try to punish all the guilty. Negative retributivism, by contrast, provides not a positive reason to punish, but rather a constraint on punishment: Because negative retributivism represents only a constraining principle, not a positive reason to punish, it has been employed in various mixed accounts of punishment, which endorse punishment for consequentialist reasons but only insofar as the punishment is no more than is deserved see s. A striking feature of penal theorising during the last three decades of the twentieth century was a revival of positive retributivism â€" of the idea that the positive justification of punishment is to be found in its intrinsic character as a deserved response to crime see H. Morris ; Murphy ; von Hirsch ; two useful collections of contemporary papers on retributivism are White and Tonry Positive retributivism comes in very different forms Cottingham All can be understood, however, as attempting to answer the two central questions faced by any retributivist theory of punishment. First, what is the justificatory relationship between crime and punishment that the idea of desert is supposed to capture: Davis â€" and what do they deserve to suffer see Ardal ; Honderich , ch. Second, even if they deserve to suffer, or to be burdened in some distinctive way, why should it be for the state to inflict that suffering or that burden on them through a system of criminal punishment Murphy ; Husak ; Shafer-Landau ; Wellman ? One retributivist answer to these questions is that crime involves taking an unfair advantage over the law-abiding, and that punishment removes that unfair advantage. The criminal law benefits all citizens by protecting them from certain kinds of harm: The criminal takes the benefit of the self-restraint of others, but refuses to accept that burden herself: Morris ; Murphy ; Sadurski ; Sher , ch. This kind of account does indeed answer the two questions noted above. However, such accounts have internal difficulties: Davis , ; for criticism, see Scheid , ; von Hirsch Furthermore, they seem to misrepresent what it is about crime that makes it deserving of punishment: A different retributivist account appeals not to the abstract notion of unfair advantage, but to our normal, appropriate emotional responses to crime: Such accounts try to answer the first of the two questions noted above: Criminal wrongdoing should, we can agree, provoke certain kinds of emotion, such as self-directed guilt and other-directed indignation; and such emotions might typically involve a desire to make those at whom they are directed suffer. But just as we can agree that anger is an appropriate response to wrongs done to me, while also arguing that we should resist the desire to hit back that anger often, even typically, involves see Horder At the least we need to know more than we are told by these accounts about just what wrongdoers deserve to suffer, and why the infliction of suffering should be an appropriate way to express such proper emotions. For critical discussions of Murphy, see Murphy and Hampton , ch. On Moore, see Dolinko See also Murphy , A third version of retributivism holds that when people commit a crime, they thereby incur a moral debt to their victims, and punishment is deserved as a way to pay this debt McDermott This moral debt differs from the material debt that an offender may incur, and thus payment of the material debt returning stolen money or property, etc. Punishment as Communication Perhaps the most influential version of retributivism in recent decades seeks the meaning and justification of punishment as a deserved response to crime in its expressive or communicative character. On the expressed dimension of punishment, see generally Feinberg , Primoratz ; for critical discussion, see Hart Consequentialists can of course portray punishment as useful partly in virtue of its expressive character see Lacey ; Braithwaite and Pettit ; but a

portrayal of punishment as a mode of deserved moral communication has been central to many recent versions of retributivism. The central meaning and purpose of punishment, on such accounts, is to communicate to offenders the censure or condemnation that they deserve for their crimes. Once we recognise, as we should, that punishment can serve this communicative purpose, we can see how such accounts begin to answer the two questions that retributivists face.

Chapter 7 : 5 Theories of Punishment in Administration of Criminal Justice

Home Criminology Punishment Theories of Punishment Punishing criminals is a function of the State. In the past, there were no strict rules for punishment and the quantum and extent of punishment largely depends on the King or the ruler.

Contact Us Search Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant It is consequence of an offence It is applied against the author of the offence It s applied by an organ of the system that made the act an offence. The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. Debunking the stringent theories of punishment the modern society is seen in loosening its hold on the criminals. The present scenario also witnesses the opposition of capital punishment as inhumane, though it was a major form of punishing the criminals earlier. The law says that it does not really punish the individual but punishes the guilty mind. As punishment generally is provided in Criminal Law it becomes imperative on our part to know what crime or an offence really is. Crime is an act deemed by law to be harmful for the society as a whole though its immediate victim may be an individual. Thus it becomes very important on behalf of the society to punish the offenders. Punishment can be used as a method of educing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. Theories of punishment, contain generally policies regarding theories of punishment namely: Deterrent, Retributive, Preventive and Reformative. Punishment, whether legal or divine, needs justification. Many a time this punishment has been termed as a mode of social protection. The affinity of punishment with many other measures involving deprivation by the state morally recognized rights is generally evident. The justifiability of these measures in particular cases may well be controversial, but it is hardly under fire. The attempt to give punishment the same justification for punishment as for other compulsory measures imposed by the state does not necessarily involve a particular standpoint on the issues of deterrence, reform or physical incapacitation. Obviously the justification in terms of protection commits us to holding that punishment may be effective in preventing social harms through one of these methods. As punishments generally punish the guilty mind it becomes very important on the part of the researcher to what crime really is. But it is quite difficult on the part of the researcher to say whether or not there must be any place for the traditional forms of punishment. It is observed that prisons have become a place for breeding criminals not as a place of reformation as it was meant to be. It may be clearly said that the enactment of any law brings about two units in the society- the law-abiders and the law-breakers. It is purpose of these theories of punishment to by any means transform or change these law-breakers to the group of abiders. To understand the topic the researcher would like to bring about a valid relation between crime, punishment and the theories. For that purpose the project is divided into three parts: Crime and Punishment Theories of punishment Conclusion The researcher due to certain constraints of limited time and knowledge is unable to cove the area of the evolution of these theories separately but would include them in the second chapter. Crime And Punishment Crime: Punishing or being punished; penalty inflicted on the offender; Punish: Cause to suffer for offence, chastise, inflict penalty on offender for his crime. One can surely observe how closely are crime and punishment related. The researcher would in this chapter precisely like to stress on this point itself. Crime is behaviour or action that is punishable by criminal law. A crime is a public, as opposed to a moral, wrong; it is an offence committed against and hence punishable by the state or the community at large. Many crimes are immoral, but not all actions considered immoral are illegal. In different legal systems the forms of punishment may be different but it may be observed that all arise out of some action or omission. All these constitute all moral as well as legal wrongs such as murder, rape, littering, theft, trespass and many more. As crime is quite different in different geographical area it is quite evident that the forms of punishment would vary as it was mentioned earlier that

punishment as well as crime are socially determined. A type of action may be a crime in one society but not in another. For example euthanasia is an offence in India, but in many European coutries such as Holland it is legalized. But there are certain offences which are recognized almost universally like murder. Durkheim explains crime, as crime exists in every society which do and do not have laws, courts and the police. He asserts that all societies have crime, since all societies involve a differentiation between two kinds of actions, those that are allowed and those that are forbidden. He calls the latter type criminal. Law is the string that binds society, and he who attempts to break the string is a danger to the society as a whole and dealt with sternly by the powerful arms of law. Punishment though most times confused with imprisonment is something much different from it. Punishment though most times confused only with sanctions may also be of moral nature like ostracism. A complete definition will now be made in such a way as to include both legal and divine punishment. Flew first suggests that punishment must be an evil, an unpleasantness to the victim. The world is a worse place the more evil there is in it and perhaps the more suffering. But it does not seem to me necessarily a worse place whenever men are deprived of something they would like to retain; and this is the essence of modern punishment. While deprivation may be a more appropriate description of modern punishment this does not necessarily exempt it from being an evil. While we must eventually come to some conclusion as to whether punishment is an evil, it would be preferable at present to use, as does W. Both of these thinkers of punishment believe that the offender must be answerable for any wrong that he has done. Baier explains punishment as law-making, penalisation, finding guilty, pronouncing a sentence. In a legal context law-making is a necessary condition, but it is possible to commit a wrongdoing intentionally although no law has been made, in fact it is because certain acts are considered wrong that laws are made in the first place. What is important to note is that punishment is a conditional act and cannot be isolated from its total context. But Durkhaeim has a different approach to punishment altogether. He treats punishment as the reaction of the society against a crime. According to him a if punishment be a proportionate response to the harm caused to the society then the extent of the punishment inflicted must be clearly sorted out. He also stressed on the point that punishment can never be calculated; it is an intensely emotional- sense of outrage- the desire to exact punishment. He says, It is not the specific nature or result of the offending action as such which matter, but he fact that the action transgresses widely shared ad strongly held sentiments, whatever these might be in any particular case. He explains that if punishment is a reaction of the society against the offenders then it is generally in the form of an outrage or anger thus rather being reparative or reformative becomes punitive. This approach of the society towards the criminals is what makes us treat them as outcasts and treated as an deviant from the social norms. This two-fold approach has been criticized severely by various penologists, as at one time there is the use of both reformative and retributive theories. Punishment and crime are very strange phenomena to deal with. It is only if the acts done are within the course of the provisions provided under the Code then any benefits take out of it is not questioned. But any action through which maybe the same benefit is gained still the person may be punished as because his action was not within the scope of the provisions. Also there are certain elements in the society who though do many immoral acts but as because any provisions or sanctions are not mentioned so that they can be punished they continue to do that act. One should not earn any benefits or satisfaction out of such acts. The legitimacy of any form of has always been criticized. Though there are many legal coercive measures but it is quite different from punishment. If the punishment were any retribution to an evil done then regardless of any consequence it would try to end that evil in itself. But if the objective of the punishment given is to prevent the crime from further occurrence then it would rather than using coercive methods it would be using persuasive measures and discourage the offender from committing that act in the future. Treating punishment as a conventional device for the expression of resentment, indignation, disappointment felt either by the sufferer and his family or the punishing authority as such J. Feinberg argues that certain kinds of severe treatment become symbolic of the of the attitudes and judgement of the society or community in the face of the wrongdoing, and constitute a stigma which castes shame and ignominy on the individual on whom the punishment is applied. The distinctiveness of the unpleasant measure could consist of the way of executing them. Thus, summarizing the concept of punishment one can suggest that punishment includes the following areas: Punishment inflicted is a

feeling of uncomfortable and unpleasant circumstances. It is a sequel of a wrongful act There must be some relationship between the punishment inflicted and the crime committed. The punishment is a form by which a criminal is made answerable to the society. With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Malinowski believes all the legally effective institutions The general view that the researcher finds is that the researcher gathers is that the theories of punishment being so vague are difficult to discuss as such. Reformative of these aspects the first is the essential and the all-important one, the others being merely accessory. Punishment before all things is deterrent, and the chief end of the law of crime is to make the evil-doer an example and a warning to all that are like-minded with him. The researcher in this chapter would like to discuss the various theories and explain the pros and cons of each theory. One of the primitive methods of punishments believes in the fact that if severe punishments were inflicted on the offender would deter him form repeating that crime. Those who commit a crime, it is assumed, derive a mental satisfaction or a feeling of enjoyment in the act. To neutralize this inclination of the 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. Pleasure and pain are two physical feelings or sensation that nature has provided to mankind, to enable him to do certain things or to desist from certain things, or to undo wrong things previously done by him. It is like providing both a powerful engine and an equally powerful brake in the automobile. Impelled by taste and good appetite, which are feelings of pleasure a man over-eats. Gluttony and surfeit make him obese and he starts suffering disease. He consults a doctor and thereafter starts dieting. Thus the person before eating in the same way would think twice and may not at all take that food. We all like very much to seize opportunities, but abhor when we face threats.

Chapter 8 : Theories of Punishment

The Various Theories of Punishment in Criminal Law 1) Elaborate the various theories of punishment in Criminal Law (10m) There are four theories of punishments, namely, retribution theory, deterrent theory, and reformation theory.

Felony and Misdemeanor A principle often mentioned with respect to the degree of punishment to be meted out is that the punishment should match the crime. Measurements of the degree of seriousness of a crime have been developed. Possible reasons for punishment[edit] See also: Criminal justice There are many possible reasons that might be given to justify or explain why someone ought to be punished; here follows a broad outline of typical, possibly conflicting, justifications. Deterrence prevention [edit] One reason given to justify punishment [7] is that it is a measure to prevent people from committing an offence - deterring previous offenders from re-offending, and preventing those who may be contemplating an offence they have not committed from actually committing it. This punishment is intended to be sufficient that people would choose not to commit the crime rather than experience the punishment. The aim is to deter everyone in the community from committing offences. Some criminologists state that the number of people convicted for crime does not decrease as a result of more severe punishment and conclude that deterrence is ineffective. These criminologists therefore argue that lack of deterring effect of increasing the sentences for already severely punished crimes say nothing about the significance of the existence of punishment as a deterring factor. These criminologists argue that the use of statistics to gauge the efficiency of crime fighting methods are a danger of creating a reward hack that makes the least efficient criminal justice systems appear to be best at fighting crime, and that the appearance of deterrance being ineffective may be an example of this. Rehabilitation penology Some punishment includes work to reform and rehabilitate the culprit so that they will not commit the offence again. Imprisonment separates offenders from the community, removing or reducing their ability to carry out certain crimes. The death penalty does this in a permanent and irrevocable way. In some societies, people who stole have been punished by having their hands amputated. Retributive justice Criminal activities typically give a benefit to the offender and a loss to the victim. Punishment has been justified as a measure of retributive justice , [7] in which the goal is to try to rebalance any unjust advantage gained by ensuring that the offender also suffers a loss. Sometimes viewed as a way of "getting even" with a wrongdoerâ€”the suffering of the wrongdoer is seen as a desired goal in itself, even if it has no restorative benefits for the victim. One reason societies have administered punishments is to diminish the perceived need for retaliatory "street justice", blood feud , and vigilantism. Restorative justice For minor offenses, punishment may take the form of the offender "righting the wrong", or making restitution to the victim. Community service or compensation orders are examples of this sort of penalty. Punishment can serve as a means for society to publicly express denunciation of an action as being criminal. Besides educating people regarding what is not acceptable behavior, it serves the dual function of preventing vigilante justice by acknowledging public anger, while concurrently deterring future criminal activity by stigmatizing the offender. This is sometimes called the "Expressive Theory" of denunciation. The critics argue that some individuals spending time and energy and taking risks in punishing others, and the possible loss of the punished group members, would have been selected against if punishment served no function other than signals that could evolve to work by less risky means. Instead of punishment requiring we choose between them, unified theorists argue that they work together as part of some wider goal such as the protection of rights. Detractors argue that punishment is simply wrong, of the same design as " two wrongs make a right ". Critics argue that punishment is simply revenge. Retribution, Crime Prevention, and the Law, states in her book that, We ought not to impose such harm on anyone unless we have a very good reason for doing so. This remark may seem trivially true, but the history of humankind is littered with examples of the deliberate infliction of harm by well-intentioned persons in the vain pursuit of ends which that harm did not further, or in the successful pursuit of questionable ends. These benefactors of humanity sacrificed their fellows to appease mythical gods and tortured them to save their souls from a mythical hell, broke and bound the feet of children to promote their eventual marriageability, beat slow schoolchildren to promote learning and respect for teachers, subjected the sick to leeches to rid them of excess

blood, and put suspects to the rack and the thumbscrew in the service of truth. They schooled themselves to feel no pityâ€”to renounce human compassion in the service of a higher end. The deliberate doing of harm in the mistaken belief that it promotes some greater good is the essence of tragedy. We would do well to ask whether the goods we seek in harming offenders are worthwhile, and whether the means we choose will indeed secure them. But these are only the minimum harms, suffered by the least vulnerable inmates in the best-run prisons. Most prisons are run badly, and in some, conditions are more squalid than in the worst of slums. In the District of Columbia jail, for example, inmates must wash their clothes and sheets in cell toilets because the laundry machines are broken. But even inmates in prisons where conditions are sanitary must still face the numbing boredom and emptiness of prison lifeâ€”a vast desert of wasted days in which little in the way of meaningful activity is possible. Advocates of this viewpoint argue that such suppression of intention causes the harmful behaviors to remain, making punishment counterproductive. These people suggest that the ability to make intentional choices should instead be treasured as a source of possibilities of betterment, citing that complex cognition would have been an evolutionarily useless waste of energy if it led to justifications of fixed actions and no change as simple inability to understand arguments would have been the most thrifty protection from being misled by them if arguments were for social manipulation, and reject condemnation of people who intentionally did bad things.

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Theories of Punishment Changes in U.S. politics have caused shifts in the theoretical purposes of sentencing. During the heyday of liberalism in the s and s, the judicial and executive branches (for example, parole boards) wielded power in sentencing.

The Various Theories of Punishment in Criminal Law 1 Elaborate the various theories of punishment in Criminal Law 10m There are four theories of punishments, namely, retribution theory, deterrent theory, and reformation theory. Firstly, a kid who falls down and kicks the floor inadvertently. Generally, it is believed to be a firm of taking revenge and would not serve only penal purpose. Deterrent theory by punishing the offenders deters the wrongdoer specially and deters the general public also by punishing him and refrain them from committing an act. If a society has laws, it must also have punishments for those who break the laws. In the UK, when someone is found guilty of a crime, a judge or magistrate makes a judgment on what their punishment should be. The main aim of punishment is to try to make sense that everyone obeys the law. However, there are different theories about what is the most effective form of punishment and what it should do. First and foremost, the theory of punishment is retribution theory. Retribution is the theory that criminals should pay for their crime. Most of the people think this should be the main reason for punishment because it makes criminals suffer for what they have done wrong. Criminals make their victims suffer, whenever the criminals should also suffer of the code of Hammurabi An eye for an eye and a tooth for a tooth , it has been urged by leaders and accepted by the general public that the criminal deserves to suffer. Among the ancient Jews even animals which killed human being were regarded as contaminated and were got rid for the good from the community. Many authorities have attempted to base the forms of human punishment on instinctive reactions, which might variously be called wrath, anger, resentment or revenge. Retribution theory intends that a man deserves punishment because he has acted wrongfully. What retribution has insisted upon is that no man can be punished unless he has broken the laws. In addition, that similar ones have been and will be imposed on similar offenders that he was responsible for his action and performed it with knowledge of possible consequences according to a penalty system and that unlike non-offenders, has gained satisfaction on the commission of an offence. As it stands it is worth consideration as a sufficient argument for punishing a man. In case of Loo Choon Fatt [] stated that retribution as an object in sentencing now plays little part in public interest in sentencing, same goes to the case of Rajandran [], certain crimes must be making clear by society through courts that through severity of the punishment, the crime shall not repeat itself again. Secondly, the deterrence punishment is that the act of punishment will deter people from committing further crime. Deterrence punishment divided into two kinds which are General deterrence and Individual deterrence. General deterrence is the knowledge that punishment will follow crime deters people from committing crimes, thus reducing future violations of rights as well as the unhappiness and insecurity they would commit because of the likely punishment ensued. In case of general deterrence, the offender who entitled to the punishment will served as an example as a threats to others which may help to deter others the seriousness of committing the offences with a properly developed Penal Code, the advantages to be gained from criminal activity would be outweighed by the harms of punishment, even when those harms were discounted by the probability of avoiding detention. Accordingly, the greater the temptation to commit a particular crime and the smaller the chance of detention, the more severe the penalty should be. Otherwise, in case of individual deterrence, the actual imposition of punishment creates because of unpleasant experience of the punishment. Adults are more able than small children to draw conclusions from the punishment of others, but having a harm befall oneself is almost always a sharper lesson than seeing the same harm occur to others. However, to deter an offender from repeating his actions, a penalty should be severe enough to outweigh in his mind the benefits of the crime. Thirdly, another theory of punishment is incapacitation. The central idea of incapacitation is the society must be protected from dangerous person disposition from acting upon their destructive tendencies. There have many ways of punishment can be applied to incapacitate the criminal offenders, for example, imprisonment temporarily puts the convicted criminal act of general circulation and the death penalty does so

permanently under S. It would also be the case if the offender, when released from prison had become dangerous then he was before. Hence, the crimes he commits after release are more numerous or more serious than these which were prevented while he was imprisoned. Next, the theory of punishment which is applicable in criminal law is Reformation. The objective of reformation is to reform the criminal so that his wish to commit crimes will be lessened and the offender can assume living with the society and plays a useful role. In case of Kenneth John Ball v R [], it was stated that criminal law is publicly enforced not only with the purpose of punishing crime but in the hope of preventing the repeatedly crime. Besides that, reformative punishment is favored in the public interest. Reformative sentencing may suitable for young offenders, persons with no previous criminal convictions and for those who have committed trivial offences which exposed in Teo Siew Peng []. However, reformative is usually conceived as involving more positive steps to make offenders less antisocial by altering their basic character, improving their skills, or teaching them how to control their crime-producing urges such as their tendency to abuse drugs or alcohol, or to commit sex crimes. These may indirectly help enhance self-respect. In a rational system of Penal Law, a close connection will exist between accepted theories of punishment and both the boundaries of the substantive criminal law and the procedures by which criminal guilty is determined. The justifications obviously teach on sentencing policies and the sorts of activities that shall be made criminalization decisions, but they are much more pervasive. One fundamental question is why the social institution of punishment is warranted. A second question concerns the necessary conditions for criminal liability and punishment in particular cases. A third relates to the form and severity of punishment that is appropriate for particular offenses and offenders. Debates about punishment are important in their own right, but they also raise more general problems about the proper standards for evaluating social practices. However, there have a lot of punishment theories to be imposed on the criminal offenders in order to design the harmful consequences that most people would wish to avoid. Firstly, the theory of punishment is Rehabilitation. Rehabilitation is to restore to useful life, as through therapy and education for the offenders. The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they can bring contribution to themselves and to society. A goal of rehabilitation is to prevent habitual offending, also known as criminal recidivism. Rather than punishing the harm out of a criminal, rehabilitation would seek, by means of education or therapy, to bring a criminal into a more normal state of mind, or into an attitude which play vital role in public interest, rather than be harmful to society. This theory of punishment is based on the notion that punishment is to be inflicted on an offender so as to reform the criminal offenders, or rehabilitate them so as to make their re-integration into society easier. The form of rehabilitation punishments are community service, probation orders, and any form of punishment which entails any form of guidance and aftercare towards the offender. Indeed, the United States Code states that sentencing judges shall make imprisonment decisions "recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation" Secondly, restoration punishment is an approach to justice that focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or applying the punishment upon the offender. Restoration punishment involves both victim and offender and focuses on their personal needs. Apart from that, it provides help for the offender in order to avoid future offences. It is based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the state. Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability. In case of Braithwaite , it was explained that restorative punishment is a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have afflicted the harm must be central to the process. Besides that, restoration punishment practices within its facilities and programs since under Colorado Revised Statues to deal with the criminal offenders. Thirdly, the other alternative theory of punishment is denunciation. Punishment can serve as a means for society to publicly express denunciation of an action as being criminal. Besides educating people regarding what is not acceptable behavior, it serves the dual function of preventing

vigilante justice by acknowledging public anger, while concurrently deterring future criminal activity by stigmatizing the offender. This is sometimes called the "Expressive Theory" of denunciation. The pillory was a method for carrying out public denunciation. Also, denunciation punishment is a principle of sentencing in criminal law that the sentence sends a clear message to the general public that the offence is serious and the punishment just which applied in the case of R v Innes []. Lastly, the punishment in the criminal justice system is back-to-back life sentence. Back-to-back life sentences are two or more consecutive life sentences given to a felon. This penalty is typically used to prevent the felon from ever getting released from prison. This is a common punishment for a double murder in the United States; this is effective because the defendant may be awarded parole after 25 years when he or she is eligible, and then must serve an additional 25 years in prison to be eligible for parole again. It also serves as a type of insurance that the criminal offender will have to serve the maximum length of at least one life sentence if, for some reason, one of the murder convictions is overturned on appeal. The objective of that kind of punishment applied in the criminal justice system is to cease the unpleasant consequences of punishment are usually preceded by a judgment of condemnation; the subject of punishment is explicitly blamed for committing a wrong of the accused. For example, the case of Jack Daniel McCullough [], the murder was sentenced to life prison for killing and kidnapped a 7-years-old little girl. In a nutshell, upon all of the theories of punishments discussed, it is clearly stated that the society must be deterrence by particular punishment in order to shape up a harmony community within a social environment. In contrast, Punishment must thus be proportionate, balancing the appropriate punishment and the severity of the crime. Hence, the criminal punishment justice could be form a public policy, based in violation of known laws, with consistent enforceable Related posts: