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INVESTIGATING THE LEGAL ORIENTATION TOWARDS CRIMINAL JURISPRUDENCE

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ABSTRACT

The crime situations in our cities is concerning. The larger the city, the higher the crime rate. Metro cities in our country have become crime capitals. There are numerous criminal activities in these areas, including homicides, kidnapping, blackmail, and corruption. It's very difficult for citizens to feel safe now. Due to increase in crime day by day certain 'Criminal law' is enacted in the world to control the crime. The Code of Criminal Procedure and Indian Penal Code these include all the important Criminal offences.

KEY WORDS: Indian Penal Code, Criminal Offender, Appellee, Felony, Dismissal.

I. INTRODUCTION

'Criminal law a key element in the life of the Victims'. Criminal law helps the society and individuals to protect themselves against the crime going on in our society or against any individuals. In context to the crime, Criminal law is very important which consist of rules and regulations for proper human conduct in the society. The criminal laws are meant so that crime could be prevented and victims would get justice. The Criminal Law in our country was laid down in year 1860. To prevent offence, Criminal laws were in acted in our constitution. Criminal offence may be consists of two elements i.e. the physical and mental element.

Criminal offence takes place due to two reasons i.e. 'Actus Rea' and 'Mens Rea'.

1. Actus Rea – Actus Rea means guilty act. The accused need to commit some act which results to the injury to the plaintiff or the victim. Without guilty act it is impossible that a crime has taken place.⁵⁷
2. Mens Rea – Mens Rea means guilty mind. The common law maxim '*Actus non facit reum nisi means sit rea*' which relates to 'The act is not guilty until the mind is guilty'.

It has been clearly stated that every wrong can not be punishable as crime, but wrong recognised again law are punishable under criminal law. The immoral act against individual and society is considered as crime and covered under criminal law.

II. FUNDAMENTAL PRINCIPLES OF CRIMINAL LAW

It has been globally accepted that the most important function of Criminal law is to prevent the incident of crime and reprimand the offender. Due to change in societal norms and values the perception of crime do changes day – by – day. Any act disapproved by the society is a crime. There are some exceptions where crime is committed but does not lead to punishment.

- A. Actus non facit reum nisi mens sit rea – The Latin maxim refers the principle as the act alone does not constitute a crime unless it is accompanied by guilty intent.
- B. Nullum crimen sine lege and nulla poena sine lege – According to the two maxim of fundamental principle of criminal law. The first maxim refers to no one held criminally liable, unless he has done an act which is prohibited and second maxim suggest that no one can be punished for an act, unless it is made punishable under ongoing Criminal Law.
- C. Ignorantia facit excusal, ignorantia legis not excusal – According to this maxim the mistake of facts may be excused, but not the

⁵⁷ State of affairs case 'R.V. Larsonneur' (1933), 24 Cr App Rep 74



mistake of law. In reference to the law of crimes, mistake of fact is a good defence where a person has mistakenly done some wrongful act bonafide believing it to be lawful⁵⁸.

D. Quad necessitas non habet leigem leegem – The maxim literally means the “necessity knows no law”. As rightly pointed out by Glanville Williams, ‘sometimes law has to be broken to achieve a greater well’. The principle deducted from Dudley’s case is that , there can be no necessity which would justify homicide⁵⁹

E. Volenti non fit injuria – Harm suffered voluntarily by the consent of the plaintiff is not actionable. This principle of law is generally known as volenti non fit injuria i.e., what is consented to is not an injury. Condition for the application of volenti non fit injuria is consent must be free, Act must be lawful, and Maxim is volenti not scientific non fit injuria.

III. PROTECTION AGAINST CRIME

As we know 21st century has lead to the major changes in the societal human conduct. Day – by – day crime in our country get increases due to which people of our society feel unsafe. Decreasing rate in incidence of crime is only possible when we’re going to protect ourselves against crime and criminals. Security of person and personal property totally depends upon the law being enacted by executive. There are three main key areas preferred for crime prevention strategy that involves primary, secondary, tertiary stage for ensuring a crime free environment because of which crime reduces subsequently.

The first stage is of primary area of crime which refers to location such as schools, residence, neighbourhood, community and involves where environment is being created not eliminating but by root of crime caution.

The second stage is of secondary area of crime which refers to reducing opportunities for crime

by making it a high risk of affair through stringent penal provision and legal prohibition.

The third stage is of tertiary crime prevention which denotes a code of conduct to be followed after a threat of crime is manifest.

By keeping in view the nature and type of offence the offender must be punished according to the crime done by them. Though there are no legislatively pronounced guidelines for sentencing, the judges are not wholly free to decide the quantum of the punishment; instead “they are to draw inspiration from consecrated principles”⁶⁰. Commenting on the roles of judges in awarding punishment to convicted criminals, the Supreme Court in Shailesh Jasvantbhai v State of Gujarat⁶¹ . It is clearly known that crime and problem of offender both lies in the common goal, namely, elimination of crime and criminals from the society.

IV. TYPES AND THEORIES OF PUNISHMENT UNDER CRIMINAL LAW

Jeremy Bentham helped in building law criminal justice system which states that “Punishment itself was an evil, but a necessary evil”.

According, to Section 53 of the IPC, there are 5 types of punishment

A. Death

The punishment of death is referred to as capital punishment. In this punishment, a culprit is hanging for death. In very rare case this punishment is given to the culprit. For this kind of punishment authorisation and predict pass by the court. It is the worst punishment given to the culprit. The punishment that is being given to the offender must be assisting sobriety of crime and how it affect the society. The different Benches of Supreme Court has conflicting opinions for death sentences.

⁵⁸ Section 76 , the Indian Penal Code

⁵⁹ Hari Singh Gaur: Penal law of India, 11th edn. , 1998 Section 81, Comments.

⁶⁰ Justice Benpomin Cordozo who was associate justice of the U.S. Supreme Court wrote the nature of the judicial process (1921) Yale University Press

⁶¹ (2006) 2 SCC 359, 2006 (1) SCALE 561



B. Imprisonment for life

Life imprisonment is mainly served as substitute to death sentence. Imprisonment for life is an alternative for "Transportation of life" by Criminal Law Act, 1955. There are 51 offences in the IPC, 1860 which are to be punishable as imprisonment for life.

As being mentioned in Section 57 of the IPC, the period for life imprisonment must be 20 years. Imprisonment for life is never a simple imprisonment it is a rigorous imprisonment.

C. Imprisonment which has two descriptions mainly: Rigorous imprisonment and Simple imprisonment

According to rigorous imprisonment, the culprit is imprisoned and rigorously work hard as labour do for example like agriculture, carpentry, digging, breaking stone. The IPC refers that whatever the offences are performed under Section 194 and Section 449 are compulsory to get punishment, with rigorous imprisonment without an exception of simple imprisonment.

According to simple imprisonment, the culprit who is held liable for the act of committing crimes such as defamation they are imprisoned with lenient duties. Section 168, 169, 172 to 180, 188, 223, 255-A, 228, 291, 341, 500 to 502, 509 and 510 are majorly covered under simple imprisonment.

D. Forfeiture of property

Forfeiture of property refers to the loss of property, by the offender, it means that government seizes or take the ownership of the property of a wrongdoer. It is a kind of punishment by statutory that are against the law and are covered under Section 126, 127, 169 and 263-A of the Indian Penal Code.

E. Fine

The wrongdoer lineant are charged fine as punishment. Fine are generally charged for the violations of traffic rules or non compliance of revenue laws and are considered as best punishment for minor offences such as gambling, looting and some related to property. Some times Court gives punishment as fine and imprisonment both. According to Section 64 of the Indian Penal Code, a court can impose imprisonment if the wrongdoer fails to pay the fine.

THEORIES OF PUNISHMENT IN CRIMINAL LAW

A. Deterrent Theory

According to the deterrence theory of punishment, the imposition of criminal punishment is ethically acceptable since it works to discourage crime. The deterrence hypothesis is frequently associated with the notion of harsh, disproportionate punishment since the fear of external punishment is a significant motivator in crime deterrence.

The wide-scope deterrence theory, a more tenable deterrence theory of punishment, is defended in this essay, which revisits the deterrence notion. According to the wide-scope doctrine, we must utilise all deterrence measures at our disposal, including both internal and external punishments. The essay develops a deep deterrence theory, which claims that internal sanction—rather than external punishment—is the most effective deterrent. It does this by drawing on concepts from the early Confucian tradition. It explains how internal penalties deter possible transgressions and why pertinent laws need not infringe upon liberalism's reverence for neutrality. Protecting society by treating offenders in a manner so that others are deterred from law breakers.⁶²

B. Retributive Theory

⁶² G.W. Paton: A textbook of jurisprudence, Oxford University Press, 4th edn., 1972, P 201



Throughout the beginning of time, cultures have vigorously discussed the problem of criminal punishment. According to Antony Flew⁶³, Stanley Benn⁶⁴, and HLA Hart [3], punishment is often characterised as something unpleasant that is administered by society and enforced by a legal authority for a violation of the law. Punishment is a common method for expressing attitudes of resentment and indignation, as well as judgements of disapproval and reprobation, on the part of the punishing authority itself or of those "in whose name" the punishment is administered [4]. Consequentialist and retributivist ideas make up the two main categories of punishment theories. [5] Consequentialist theories focus on the use of punishment to improve outcomes.

C. Preventive Theory

Punishment is not a novel concept to man. Punishment has long been thought of as a way to reduce crime in society from the dawn of civilisation and the creation of laws. Punishment entails adherence to social rules, the preservation of peace and order in the world, and the protection of people from harm to their person or property. But, the more significant function it performs is the punishment meted out to an individual or group for engaging in behaviour that the general public deems to be unpleasant or objectionable. Punishment is typically administered by a representative of power; in the modern world, this representative of power is the State or the government.

D. Reformatory Theory

"An eye for an eye blinds the whole world." This quotation by Mahatma Gandhi is the foundation of the reformatory theory of punishment. Punishment should not be used simply to punish; rather, it should be used to transform. The goal of punishment should be to change the offender's character. Punishment is a form of societal regulation that enables a

society to maintain its policies and regulations, as well as the peace of its residents' lives. As a result, if the crime is not monitored, it will cause trouble within the community and in people's daily lives. In order to cope with improper conduct or crimes that could be defined as infringements of the law, a new theory known as the reformatory theory was introduced around the 18th century. The theory's distinguishing characteristic is that, unlike all the other theories of punishment, it focuses on the criminal instead of the crime and aims to alter the criminal's mindset in order to rehabilitate him/her as a law-abiding citizen of society. In this article, we will be looking at various provisions and cases in which the court recognises the concept of reformatory theory.

CONCLUSION

Throughout the past 20 years, extensive drug misuse issues and drug-related crime have had a substantial impact on the criminal justice system. It has become extremely difficult for courts, jails, prisons, and community corrections—all of which have expanded significantly over this time—to stop drug-related offenders from repeatedly reentering the criminal justice system. A number of substance abuse treatment programmes, both residential and "outpatient" ones that use cognitive-behavioural and motivational enhancement techniques and concentrate on reshaping "criminal thinking," have been developed in correctional facilities as a response to this trend. The requirements of offenders with co-occurring mental and substance use problems, who present a higher risk for recidivism upon release from custody, have also started to be addressed by specialised correctional treatment programmes. Increasing number

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