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2nd Year, BBA LL.B.**DETERRENCE THEORY UNDER CRIMINAL SYSTEM AND IT'S
CRITICISM****ABSTRACT**

Certain Philosophers like Jeremy Bentham, Beccaria talked about the consequences and importance of Punishment under criminal justice system of the society. As the time passes the society is growing collectively, and an individual member of the society always seeks to take away his portion from the mass, not only his but also to encroach upon that of the others, so in order to make a society free from the wickedness, illicit acts, apprehension and chaos, Law comes into force to set down norms in the society and punish the lawbreakers and to serve its purpose to prevent others from committing any offences (Deterrent effect).

INTRODUCTION

Deterrence is a theory aims at not only punishing the violators of law but also discouraging other people from committing similar offence by comparing the repercussions of the unlawful act . A person who would have committed the act otherwise is restrained from doing it , because of the unpleasant consequences . It is in the Best way expressed by Burnett J who said to a prisoner that - *"Thou art to be hanged not for having stolen a horse, but in order that other horses may not be stolen"*.

COMPONENTS OF DETERRENCE THEORY

There are certainly three components of Deterrent theory , namely **Severity , celerity , certainty** . Severity of punishment aims at severe sanctions to deter crimes . It is to increase the magnitude of the punishment so to prevent people and creating reasonable apprehension of the potential consequences . For example – Increasing the term of the imprisonment , or imposing heavy

penalty or granting capital punishment in certain heinous crime may deter people . Celerity is the quickness With which a person receives the punishment as a consequences of infringing the law , delayed punishment is never compatible with the spirit of justice , people prefer speedy justice for the victims and speedy punishment for the criminals .For example –A girl who was brutally raped and tossed outside the bus and such brutal Nirbhaya convicts were hanged after 7 years of committing the crime , the time period of 7 years have experienced a humungous number of Rapes case ¹, just because the convicts of Nirbhaya has not been sanctioned by the supreme law till that time , and thus encouraging another criminals to commit crimes as they would think they can escape from the punishment , people would forget that , and the criminal chapter will close. Certainty of punishment is considered to be the most important component , it is about the likelihood of being caught , and there are potential chances a criminal being caught , other components like severity and celerity would not work if there is no possibility of being caught . There is an evidence that , when people believe they are likely to the captured or arrested under a crime are less likely to commit an offence than those who not at all expect to being captured or punished . For example – likelihood of being caught by cops and troops while negligently driving or violating the traffic rules may prevent them violating the law . Thus a crime rate will be lower If we increase the severity , celerity and certainty of punishment . Changing the severity of punishment simply requires legislators to replace the existing penalty with more severe ones Increasing the certainty can be done by making robust the police practises and more enforcement efforts should be put on . Increasing the celerity may face challenges like due process of law , our court have already a stack of unaddressed cases . Deterrence can be of two types namely , **General** and **Specific** Deterrence . General deterrence is to prevent the general population from committing the crimes . Thus punishment by law to the offenders can serve a general deterrence to other people who have not yet committed the crime . It may apprehend them about the severe sanction of law , For example – Providing death penalty , corporal punishment , even corporal punishment still in some place carried out in public so that people could witness the consequences and dare to the offence . For example hanging till death was once carried out in England and USA , public and family members were allowed to attend and witness the ones who broke the law . Specific deterrence is preventing only the individual offender from re-committing that crime in further future .Punishing them severely will make them not willing to reoffend in the future . For example – A thief would be deterred from trespassing and stealing the stuffs because of the suffering due to his conviction and the punishment he was imposed upon on a prior offence . If we go down to the lane , then our Hindu scriptures also believe in deterrent theory , convicts were hanged in public , they were also immersed in hot oil and water , so that it create apprehension on the mind of the general public and will discourage them from indulging in such acts .

CRITICISM OF DETERRENCE THEORY

Does deterrent theory is really effective in today's time ? Talking about Nirbhaya case , 6 people gang raped a girl in such a brutal and gruesome , but the judgement of the court came after 7 long

¹ Mukesh and Anrs . Vs NCT Delhi (Nirbhaya case) 2017

2 Available at: <https://nij.ojp.gov/topics/articles/five-things-about-deterrence><https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

years and only 4 out of 6 were granted death sentence . So now the first component of deterrent theory that is severity is fulfilled because death penalty is such a severe and fearsome punishment , but what about the celerity component , it is absolutely a fail , delayed justice of 7 years didn't met this component , and to some extent certainty component is not met because even after such crime , rape case and other heinous crime is rising at a fast pace , the offenders are freely roaming into the road , and re offending again , because they are less likely to be chances of them being caught , therefore deterrent theory is not effective here, even after capital punishment , the raped case continued to be unabated , there were Hathras case and many more , so simply despite of such punishment , there were no improvement , and thus deterrent theory being ineffective. Deterrence theory fails to work because of High **recidivism** rates which is the propensity of the convicted criminal to re offend at even a very high rate . And even some crime are not based on cost benefit analysis that is comparing the consequences of committing a crime with benefits of not committing a crime , as the crimes which committed under unconsciousness such as under the influence of alcohol and drugs then they cannot ponder over rational cost benefit analysis .This theory always tries to prevent the crimes by punishing the present , it doesn't matter if the punished is actually guilty or just mistakenly doubted, because the focus is not on achieving justice but to only halt crime in the society and even at times the punishment may exceed the degree of actual crime committed . For example – Earlier times it was evident that people were getting severe punishment for trivial crimes , such as pickpocketing but they were hanged in public , which is exceeding actually the reasonable punishment . punishment exceeding the reasonable limit is again an injustice in itself and to be offenders. It also neglect the retributive form of theory which aims at reforming the criminals in rehabilitation camp , giving them chance to ameliorate themselves and to be accepted by the society , it only aims to punish the offenders . This theory is also criticized² for treating men as a means to achieve an end which is against **kant's** theory . Because the motto of punishing a person is for public good , for deterring crime and not for his own sake or reformation . For example – if a person is convicted for robbery , then he is punished so that others not dare to do it , thus using men as a means .

CONCLUSION

Therefore , this theory was meant for a good motto to deter crime , but considering today's situation , it is a major fail , because the aim is not fulfilled i to deter crime , as day by day there is always a hike in the criminal cases , even punishing the criminal is actually not restricting the general public not to commit crimes instead of that the we have witnessed high recidivism rates , this theory even actually treats criminal as outsiders and considering them as a means , to achieve social ends . Thus , focus should not only be on deterring the society but at the same time giving chance to reform the criminals , which may reduce the recidivism rate as it is seen that severity of punishment seems to be inefficient there . And taking it forward celerity should be there in justice as justice delayed is justice denied , people should be discouraged if there is a certainty of being caught and punished , there is a speedy punishment for the crime committed which will be justice to the victim and criminals would be paying for their illicit activities with severe punishment for heinous crime, so that reasonableness will exist and there is no injustice against offenders.

3 Available at: <https://www.britannica.com/topic/punishment/General-deterrence>