



AN ASSESSMENT OF SOME THEORIES OF PUNISHMENT AND THEIR INFLUENCE ON CORPORAL PUNISHMENT'S USE AS A BEHAVIOUR MODIFICATION STRATEGY

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Abstract:

Theories explain the essence of the use of strategies in society. This review analyses the main theories that underpin the use of punishment as a behaviour modification strategy. Four main theories, namely the deterrent theory, incapacitation theory, compensation theory, and reformatory theory, were reviewed and discussed in related literature to give an understanding of the use of punishment as a behaviour modification strategy in society. The discussion is concluded by drawing a linkage from the discussed theories with the use of corporal punishment in society. Recommendations are made in support of the use of alternative strategies rather than punishment in our current dispensation.

Keywords: assessment, theories, punishment, deterrent, incapacitation, compensation, reformatory

1. Introduction

Punishment refers to the application of an unpleasant thing in response to an undesirable behaviour, with the intention of preventing the repetition of that behaviour (Oxley & Holden, 2021). Punishment can also mean the withholding of a reward following an undesirable behaviour with the intention of terminating the undesirable behaviour (Clark, 2018; Ziv, 2017). However, in ordinary usage, the term punishment is more often used to mean the application of an unpleasant thing on an individual for the purpose of deterring a behaviour.

There are several forms of punishment that are administered in society as a deterrent measure against the exhibition of inappropriate behaviour. These include suspension, fines, expulsion, exclusion and detention. Others are caning, flogging, incarceration, death and manual work (Kano, 2012; Wildlife Law Africa, 2020). Punishment is offered to achieve several aims. These are explained by the theories of punishment, which form the fundamental basis for administering punishment.

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In the past, punishment has focused on the purpose of deterring, reforming, preventing, and retributing an offence committed (Shelke & Dharm, 2019). These are underpinned by the various theories of punishment, which are explained next.

2. Deterrent theory

The main reason for punishment, according to this theory, is to inflict pain or harm on the offender so that he/she does not repeat the offensive act again and to let others, based on the punishment meted out, also not to commit the same act or offence (Rai, 2020; Karim, 2020; Shelke & Dharm, 2019). This approach is also known as the preventive or exemplary theory of punishment since it focuses on preventing future occurrences of the same or similar offences by the same or different people (Karim, 2020). It is the belief of the proponents of this theory that someone who, for instance, had his/her hand chopped off for stealing might not do so again because of the loss incurred and the pain suffered as a result. Others, having seen the consequence of his/her act of stealing (chopping off of his/her hand), might also not attempt to steal in order not to suffer the same fate.

Advocates of this theory (utilitarian and consequentialists) allude that the use of punishment as a deterrent measure is good because it is forward-looking and prevents further offences in the future (Karim, 2020). Deterrent punishment also denotes to others the consequences of an offence committed by someone and, hence, deters them from committing that same offence. Furthermore, it aims at the well-being of society and, hence, prevents the repetition of similar offences in society.

Specific deterrence, broad deterrence, marginal deterrence and partial deterrence are the four primary types of deterrence (Karim, 2020). The impact of punishment on the offender's future behaviour is known as specific deterrence. As a result, particular deterrence refers to the ability of punishment to keep an offender from committing the same crime again. The potential of punishment to stop others from performing the same behaviour is known as general deterrence. Marginal deterrence focuses on the net effect of two acts of punishment. For instance, if caning a person is more deterrent than fining the person, caning is said to have a higher marginal deterrent effect than fining. Partial deterrence is momentarily abstaining from the administration of punishment because of the nature of the offence committed. A crime of less threatening value to victims is partially punished.

There are several oppositions to deterrent punishment. It is seen to focus on the prevention of future crimes rather than whether the offender is guilty or not; hence, it does not seek justice for the offender. Furthermore, it does not weigh the magnitude of the punishment vis-à-vis the crime committed; hence, most often, one is punished more than he/she deserves. Deterrent punishment does not also focus on reforming the offender but only on preventing the recurrence of the crime (Karim, 2020). Deterrent punishment is further criticised for using human beings as a means of curbing future crimes. Consequent to these oppositions to deterrent punishment, a number of deterrent

measures, such as imprisonment, have proven not ineffective in deterring future offences (Listwan *et al.*, 2013).

3. Incapacitation theory

Incapacitation theory emanated from Britain in the 18th and 19th centuries, when convicted persons were moved to America and Australia (Rai, 2020). Incapacitation has been defined differently by different authors. Malsch and Duker (2016) defined it as every measure or step put in place which has the goal of hindering, limiting or preventing the repetition of an action. Rai (2020), on the other hand, defined incapacitation as limiting or restricting of the freedoms and rights of individuals in society. The incapacitation theory of punishment, therefore, posits that an offender should be made powerless so as not to have the chance of repeating the offence committed (Malsch & Duker, 2016). Incapacitation, therefore, mainly aims to prevent future repetition of an act by putting the offender in a state where he/she cannot commit the act again permanently or for a period. Therefore, just as in deterrent theory, prevention is the overall goal of incapacitation (Rai, 2020).

There are several forms of incapacitation, all mostly aimed at the prevention of future offences. These forms include imprisonment or incarceration, house arrest, control order and death penalty. Imprisonment is the widely used incapacitation measure (Rai, 2020). The liberties and rights of the offender are restricted for the period of imprisonment, making it impossible or difficult to repeat the offence at that time and as a lesson not to repeat the act in future. The death penalty, however, is the highest form of incapacitation since it takes away the life of a person as well as the chances of repeating the offence (Malsch & Duker, 2016).

Malsch and Duker (2016) accounted for the increasing use of incapacitation as a means of punishment in recent times. First, its use has become eminent as a means of preventing increasing crime in society. In this era of sophisticated crimes ranging from murder to stealing, the use of imprisonment and other forms of incapacitation is justified as a means of preventing an increase in such crimes in society and, hence, the reduction in such crimes. Second, the use of incapacitation is justified on the grounds of eliminating fear and insecurity in society. Following the 9/11 disaster and the recent increase in terrorism and general insecurity in society, incarceration and other forms of incapacitation are seen as means of eliminating the perpetrators of these crimes in society. By so doing, society would be rid of these threats to society. Despite the justification of incapacitation as a form of punishment, it is criticised on several grounds. First, the cost of maintaining a large number of incarcerated people is a burden to most countries. For instance, the United States prison population increased by 263% with the coming into force of the sentencing guidelines (Pathinayake, 2017). Again, there is the tendency for incarceration to be more proportional to the magnitude of the offence one committed and hence, incarceration is seen as harsher for petty offences. Pathinayake (2017), therefore,

recommends that incarceration should be used for severe sexual and violent offences and not for less civil and criminal offences.

4. Compensation theory

The compensation theory of punishment is underpinned on the philosophical grounds that the offender must pay back to the victim or society some form of recompense for the harm the victim suffered through the offence the offender committed. Compensation theory is, therefore, based on the idea that the victim lost something from the offence suffered and must be brought back to the position where he/she was prior to the offence. The offender, on the other hand, must lose something as a form of reimbursement to the victim of the offence. Compensation is founded on two philosophical principles, according to Maheshwari (2015). First, the victim must be paid by the state for the state's failure to prevent the crime or harm. Second, the perpetrator must recompense the victim in order to return him or her to the position in which he or she was before the injury was caused. These two reasons form the legal and humanitarian bases of compensation, respectively.

Compensations are usually paid to the victim by the state or by the offender. Several forms of compensation exist in society. The most common are penalties, which are levied on the criminal to compensate the victim and to indicate the state's disapproval of the crime committed. Compensations, therefore, apart from restituting the victim to his/her former position, also have a preventive motive since the offender or onlookers are discouraged from committing that same act in the future.

Several factors determine people's preference for compensation over other punitive disciplines. Doorn and Brouwers (2017) identified two factors, namely, social benefits and individual factors. In terms of social factors, they argue that compensation helps restore the victim to his/her original position, unlike punitive discipline. Furthermore, they found that compensation builds up a good relationship between the offender and the victim than in the case of punitive discipline. In terms of individual factors, they found that compensation is preferred by people with a high need for understanding human nature and people with empathic concern for others. A further study by Hu, Strang and Weber (2015) supports this assertion. On the other hand, people might prefer punitive discipline to compensation due to factors relating to the desire for retribution, the severity of the offence committed and individual factors relating to holding negative perceptions towards the offender (Doorn & Brouwers, 2017).

5. Reformatory theory

This theory posits that punishment should not be used as a preventive or deterrent measure but as a curative process in society. Thus, this theory is based on the orientation that crime is a disease resulting from the lack of will power of offenders to resist and hence, society should not punish it through deterrent or preventive measures but cure it

through reformative practices (Rai, 2020; Sandeep, 2021; Shelke & Dharm, 2019). This theory of punishment focuses on the humanistic doctrine that if even one commits an offence, he/she does not cease to be human and, hence, should be given the needed respect by society and reformed for the better (Sandeep, 2021). The offender should be treated as a patient in need of help and should be given the needed help through reformation. This theory disagrees with the retributive philosophy of “an eye for an eye” but rather holds that offenders should be helped to get over their offences.

In modern times, reformative practices such as education, training, therapy, parole, probation, commutation of sentences and pardon have become a centre stage of prisons and criminal reforms. They are used mostly in reforming juvenile and first-time offenders (Gupta, 2021; Sandeep, 2021). The idea of reformation and its various measures are supported by several advocates as having some advantages. Gupta (2021) outlined the following as some benefits of reformative practices. First, it serves as grounds of encouragement to the offender to change his ways for the better. Second, it ensures no disruption in the family structure of the offender by not removing him from the family as in the case of incarceration. Thirdly, reformation helps the offender to better adapt to the community through the training and practices he/she is taken through as points of reform.

Despite the apparent benefits of reformative theory, it is criticized on several grounds and, hence, not supported by a number of communities. Gupta (2021) and Sandeep (2021) summed up the criticisms of the reformative approach as follows: first, the use of this approach does not help habitual offenders since it encourages them to continue to perpetrate the act. In such cases, deterrent measures are most suitable. Second, reformation does not work in the case of a death sentence since reformation can take place only when one is alive. Third, reformation might not adequately relieve the victim as no justice seems to be served by reformative practices. Finally, in countries with high crime rates, reformation does not serve as a deterrent measure to the continuous perpetuation of crimes. In such countries, punitive discipline is seen as more effective than reformative practices.

6. Influence of these theories on the use of corporal punishment

The use of corporal punishment by parents, teachers and others in society is largely influenced by the preventive/deterrent theory of punishment. Corporal punishment, which involves the presentation of an unpleasant stimulus (mostly a cane) to an offender, aims at preventing the repetition of a behaviour and deterring others observing the consequences of that behaviour from repeating that same behaviour.

Contributing to the reasons for the use of corporal punishment in schools, Agbenyega (2006) found that the preventive motive was one overriding motive for the use of corporal punishment. Similarly, Goodman (2022) found the same reason for its use by teachers. He emphasized that the use of corporal punishment serves as a deterrent of indiscipline acts on the pupils who undergo this behaviour modification strategy.

The other theories of punishment, namely incapacitation, compensation and reformatory, offer little grounds for the use of corporal punishment. Corporal punishment is not mainly used for compensation, incapacitation, and reformation, even though some people do use it for these reasons. Alternative strategies, namely positive discipline strategies, have proven to be more effective in reforming pupils than the use of corporal punishment, as documented in studies like Acosta *et al.* (2019), Bevington (2015) and Stowe (2016), among others.

7. Conclusions and Recommendations

The foregoing theories of punishment indicate that several reasons influence the use of punishment in society. It might aim at reforming an offender just as most of the alternative strategies to corporal punishment do. It might also aim at recompensing the offender as in the case of compensatory theory. Furthermore, some aim to render the culprit powerless to perpetrate further offences. However, the overriding reason for punishment is to prevent the repetition of a wrong behaviour by the offender and the deterring of prospective perpetrators of that behaviour. These motives are seen in the case of the preventive/deterrent theory of punishment. Corporal punishment largely follows the lines of preventive and deterrent motives in schools and homes, and it is used by parents, teachers, and other people as a behaviour modification strategy.

Though these are cogent reasons for the use of punishment, it is recommended that:

- 1) The use of punishment should be avoided because of the negative outcomes of its use, as documented in the literature (Akhtar & Awan, 2018; Elgar *et al.*, 2018; Heekes *et al.*, 2022).
- 2) The use of the alternative strategies to punishment should be pursued since they have proven to serve the same purpose as punishment but with limited negative consequences as compared with punishment (Childs *et al.*, 2016; Gage *et al.*, 2020; Lee & Gage, 2020).

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