

## PSYCHOLOGY OF CRIME – II

### *Unit III*

#### PUNISHMENT

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#### REACTION TO PUNISHMENT

To explore the factors mediating impulsivity in the syndromes of disinhibition, we investigated the ability of extraverts and psychopaths to use signals for punishment to withhold maladaptive approach behavior under various incentive conditions. The results provide evidence that (a) in comparison to controls, extraverts and psychopaths fail to use cues for punishment to inhibit incorrect approach responses; (b) the deficient response inhibition of disinhibited subjects is specific to approach-avoidance situations; (c) under conditions involving monetary rewards and punishments, disinhibited subjects are less likely to slow down, and may even respond more quickly, following punishment; and (d) the tendency to speed up rather than slow down following punishment is associated with failure to learn from punishment. The results suggest that once focused on obtaining reward, extraverts and psychopaths display an active (disinhibited) as opposed to a passive (reflective) reaction to punishment and frustrative nonreward. This reaction to punishment appears to interfere with learning cues for punishment and may underlie the poor passive avoidance learning and impulsive behavior that characterize the syndromes of disinhibition.

#### THEORIES OF PUNISHMENT

## **Retributive Theory of punishment**

The Retributive Theory of Punishment, or the theory of Vengeance', as many people in the society would perceive it as, is the most basic, yet inconsiderate theory of inflicting a penal sentence over a perpetrator. It is based on a very small doctrine, namely the doctrine of Lex talionis, which if translated, means 'An eye for an eye'. Now, if looked at from the perspective of very serious and heinous offences, like the Delhi gang-rape case, people may feel that it is better to inflict such retributive punishments, to ensure that a deterrent is set across the society, to prevent such crimes shortly.

However, we forget to understand sometimes that always having a retributive approach will render the society one with a primitive system of justice, where the Kings or the Judges were considered to be the supreme beings and were provided with the stature of God Himself (hence the address My Lord) and thus, collapse the very concepts of the representatives being 'servants'. Before we move on to a deeper understanding of the Retributive Theory, we need to understand two very important doctrines. Let us have a look at them both.

### **Understanding Retributive Theory of Punishment:**

The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles:

1. that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment;
2. that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and
3. that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.'

The above three principles clarify the need for retributive justice even further. We may understand retributive justice in this manner. The place where both Criminal Law, as well as Moral Law, meet, is the place where mostly the retributive punishments are generated.

In fact, although people may classify punishments into seven different types, in reality, every punishment, indeed, is retributive. It is very interesting to see that the damages claimed under Torts, or the remedies sort for environmental violations, maybe compensatory, but at their hearts, are retributive. Then why aren't they labeled as retributive, instead? Well, the answer

to the question is simple. Retributive punishments are somewhat vengeful in their nature (an eye for an eye). They may not be vengeful always, but maybe merely morally vengeful. When we say this, it means that although the punishment is not literally the thing that was originally done by the perpetrator, it still acts as a vengeance by its seriousness.

E.g: If a person rapes someone, capital punishment may be given as a retributive measure. If we literally give the person back what he did, i.e., sex, then it would be pleasurable rather than torturing for him. Now that we have understood briefly how exactly the retributive punishment works, let us now move on to understand the ways in which Retributive Theory is displayed in the Hindu texts and scriptures.

### **Deterrent Theory of punishment**

In the Deterrent theory of punishment, the term “DETER” means to abstain from doing any wrongful act. The main aim of this theory is to “deter” (to prevent) the criminals from attempting any crime or repeating the same crime in the future. So, it states that deterring crime by creating fear is the objective; to set or establish an example for the individuals or the whole society by punishing the criminal. That simply means, according to this theory if someone commits any crime and he/she is punished by severe punishment, then, it may result may be that the people of the society will be or may be aware of the severe punishments for certain kinds of crimes and because of this fear in the minds of the people of the society, the people may stop from committing any kind of crime or wrongful act. Here I used the phrase “may stop” instead of “will stop”. That means, there is a probability of committing any crime or repeating the same crime.

The concept of deterrent theory can be simplified to the research of philosophers such as Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794), Jeremy Bentham (1748-1832). These social contract thinkers provided the foundation of modern deterrence in criminology.

In the Hobbesian view, people generally pursue their self-interests, such as material gain, personal safety, and social reputation, and make enemies, not caring if they harm others in the process. Since people are determined to achieve their self-interests, the result is often conflict and resistance without a fitting Government to maintain safety. To avoid, people agree to give up their egocentricity as long as everyone does the same thing, approximately. This is termed as “Social Contract”. According to this social contract, he stated that individuals are punished for violating the social contract and deterrence is the reason for it to maintain the agreement between the State and the people, in the form of a social contract workable.

From the deterrent theories of Thomas Hobbes, Cesare Beccaria, and J. Bentham, we came to know that the theory of deterrence consists of 3 major components. They are as follows:

- **Severity:** It indicates the degree of punishment. To prevent crime, criminal law must emphasize penalties to encourage citizens to obey the law. Excessively severe punishments are unjust. If the punishment is too severe it may stop individuals from committing any crime. And if the punishment is not severe enough, it will not deter criminals from committing a crime.
- **Certainty:** It means making sure that punishments must happen whenever a criminal act is committed. Philosopher Beccaria believed that if individuals know that their undesirable acts will be punished, then they will refrain from offending in the future.
- **Celerity:** The punishment for any crime must be swift in order to deter crime. The faster the punishment is awarded and imposed, the it has more effect to deter crime.

According to Austin's theory, "Law is the command of the Sovereign". In his imperative theory, he clearly declared three important things, which are as follows:

1. Sovereign.
2. Command.
3. Sanction.

Austin's question is that 'Why do people follow the rule?'. He believes that people will follow the law because people have a fear of punishments. On the basis of his beliefs, we can see a small example over here: When people are biking, they wear a helmet as per biking rules. Now, we can assume that some people wear helmets genuinely to save themselves from road accidents but on the other hand, some people wear helmets because of escaping fines or in fear of cancellation of their biking license. So, in that case, they know that if they bike rashly or disobey the biking rules they will be punished by giving huge a amount of fines, or their biking license will be canceled. So here we can say that the purpose of the deterrent theory is successful and applied also.

### **Preventive Theory of punishment**

The preventive theory of punishment seeks to prevent prospective crimes by disabling the criminals. The main object of the preventive theory is transforming the criminal, either

permanently or temporarily. Under this theory, the criminals are punished by death sentence or life imprisonment, etc.

### **Philosophical View of Preventive Theory:**

Utilitarians such as Bentham, Mill, and Austin of England supported the preventive theory of punishment due to its humanizing nature. Philosophy of preventive theory affirms that the preventive theory serves as an effective deterrent and also a successful preventive theory depends on the factors of prompt offense. The founder of this theory held that the aim of punishment is to prevent the crimes. The crimes can be prevented when the criminal and his notorious activities are checked. The check is possible by disablement. The disablement may be of different types. Confining inside the prison is a limited form of disablement, that is temporary and when it is an unlimited form of disablement, that is permanent. It suggests that imprisonment is the best mode of crime prevention, as it seeks to eliminate offenders from society, thus disabling them from repeating the crime. The death penalty is also based on this theory. This theory is another form of deterrent theory. One is to deter the society while another is to prevent the offender from committing the crime. From an overall study, we came to know that there are three most important ways of preventive punishment, they are as follows:

- By creating the fear of punishment.
- By disabling the criminal permanently or temporarily from committing any other crime.
- By way of reformation or making them a sober citizen of the society.

### **Incapacitation Theory of punishment**

#### **Meaning:**

The word “incapacitation” means ‘to prevent the offence by punishing, so that the future generation fears to commit the criminal act.’ Incapacitation happens either by removing the person from the society, either temporarily, or permanently, or by some other method, which restricts him due to physical inability. One of the most common way of incapacitation is incarceration of the offenders, but in case of severe cases, capital punishments are also applied. The overall aim of incapacitation is preventing or restraining the danger in the future.

#### **Definition:**

“Incapacitation refers to the restriction of an individual’s freedoms and liberties that they would normally have in society.”

**Purpose of Incapacitation Theory:**

One of the primary purposes of this theory is removing the sufficiently dangerous persons from the society. The risk that is found to be posed by the offenders are largely a matter of inception. Therefore, if one country treats one offence in one way, another country will treat the same offence in a different way. For example, in the U.S., they use incarceration to incapacitate offenders at a much higher rate, than in other countries. It has been seen that unlike the other theories of punishments like deterrence, rehabilitation and restitution, the theory of incapacitation simply rearranges the distribution of offenders in the society so that the rate of crime decreases in the society. The main aim of the theory of incapacitation is to dissuade others from the offenders in the past, so that it is not followed by the future generation.

**Application of the theory:**

The theory of incapacitation gets reserved only for those people who are either sentenced to prison or to life imprisonment. Yet, it also includes things like being supervised by the departments within the community, like probation and parole.

**Origin:**

The theory of incapacitation was originated in Britain, during the 18th and the 19th centuries, where the convicted offenders were often transported to places like America and Australia. Later in the 21st century, the theory was changed to some extent, where the offenders were to remain in the primary method of incapacitation which was found in most of the contemporary penal systems. Therefore, the theory usually takes the form of imprisonment, which is considered to be the best the form of incapacitation, rather than other methods of incapacitation.

According to a study conducted by The University of Chicago, it has been proven that the crime rates can be prevented by 20 per cent. Also, it has been seen that if other theories are applied like Retributive Theory, Compensatory Theory, etc., then they lay down a fairly stringent application of putting the criminal behind the bars for at least 5 years. Also, it can happen to increase the population of the prison if the rest of the theories are applied. If a small number of high-rate offenders commit a disproportionately large amount of crime, targeting limited prison resources on these offenders should achieve increased crime control without increasing prison populations unreasonably. This policy will depend on the degree of the crime committed and whether the criminal is early in his carrier.

**Compensatory Theory of punishment****Definition:**

The main look out in the law of crimes is to penalize the criminal, and/or to seek his reformation and rehabilitation with all the resources and goodwill available through the Courts and other Governmental and non-Governmental organizations. It must be seen that the criminals should get proper judgement for their crimes so caused and the harassment caused to the victim and towards their family members and property. The victims in a crime can be compensated on mainly two grounds, namely-

1. A criminal who had inflicted an injury against the person (or group of persons), or the property must be compensated for the loss caused that has caused to the victim, and
2. The State that has failed to provide safety towards its citizens, must receive compensation for the loss caused.

Compensation is the true essence of deterrent, reformative and a necessary contribution of retribution.

### **Reformative Theory of punishment**

The idea of the Reformative Theory is hypothesis. As per this hypothesis, the object of discipline ought to be the change of the crook, through the strategy for individualization. It depends on the humanistic rule that regardless of whether a wrongdoer perpetrates a wrongdoing, he doesn't stop to be a person. In this way, an exertion ought to be made to change him/her during the time of his/her detainment. For example, he may have executed bad behaviour under conditions which may never happen again. Hence an effort should be made to transform him during the hour of his confinement. The object of order should be to accomplish the moral difference in the liable party. He ought to be told and perform some craftsmanship or industry during the hour of his confinement with the objective that he may have the alternative to start his life again after his conveyance from jail.

### **History of the Theory:**

The human development has consistently been administered under the standard of an incomparable force. The job and type of pre-eminent force has changed throughout a long term. Beginning from the primitive type of Government to the present just, republican and different types of Governments, the obligation of the incomparable authority has changed a lot. The idea of discipline has additionally changed like the idea of State duty throughout the long term. The idea of discipline relied upon the premise of religion and the organization of the Kings. During old occasions, the idea of discipline was retributive premise, where the

hoodlums were given uncouth type of discipline. Afterward, over the entry of ages, the significance of common liberties expanded which in essence cleared path for the replacement of Retributive hypothesis by Reformatory and Rehabilitative hypotheses. Under the Reformatory and Rehabilitative hypotheses, the blamed are given such structures for discipline which would change them and keep them from perpetrating such wrongdoings.

The theory of punishment being followed in India with the goal to change the crooks as opposed to rebuffing them isn't that compelling in avoidance of the event of violations in India. The essential idea of law isn't to be static, but to be dynamic in nature. At exactly that point the law will have the option to be successful in all fields of the general public.

### **The Main Purpose Reformatory Theory:**

The reason for this hypothesis of discipline is to make the criminal languish over his bad behaviour. Here the motivation behind the discipline is profoundly customized and rotates around the mental outlet of the person in question or his family. The primary reason might be accomplished to parole and probation, which have been acknowledged as current procedures of improving the guilty parties all around the globe. Consequently, the backers of this hypothesis legitimize imprisonment not exclusively to separate hoodlums and kill them from society. Not many of the advanced reformatory procedures of discipline are essentially concocted for the treatment of guilty parties as per their mental attributes, for example, probation, parole, uncertain sentence, exhortation and pardon. The reformatory techniques have demonstrated to be valuable in the event of adolescent misconduct, first wrongdoers and ladies. Sex cases additionally appear to react well to the reformatory strategy for discipline. All the more as of late, the reformatory hypothesis is in effect widely utilized as a technique for treatment of intellectually denied wrongdoers.

### **Criticism:**

1. Reformatory theory anticipates better framework and offices in jail, legitimate co-appointment between various control and diligent exertion on their part to shape criminals. It requires gigantic ventures which poor nation can't bear the cost of.
2. A great many guiltless individuals who have high respects for law are finding hard to get fundamental courtesies hypothesizes moral avocation for giving better offices inside jail.
3. Also, the soundness of the hypothesis is more towards motivators for the commission of wrongdoing instead of counteraction.



4. Transformation can work out on those individuals who can be improved, there are individuals who can't be changed like bad-to-the-bone lawbreaker, profoundly instructed and proficient hoodlums.

5. This theory disregards possible wrongdoers and people who have submitted wrongdoing however not inside the arms of law. Further, it ignores the cases of survivors of violations.

6. Degenerate social ecological is liable for wrongdoing yet not person duty, is the way of thinking of reformative which is difficult to process. In any case, it is out of line to excuse the honourable idea of reconstruction as a complete disappointment. All know about the occasions where untalented, uninformed and evidently hopeless lawbreakers have created aptitudes in jail, which have changed them into profoundly valuable people.

### **Utilitarian Theory of punishment**

The utilitarian hypothesis of discipline tries to rebuff guilty parties to debilitate, or "hinder," future bad behaviour. Under the utilitarian philosophy, laws ought to be utilized to amplify the joy of society. Since wrongdoing and discipline are conflicting with bliss, they ought to be kept to a base. Utilitarian's comprehend that a wrongdoing-free society doesn't exist, yet they attempt to incur just as much discipline as is needed to forestall future violations.

The utilitarian hypothesis is "consequentialist" in nature. It perceives that discipline has ramifications for both the wrongdoer and society and holds that the all-out great created by the discipline ought to surpass the absolute malevolence. At the end of the day, discipline ought not be boundless. One delineation of consequentialism in discipline is the arrival of a jail detainee experiencing an incapacitating sickness. In the event that the detainee's demise is fast approaching, society isn't served by his proceeded with restriction since he is not, at this point fit for carrying out wrongdoings.

Under the utilitarian way of thinking, laws that indicate discipline for criminal leads ought to be intended to dissuade future criminal direct. Discouragement works on a particular and an overall level. General discouragement implies that the discipline ought to keep others from carrying out criminal acts. The discipline fills in as an illustration to the remainder of society, and it advises others that criminal conduct will be rebuffed. Explicit discouragement implies that the discipline ought to keep similar individual from perpetrating violations. Explicit prevention works in two different ways. Initially, a guilty party might be placed in prison or jail to truly keep her from perpetrating another wrongdoing for a predefined period.

Secondly, this crippling is intended to be undesirable to such an extent that it will demoralize the guilty party from rehashing her criminal conduct.

Does Utilitarian Theory Support Death Penalty:

The apparent seriousness of capital punishment, there has been an exceptional debate encompassing the issue. Rivals of capital punishment pronounce that it is savage and harsh thus the administration ought to get rid of it. Then again, its allies keep up that capital punishment is a fundamental type of discipline that ought to be utilized on the most horrible guilty parties in the public eye. The exceptionally captivated discussion on capital punishment has kept on existing for quite a long time. Moral hypotheses can be utilized to concoct an answer for this exceptionally dubious issue. Morals figure out what is the correct strategy in a given circumstance. Various strong moral hypotheses have been proposed by researchers and scholars throughout the long term. This paper will utilize one of the most broadly applied moral hypotheses, which is utilitarianism, to exhibit that capital punishment is for sure legitimized.

Net Benefits:

The principal significant advantage offered by capital punishment is that it assumes a huge discouragement job. The most significant objective of the criminal equity framework is to debilitate individuals from taking part in wrongdoing.

This is accomplished by joining disciplines to violations with the goal that an individual sees the benefits of taking part in unlawful activities as being exceeded by the results. In that capacity, an ideal society would be one where nobody is rebuffed since the danger of discipline shields everybody from taking part in wrongdoing. Capital punishment is the most extreme discipline and its accessibility is probably going to dissuade individuals who probably won't be frightened by long jail sentences.

From a utilitarian point of view, the prevention job is moral since it adds to the general satisfaction of the general public. At the point when crooks are deflected from participating in wrongdoing, the general public is more secure and individuals appreciate the harmony and security in their networks.

Another huge advantage offered by capital punishment to the general public is that it prompts the perpetual debilitation of the indicted individual. Not at all like different types of discipline which just confine a portion of the opportunities of the guilty party, capital punishment removes his life.

## The 10 Principles of Crime Prevention

These principles can assist you in reducing the opportunity for crime to occur at your home, your place of work or your business. They can be considered for development and implementation by individuals, communities, partners or businesses and act as a check-list to see what steps you may be able to take for your own particular circumstances. It's not a case of having to use all of the 10 Principles at once, you may find using just one of them could help you or it may be a combination of several of them.

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When you are looking at using the principles of crime prevention to improve security around your home or business, the best way to approach it is to look at your home or premises as if you were the offender. Identify the weak spots, vulnerable areas and concealment points and prioritise the areas for improvement. Contact our Crime Prevention Officers before you undertake any improvements and they will work with you to ensure that you are taking the best approach possible for your respective circumstances.

The 10 Principles of Crime Prevention are:

### 1. Target Hardening

Making your property harder for an offender to access.

- Upgrading the locks on your doors, windows, sheds and outbuildings
- Fitting sash jammers to vulnerable doors and windows
- Using secure passwords to prevent criminals hacking your online accounts

### 2. Target Removal

Ensuring that a potential target is out of view.

- Not leaving items on view through your windows – i.e. laptops, phones, keys, bags
- Putting your vehicle in the garage if you have one and not leaving valuables on display
- Being cautious about what you post online as it may be used to identify or locate you offline

### 3. Reducing the Means

Removing items that may help commit an offence.

- Not leaving tools and ladders in the garden and clearing up any rubble/bricks
- Keeping wheelie bins out of reach, as they may be a climbing aid or help transport items
- Making sure that bricks and rubble are cleared up

#### 4. Reducing the Payoff

Reducing the profit the criminal can make from the offence.

- Security marking your property
- Marking your property in such a way that others will not want to buy from the thief
- Not buying property you believe or suspect to be stolen

#### 5. Access Control

Looking at measures that will control access to a location, a person or object.

- Locking your doors and windows to both your house and your vehicle
- Ensuring that fencing, hedges, walls and other boundary treatments are in a good state of repair
- Putting a security system in place at a commercial site (entry barriers, security guards, ID cards)

#### 6. Surveillance

Improving surveillance around homes, businesses or public places to deter criminals.

- Removing high hedges / fences at the front of your home that allows an offender to work unseen
- Consider adding CCTV to a commercial site or public place
- Establishing a Neighbourhood Watch Scheme in your street

#### 7. Environmental Change

Ensuring your property and wider community looks cared for.

- Ensuring that graffiti and domestic/commercial waste is cleared up
- Reporting issues with fly-tipping or broken street lights to the relevant authority
- Working with the police and local authority to close a footpath

#### 8. Rule Setting

Changing our habits by setting rules and positioning signage in appropriate locations.

- Introducing a rule that the last person entering / leaving should lock the door and remove the keys
- Informing visitors to commercial sites that they must report to reception on arrival
- Informing users that a particular site is closed between certain times and should not be accessed

#### 9. Increase the Chances of Being Caught

Increasing the likelihood that an offender will be caught to prevent crime occurring.

- Making use of dusk to dawn security lighting is in place and in working order
- Using good quality CCTV and/or alarm systems, especially on commercial sites and public places
- Upgrading security to delay an offender, meaning they have to spend more time to gain access

#### 10. Deflecting Offenders

Deterring an offender or deflecting their intention.

- Using timer switches to make our homes look occupied if vacant after the hours of darkness
- Running youth diversionary schemes with partner agencies
- Referring offenders to drug rehabilitation programme.