The Expiatory Theory of Punishment.

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MEANING

Expiation" means "the act of expiating; reparation; amends; compensation; atonement. According to Expiation Theory, compensation is awarded to the victim from the wrong-doer.

ANCIENT PERIOD

The expiatory theory was based on moral principles, had little to do with law or legal concepts. This theory is more related to ancient religious perceptions regarding crime and punishment when prisoners were placed in isolated cells to repent or expiate for their crime or guilt from the core of their heart and resolve to shun crime. It was believed that anyone who sincerely repents for his misdeeds or crimes, deserves to be forgiven and let off. The ancient Hindu law commentator Manu was a great admirer of expiation as a form of punishment for the rehabilitation of the criminal in society. The expiatory theory, being based on ethical considerations, has lost its relevance in the modern system of punishment. In the present age of materialism and declining moral values, expiration can hardly be effective in bringing about a change in the criminal mentality of offenders and therefore, expiatory theory as a punishment is not suited in the present context of rationalized penal policies but now it has come with broader aspect with the different retributive concept in tortious liability and in some penal provision of Indian Criminal justice as in compoundable offense reference section 320 of criminal procedure code.

MODERN PERIOD

According to the Modern Expiation Theory, compensation is awarded to the victim from the wrongdoer. By crimes awarding compensation from the pocket of the wrong-doer, he is punished and is prevented from doing such offenses in his remaining life. This also becomes a lesson to the remaining public. Generally, in other systems 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 a position to point out the grievance of the victim or his family members. They only have the aim to 1 prevent the crimes. They only know to' punish criminals. Recently by the efforts of the sociologist's criminologists, penologists, etc., the criminals are also not punished severely, and there are certain rehabilitative and reformative steps taken to reform the criminals. It is a good and welcome measure. Then what about the real victims, who suffered in the hands of such criminals? In majority cases, the real victim also becomes a criminal and wants to take revenge against the wrong-doer or his family. Psychologically, economically, socially, etc., the victim is not satisfied by mere punishment on the criminal. The jurisprudents, jurists, criminologists, penologists, sociologists, etc., too are not concentrating.

CONCEPT OF VICTIMOLOGY AND EXPIATORY THEORY

Recently separate researchers, scientists under the name of "Victimologists" are propounding to give certain remedies to the aggrieved victims and their families. This separate science is called "Victimology". This theory supports the Expiation Theory. According to the Victimologists, the chain

reactions of personal revenge can be decreased in society by awarding compensation to the victims from the property of the criminals. It can prevent criminal behavior in society. Because it stops the chain reaction. It subsides the personal revenge. Economically too, 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. Thus considerable sects of modern criminologists, jurists, penologists, jurisprudents, sociologists, etc. support the idea of victimology and expiation theory.

STATE VS. SAYYADUDDIN 1996 AP

Justice Motilal Naik of A.P. High Court gave a sensational judgment on 25-11-1996 covering this expiation theory. The case particulars are: Sayyaduddin and his brother raided Maslehuddin due to personal grudges. As a result, Maslehuddin was killed. The High Court imposed three years imprisonment to the accused and awarded Rs. 60,000/- as compensation payable by the accused to the family members of Maslehuddin.Delivering the judgment, Justice Motilal Naik observed:
"By imposing imprisonment on the accused could not be helpful to the family members of the victim. In my opinion, it is better to help the victim's family members, as there is no one to look after them after the death of the bread-earner. Therefore, it is justified to impose a penalty/fine of Rs. 60,000/- on the accused besides sending him to prison for three years."

ACCORDING TO J.G. RIDDAL

The theory is linked with the retributive theory and is, sometimes, considered to be part of it. Hagel and Kohler are the main supporters of this theory. Hagel says that the punishment makes the criminal to expiate for the wrong done. This theory is based on morals. This theory is now obsolete. The principles of morality can't wholly and solely come under the domain of law. At present, the organization of the state, its functions, human habits, attitudes have all developed to a great extent. According to Paton, this theory is based on moral doctrine and, therefore is beyond the limits of modern law and jurisprudence.

VIEW OF G.W. PATON

In his Book, A textbook of jurisprudence Paton writes There are many theories concerning the justification of punishment, but only typical approaches to this problem can be dealt with here. It is clear that the philosophy of punishment will affect the actual standards of liability laid down by the law. If punishment is based on an ethical desire to make men better, then a subjective theory of liability should be adopted. If punishment is designed to protect society from certain acts, then punishment may be inflicted where there is no moral guilt. Is punishment an end in itself or a means to an end? Some theories look to the past— e.g. those that emphasize either the need to take vengeance on the wrongdoer or the necessity for expiation or retribution. The preventive theory concentrates on the prisoner but seeks to prevent him from offending again in the future. The reformative theory sees in the readjustment of the prisoner to the demands of society. The greatest need of the criminal law. The deterrent theory emphasizes the necessity for protecting society, for so treating the prisoner that others will be deterred from breaking that law.' No system of law adheres entirely to any one theory. Even primitive law, apparently based on vengeance, is also built on the hope of deterring others. Successful reform of the prisoner will prevent him from offending again. On the other hand, the easiest way to prevent a prisoner from offending again is to hang him, but this can scarcely be called a reformative method. The theories of expiation depend

on moral doctrines that go beyond the limits of the law. It is not suggested that criminal law can or should be entirely divorced from the moral views of a particular community, but ethics must take a more subjective 'viewpoint than is possible for the law. Many ethical wrongs are not crimes at all and, conversely, the State often condemns acts that are free of ethical LUilt. It is not the task of the State to punish sin, but only to adopt measures against certain social dangers. Any attempt to enforce an ethical code in its entirety by the crude compulsion of the criminal law is foredoomed to failure. The more that science examines the mainsprings of human action, the more forcibly do we feel the strength of Christ's maxim, 'Judge not that ye be not judged'. If expiation is the reason for punishment, then a prisoner should be convicted only where he is ethically responsible for the act. Whether the will be free or not, it is now recognized that environment, heredity, and physical factors play a greater part in the urge to crime than our forefathers dreamed of. How much of our administration of criminal law would stand an ethical searchlight? Clearly, the law must act to protect society, but it should not claim too lofty a justification for acts the reason for which is a necessity rather than morality. Some forms of the retributive theory emphasize that punishment should be inflicted not merely in order to attain certain ends, but solely because the prisoner has committed a crime. If an island community was about to dissolve, its duty (so it is said) would be first to execute the convicted murderers in prison. The retributive theory is not, of course, the narrow theory of vengeance, but rather the doctrine that the wrong done by the prisoner can be negated only by the infliction of the appropriate punishment. The community as a whole places emphasis on the retributive theory, at least where certain crimes are concerned; a feeling of outrage demands satisfaction and if the penalty imposed by the courts is not considered sufficiently harsh, there is a danger of lynch law. But 'the fuller becomes our insight into the springs of human conduct, the more impossible does it become to maintain this antiquated doctrine (of retribution)'.' Modern criminal law must seek another basis, whatever may be the view of religion or morality. Today the usual legal approach is utilitarian, for it is recognized that the law cannot attempt to carry out all the dictates of religion or morality, but can enforce only that minimum standard of conduct without which social life would be impossible. The law must certainly protect society, and its rules cannot, of course, be determined without reference to moral values. But the object of the criminal law is not to reform men's hearts but to stamp out courses of conduct that either offend the minimum ethic or are socially inexpedient. Punishment must be directed both to deterring others from breaking the law and to readjusting the attitude of the offender to the demands of social life. Norval Morris writes that every criminal law system except one 'has deterrence as its primary and essential characteristic'. But even a utilitarian approach does not mean that we can ignore the inner springs of human conduct, for punishment based on a real understanding of the mind of the particular criminal is more likely to be effective than that which metes out the same punishment for the same acts irrespective of the individual's character. Modern criminology considers that the personality of the offender is as important as his act and emphasizes that the wrongdoer is not only a criminal to be punished but a patient to be treated.The cry is for the individualization of the penalty, not to let the punishment fit the crime, but the personality of the criminal. Thus it is argued that the real test of criminality should be the extent to which the prisoner is endangering society, his act is treated as an index to his personality rather than as that alone which is deserving of punishment.Some cases graphically show the weakness of our present methods. Thus in 1937, a man was convicted of rape. He was a psychopath, but not insane. After

serving a sentence of five years, he was convicted of molesting two young girls. Meanwhile, he was released after one year and then committed rape and murder, for which he was electrocuted.' If we fully applied the test of the danger of the personality of the prisoner, I would change the principles on which the severity of the punishment is calculated, for a relatively innocuous act may be done by one who is, in fact, a danger to society, whereas a serious crime may be committed by one who is unlikely to repeat the wrong. If we put all the emphasis on the likelihood of the prisoner's offending again, we would reach results very different from those of the orthodox system which grades penalties merely by a consideration of the act that was done and the harm that resulted. In the case of a lawyer or a doctor the real punishment is not the imprisonment, but his exclusion from the professional brotherhood, and, even without imprisonment, he is less likely to offend again than one who suffers no such loss. Ferri suggests that no doctor would fix rigidly in advance a patient's stay in hospital—his stay is determined by the time it takes to effect a cure.' Similarly, he urges that the legal provisions for the treatment of criminals should be flexible enough to take into account the prisoner's response to treatment, or, in other words, the speed with which his reformation takes place. Baroness has carried the modern theory furthest, in her thesis that the court should be confined to determining the facts and that punishment (or rather a treatment) should be determined by a panel of experts who, as in the case of a doctor and a sick patient, could vary the treatment according to the progress of the prisoner. There are several factors to be considered in assessing the practicability of such an approach. Firstly, it is not always easy to determine by a prisoner's conduct, when sub just to observe, how he will behave when he is released. Secondly, there is the problem of the protection of individual liberties. In the case of disease, we are willing to enforce quarantine if necessary, but, save for such instances as leprosy, the periods of isolation are relatively short. Imprisonment raises more serious issues concerning private rights thus liberalism feels that the power of the State to curb the liberty of wrongdoers must be curtailed and hence supports the rigid fixing of the maximum limits of punishment in each case. If an offender is incorrigible should he be permanently detained, even if his only crime be larceny? The safeguarding of the liberty of the subject by stating in advance the maximum penalties involved in certain breaches of the law has its advantages. C. S. Lewis has shown the danger of divorcing criminal law entirely from morality.The concept of danger to society, divorced from moral guilt, may lead to authoritarian interference with human liberty. The community would not tolerate deterrence as being the sole determinant of punishment. At a time of social fear, a judge may award a heavy sentence to a spy," without raising resentment in the community but it is otherwise with regard to more common offenses. Illegal parking of motor cars would be much diminished if the penalty was the confiscation of the car, but no society of motor car owners would tolerate such a law.' Thirdly, the law treats an attempt as deserving of less punishment than a completed crime. Yet, if the consummation of the crime is prevented by causes beyond the control of the prisoner, an attempt reveals that the prisoner is as much a social danger as if the crime had been completed. But so imbued are we with the notion that the punishment must bear some measure to the injury caused, that, at first sight, it would seem unjust to treat an attempt as severely as a completed crime.Fourthly, in addition to social danger, we must also consider moral blameworthiness. There are cases where it is expedient to create crimes that do not require mens rea, but these exceptions should be strictly limited. Unless the average man feels that there is an element of blame attachable

to the offense, then it may become 'respectable' to be convicted and the criminal law may lose one of its deterrents.

It may be necessary to have objective standards, but, if these are not related to the habits of the ordinary citizen, the standard set will probably be too high. Even from an objective standpoint, it is necessary to consider mens rea, for a prisoner who commits a dangerous act accidentally is on the whole less likely to repeat his conduct that is one who acted intentionally. Fifthly, we can carry the theory too far. If a person commits murder under extraordinary psychological stress which is most unlikely to recur, then that murderer is hardly a future danger to society. But few would suggest that punishment should, therefore, be waived. Lastly, it must be remembered that in an imperfect world the law must provide an outlet for that resentment that arises against the perpetrator of certain outrages. If modern schemes are to be successfully applied, then a cautious and tentative beginning must be made with crimes that do not arouse too much public indignation.' But even in these cases, we must remember that the treatment should not only readjust the prisoner but be such as to deter others. If it were proved that all tendency to steal could be removed by a grant of £20,000, would that 'treatment' encourage or discourage others from committing larceny? Psycho-analysis has shown that even the law-abiding citizen is helped in the struggle against his anti-social desires by the spectacle of others being punished for doing that which he consciously or unconsciously desires to do.' There is thus a conflict in each case between the needs of a particular prisoner and the social interest in enforcing the law. 'What may be the best treatment for a criminal may conflict with the necessity of deterring others. Moreover, the 'social danger' school should be modest, for our methods of treatment do not yet win the success which they should. Until we can be more exact in methods of treatment, we should not divorce the criminal law too far from community standards.' The real problem is, therefore, to combine the deterrent and reformative theories in due proportions. The expense of research into proper methods and of experimental treatment will be high—but what is the cost of crime to the community? To readjust a prisoner so that he may play a useful part in social life is, in the long run, a cheaper method than that of periodical sentences or life imprisonment. Among lawyers, the deterrent theory was, until recently, the most popular, and much scorn was sometimes poured on the 'weak' or 'sentimental' approach of those who advocate reform. It is true that some reformative theories are marked by lack of realism, by sentiment, and show no evidence of contact with the criminal classes, but the modern approach to criminology is as coldly scientific as it can be. The criminal is a danger both to society and to himself, and the criminologist urges only that the most scientific methods be used to remove this danger. Few modern writers fail to recognize the need to deter others. On the other hand, to regard deterrence as the sole end of the criminal law is a confession either of defeatism or of cynicism.

RUSSIA AND ITS JUDICIAL PREVIEW

Russia divides crime into two classes: minor crimes and those which strike at the safety of the State or are the result of bourgeois motives. Those guilty of offenses of the latter description are harshly treated, and Russian jurists scornfully dismiss as out-moded liberalism any guarantee to the prisoner of rights which might conflict with the safety of the State. Thus trial by jury is distrusted, as a jury might not always decide in accordance with the general directions of state policy. But those who are guilty of minor crimes are tried in the People's Court, and the treatment in prison is

built on modern reformative methods. Many persons are placed in open or semi-open camps: in some cases, prisoners are placed in labor communes, with a village life which is as much as possible like that of free men.' There is little prison stigma and, since many prisoners receive technical training, they have, on release, no difficulty in securing employment. But the accessible data are not yet full enough to make a final assessment of the result—such literature as is available shows very diverse pictures.

CRITICISM:

The penologists criticize the expiation theory opening that this theory is sufficient to meet the less serious type of offenses, such as abuse, assault, defamation, trespass, torts, etc. However, the expiation theory could not be a solution in cases of murder, plunders, rapes, kidnapping, thefts, etc., serious natured offenses. If the compensation is allowed to be paid in rapes, the number of rapists will be increased. The rich people will be habituated to rape poor women and pay compensation. By their money, they become recidivists. They can escape imprisonment by paying money. Therefore, it could not prevent serious offenses. One more difficulty in the Expiation theory is what measures the compensation can be fixed in cases of rape, kidnapping, murder, etc.? Sometimes, the criminals may not have sufficient money to pay compensation. How much compensation can be awarded to a woman raped? How society will react against her and rapist? If the woman raped is awarded money, does she not become habituated in filing false complaints? So by expiation theory, the crimes cannot be prevented, even though a certain amount of compensation is awarded to the victims. Therefore, it is not a correct remedy to prevent the crimes in the society. However, in the Criminal Procedure Code, 1973 this theory is already being implemented. This Code classifies the offences in two categories – one serious natured crimes and another simple crime. Section 320 of Cr.P.C. describes certain crimes, which can be compoundable. The accused can compromise with the victim by paying money or apology. Assault, defamation, etc: are classified as "compoundable offences" under Section 320 CrPC. The framers of the Code intentionally excluded the offences of murder, kidnapping, rape, theft, etc., from compoundable offences. These cases are not compromisable and compoundable. The State shall inquire, investigate and punish the culprit to protect the society from such culprits.