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# Reformative Theory of Punishment: Analyzing the Status in India

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## ABSTRACT

*Of all branches of law, the branch that closely concern or touches a person in his daily life is criminal law. Crime could also be defining as the commission of acts prohibited by penal law and criminals as persons who commit such acts. The penalisation system is an integral part of criminal justice and for maintaining Social Security. The progress of civilization has resulted within the change within the theory, technique and motive of penalisation.*

*Punishment may be used as a way of reducing the incidence of criminal behaviour either by deterring the potential offenders or by disabling and preventing them from repeating the offence or by reforming them into law-abiding citizens. Thus, theories of punishment comprise of policies concerning handling of crime and criminals. They're classified into four types. All these aren't reciprocally exclusive and each of them plays a very important role in handling potential offenders. The theories of punishment are Retributive theory, Deterrent theory, Preventive theory, Reformative theory. This write up is regarding reformative theory and critically analysing the status in India.*

**Keywords-** Reform, Punishment, Imprisonment, Offender, Character.

## I. INTRODUCTION

The practice of penalisation is important for the maintenance of social cohesion. Law is one among the vital pillar of the state. To administer justice penalisation is required and duty of the state to produce a peaceful surroundings to its individuals. With the change of your time, the systems of penalisation have met with totally different kind of changes and modification.

According to the reformative theory, the object of penalisation ought to be reform of the criminal, through the strategy of individualisation. The bad person might commit a criminal offense under certain circumstances which could never occur again. Therefore, an attempt should be created to reform him throughout the period of his imprisonment. The object of penalisation ought to be to create the ethical reform of the wrongdoer. He should be educated and instructed some art or trade throughout the period of his imprisonment so he is also able to

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begin his life once more when his release from jail.

While awarding punishment the judge ought to study the character and age of the wrongdoer, his education and atmosphere, the circumstances below which he committed the offence and different factors. the object of doing therefore is to familiarise the judge with the precise nature of the circumstances so he might provides a punishment that suits the circumstances.

## **II. REFORMATIVE THEORY**

“Punishment the aim of which is to alter the character of the wrongdoer.” (Bryan)

According to the roman jurisprudence, penalisation shouldn't be for the sake of punishment; rather it should be for reform. (Kasha) after the retributive, deterrent and preventive theories couldn't reduce crime in society, a new theory known as reformatory theory was introduced at around 18th century. Reformatory theory focused on the criminal instead of crime and sought to create a change within the perspective of the wrongdoer therefore on rehabilitate him/her as law binding member of society. (Paranjape) According to this theory, crime is related with the prevailing psychological or physical characteristics of the offenders and with the surroundings and circumstance of the society. Hence, the criminal is treated as a patient. therefore penalisation isn't used as a live to reclaim the wrongdoer and to not torture or harasses him/her.

Punishment is barely justifiable if it's the future and not the past. It shouldn't be considered setting an old account but rather a new a brand new one. Imprisonment shouldn't be for the aim of analytic and eliminating them from society but to create a modification in their mental outlook through effective measures during the term of their sentence. It believes that a sympathetic, tactful and affectionate treatment of offenders will have a revolutionary change in their characters.

According to this theory, a crime is sometimes committed because the results of conflict between the character and motive of the criminal. (Theories of Punishment, n.d.) It might be taken into consideration that one may commit a crime either as a result of the temptation of the motive is stronger or as a result of the restraint obligatory by the character is weaker. Reformatory theory considers penalisation to be curative over to be deterrent. According to this theory, crime is sort of a sickness that can't be cured by killing instead of curing it with the medication with the help of process of reformation.

## **III. STATUS IN INDIA**

Crime could be a universal truth and society would never escape with crime as crime is an inevitable condition. The conception of reformatory theory for healing the present rate in India

also as polishing agent to the social control system in our country targets the essential ideology of rehabilitation of criminal offenders and also reworking the idea of punishment as a concept of transformation of person as well as the behavioral aspects, the inner well-being also as the outer well-being.

Mahatma Gandhi once stated (An eye for an eye leaves everyone blind can employing reformatory theory heal the current crime rate and polish the punishment system in India, n.d.) Hate the Sin, but not the offender. the foremost thrust of the reformist theory is that the rehabilitation of inmates in penal institutions in order that they're transformed into law-abiding citizens. It focuses more appreciable attention on human treatment of prisoners within the prison, they must be educated appropriately, educated and trained to regulate themselves to traditional life within the community once their unleash from a institution. This purpose is also achieved through the agencies of parole and probation, that are accepted as modern techniques of reforming the offenders all round the world. Few of the modern reformatory techniques of social control are primarily devised for the treatment of offenders according to their psychological traits such as:

- (i) probation,
- (ii) parole,
- (iii) indeterminate sentence,
- (iv) admonition and
- (v) pardon. (Priya, n.d.)

Reformatory theory is substantive of the studies of criminology (An eye for an eye leaves everyone blind can employing reformatory theory heal the current crime rate and polish the punishment system in India, n.d.) , it states that anyone committing the incorrect or going against the state is motivated by varied factors like every physiological defects, factors of social pressure, poverty, psychological breakdowns and varied alternative factors that usually stay unturned throughout the course of granting justice. Reformatory Theory suggests that patterns like community services, counselling, rehab programmes, therapy sessions and varied alternative strategies. The reformatory strategies have proven helpful just in case of juvenile delinquency, first offenders and women. Sex psychopaths also seem ways favorably to the reformatory method of social control. additionally recently, the reformatory theory is being extensively used as a way of treatment of mentally disadvantaged offenders. This present trend to treat the wrongdoer instead of to penalise him is termed therapeutic jurisprudence. (Priya, n.d.)

## **IV. JUDGEMENT IN INDIA**

### **(A) Mithu and etc. v. state of Punjab (1983)**

In this case, it was said that “in cases which are covered by section 303 IPC seems to have been that if, even the sentence of life imprisonment was not sufficient to act as a deterrent and the convict was hardened enough to commit a murder while serving that sentence, the only punishment which he deserved was death.” Legislature was used to be harsh at the offence of murder committed by a life convict in early history. At present section 397 of Code of Criminal Procedure which is exercise power of high court or session court judge is replaced by Section 397 Amendment Act, 1955. According to this section, if a person already undergoing a sentence of imprisonment for life was sentenced on a subsequent conviction to imprisonment for life, the subsequent sentence had to run concurrently with the previous sentence. The object of referring to this aspect is to emphasise that when section 303 of the Penal Code was originally enacted, the legislature did not consider that even successive sentences of transportation for life were an adequate punishment for the offence of murder committed by a person who was under the sentence of life imprisonment. (www)

### **(B) Padamarathi Subhramanyam v. State of Andhra Pradesh (2004)**

In this case the accuse was convicted under section 376 of IPC, on the evidence statement of victim they are in love so they wanted to get marry. After the bail of the accused they got married. The court held that “In matters of matrimonial problems, always Courts may have lean in favour of protecting the matrimonial ties, not only in the interest of couple, but, also in the interest of society at large. Even, if it is taken that a person had perpetrated a sexual offence of the nature, if such a person reconciles with social conditions and enters into a matrimonial tie with the victim, Courts may have to raise up to the occasion and see that such a couple may lead a happy matrimonial life, this will definitely in consonance with justice, equity and good conscience and also in accordance with the concept of reformatory theory.”

### **(C) Dhanraj Saini & Ors. v. State of Rajasthan ( 2016 )**

Dhanraj’s pleading was pending before the State Level Parole Committee. Therefore, he filed a petition claiming that he deserves to be entertained. Court held that state have the constitutional duty to restore the personal liberty of a convicted prisoner, if he is eligible for the same. Similarly, they have a statutory duty under the parole rules to grant the benefit of permanent parole to those who are eligible for it. By keeping the cases pending the State functionaries are violating the constitutional philosophy, and the legal rights of the convicted prisoners and the very essence of reformatory theory. As parole rules were designed as part of

the reformative theory of punishment in order to motivate the prisoners to reform themselves while they serve their sentence.

## **V. CRITICISM**

It is true that reformative Theory will work productively just in case of reformation of non-habitual offenders. however in some cases, it doesn't work smoothly, as a result of a hard-core criminal can not be reformed. This theory believes within the idea that the object is to extinct crime and not the criminal which no one is born as a criminal; it's solely the results of these circumstances which were around him. So, the attack should be on the cause and not the symptoms by dynamic the situations and circumstances. The reformative theory suggests that punishment is simply justifiable if it's to the future and not to the past. It shouldn't be considered setting an old account but rather as opening a new one. Habitual wrongdoer hardly responds favorably to the current ideology, they will repeat the same kind of offense.

That is why; rather than trying for the reformation of his criminal mind he should be penalised. Thus, it said same that the reformative theory are more effective if it's meant to supplement normal penalty, rather than replace it altogether.

## **VI. CONCLUSION**

It is a fact that the prevention of crime and protection of society are the main objects of the society and no single theory of penalty can serve the important purpose altogether. The reformative theory is also referred to as rehabilitative sentencing. Rehabilitation bring changes in offenders and their behaviour. As within the rehabilitation usually works through education and psychological treatment to reduce the probability of future criminalism. In terms of the theory, offenders mostly commit crime as a result of psychological factors, personality defects, or social pressures.

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