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# Theories of Punishment under Indian Penal Code

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## ABSTRACT

*Indian criminal law was enacted in 1860 and has remained largely unchanged since it was enacted in. Various organizations believe that the types and amounts of penalties provided for in the Indian Penal Code 1860 are not appropriate under the modified scenario. Penalty objectives serve to assess the degree of measures and penalties for various offenses under the Indian Penal Code. This paper is an attempt to analyse the different types of penalties under the Indian Penal Code 1860 and their suitability for the current scenario.*

**Keywords:** Deterrent, Reformatory, Retributive, Preventive, Compensatory.

## I. INTRODUCTION

Punishments are prescribed by law to deter offenders from committing crimes again. Punishment is the result or consequence of an injustice committed by a person. Penalties are set out in **Section 53 and Chapter III of the Indian Penal Code (IPC)**.

Punishment is a way of deterring criminals from committing crimes against persons, property, and governments. People are said to be "punished" when they suffer pain or disadvantage. This can range from the death penalty to a symbolic fine. But when the sole purpose of punishment is to inflict physical pain on the offender, it is of little use. However, if the punishment made the perpetrator aware of the seriousness of his crime and experienced remorse and reparation, it would have had the desired effect.

## II. PUNISHMENT

The immediate consequences of a crime are called punishments. It is the process by which the state inflicts pain on the person or property of a person convicted of a crime. Punishments may include all or any of the following:

Suffering/loss/pain/damage to reputation.

### (A) Nature & Characteristics of Punishment:

1. Punishment is a privation (evil, pain, disvalue)

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2. Penalties are coercive
3. Punishments are imposed on behalf of the state.
4. Punishment presupposes a more or less formal statement of rules, violations, and rules expressed in judgments.
5. Violators who cause harm will be penalized.

**(B) Why is punishment given:**

Past: To prevent crimes from happening again

Present: To create fear

Future: To prevent crimes, considered offensive.

**(C) Elements of Punishment:**

- Must involve pain or other consequences that would normally be considered unpleasant.
- Must be in violation of legal regulations.
- Must be the actual or suspected perpetrator of the crime.
- It must be imposed and administered by an authority constituted by the legal system in which the offense is committed.

**(D) Object:**

The purpose of punishment is to prevent crime, and any punishment has a double effect. To prevent those who have committed crimes from repeating their acts or omissions and to prevent other members of society from committing similar crimes.

Penalty is defined as personal injury, loss, imprisonment, or other punishment imposed on a person for a crime by an authority.

### **III. THEORIES OF PUNISHMENT**

Various theories have been put forward to explain the purpose of punishment.

1. Deterrent theory
2. Retributive theory
3. Preventive theory
4. Reformatory theory
5. Compensatory theory

## **1. Deterrent Theory:**

The term deterrence means "to refrain from action/to take any action". Deterrence is defined as "the imposition of severe penalties to dissuade offenders from committing crimes again is primarily a deterrent, which acts on the perpetrator's actual or potential motives.

The idea behind deterrent punishment is to prevent crime by imposing exemplary punishment on perpetrators. In doing so, the state seeks to create fear among its members, thereby deterring them from committing terrorism and warning perpetrators and others.

According to this theory, the purpose of punishment is not only about preventing wrongdoers from making mistakes again, but also about setting an example for others with criminal tendencies.

A judge said: "I am not punishing you for stealing sheep, but to keep them from being stolen." The purpose of punishment is fear, not revenge.

Deterrence was the basis of punishment in medieval England. Harsh and inhumane penalties were routine, even for minor crimes such as pickpocketing and theft. The perpetrators were sentenced to a severe death sentence of stoning and flogging. In Mughal-era India, the death penalty or limb amputation was imposed even for future petty crimes such as forgery and theft, and a signal was sent that future crimes would be given another punishment.

This means that people can learn lessons from punishment to reduce crime ratios.

### **Criticism:**

In modern times there are many criticisms of the penalty theory of deterrence.

1. It has been found to be ineffective in controlling crime, and that punishments that are too harsh tend to undermine their original purpose of arousing public sympathy for those who have been brutally and inhumanly punished. It has been criticized for a reason.

2. If the offender keeps appearing before the judge, the punishment doesn't hit the mark.

3. Punishments of this kind act on the weak and shaky.

4. Deterrent punishment has not been entirely eliminated from contemporary criminal justice politics

5. When the offender is punished, the fear of punishment disappears and the punishment has less impact.

**Phul Singh V. State of Haryana<sup>2</sup>**

A young philanderer aged 22, overpowered by excess sex stress, raped a 24-year-old girl next door in broad daylight. The Session Court convicted him to four years' rigorous imprisonment, and the High Court confirmed the sentence in appeal. When the matter went in appeal to the Supreme court, the sentence was reduced to two years' rigorous imprisonment, as the accused was not a habitual offender. Thus, by reducing the punishment, the supreme court blended correction with deterrence.

**2. Retributive Theory:**

Retributive means, "punishment or repayment or return". In primitive societies, punishment was primarily retribution. The wronged person was allowed to take revenge on the wrongdoer. Punishment meets revenge.

In ancient times, when a man hurt another, it was the right of the hurt to take revenge on the one who hurt him.

The principles of "eye for eye", "tooth for tooth" and "limb for limb" were the basis of criminal administration.

According to Judge Holmes, "It is well known that early legal proceedings were based on revenge." The idea behind this theory is to make criminals aware of their suffering/pain. Proponents of the theory argue that criminals deserve to suffer.

While other theories see punishment as a means to another end, retribution theory sees it as an end in itself. She believes it is perfectly justified that evil should be met with evil, and that one should be treated the same as one treat another. teeth. This is the law of natural justice.

and a tooth for a tooth is deemed to be the rule of natural justice.

**Criticism:**

1. Critics of retribution theory point out that punishment itself is not a remedy for the harm done by the perpetrator.
2. It only aggravates the evil. Punishment is inherently evil and can only be justified as having better consequences.
3. Revenge is fierce justice. Retribution is only a secondary purpose served by punishment.

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<sup>2</sup> 1980 AIR 249, 1980 SCR (1) 589 ref

4. This theory sees punishment as an end in itself, not as a means of social security or welfare.
5. In modern times, the former aspect is emphasized as social welfare is of paramount importance. The ethical approach to crime, the main basis of the theory of retribution, is gradually losing its place in modern times.

### **Nirbhaya Judgement (Mukesh & Anr V. State for NCT of Delhi & Ors)<sup>3</sup>**

This case is indeed the first and foremost case to be mentioned, while talking about retributive justice in India. In this Judgement, the Supreme Court sentenced four out of six felons involved in the extremely heinous Delhi Gang Rape case to death, much to the delight of the society, as they had committed an extremely gruesome, as well as morally unimaginable crime.

### **3. Preventive Theory:**

Prevention theory is also called "disability theory." According to this theory, punishment is based on the phrase "not to avenge crimes, but to prevent them." Prevention theory is based on the idea of preventing the recurrence of crime by subjecting offenders to:

- prison
- death penalty
- or expulsion

also called incapacitation, by ending offenders It means the ability to impose such severe penalties.

In the old days, criminals were again deterred from committing crimes by permanent obstacles such as cutting off their hands as punishment for theft. The death penalty is the most appropriate punishment for dangerous crimes. In modern times, other precautionary measures such as dismissal, suspension and revocation of trading and driving licenses are also applied. By putting a criminal in prison, he is prevented from committing another crime. Proponents of this theory recognize that imprisonment is the best punishment, serving as both an effective deterrent and a useful preventive measure.

### **Purpose:**

The purpose of this theory is to neutralize criminals. She focuses on the prisoner and tries to protect him from future crimes.

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<sup>3</sup> (2017) 6 SCC 1

**Criticism:**

1. Critics points out that punishment has the undesirable effect of hardening first offenders or minor offenders.
2. This theory is not very convincing and does not work well in fighting crime.
3. A person who commits a crime under exceptional mental distress rarely repeats the crime.
4. As soon as they know that their reputation has been damaged and that they no longer need to fear punishment, they commit crimes again and again.

**Surjit Singh V. State of Punjab<sup>4</sup>**

An accused policeman who entered the deceased's house to commit rape but was prevented from doing so as the deceased's sons shouted out for help. The accused for held guilty under Section 450 of the IPC because death penalty is thought to be temporary form of punishment.

The Supreme court in this case held that the aim punishment should be reformation, deterrence and prevention. All theories of punishment should be used independently to correct and make the individuals of a society sober. This case upheld that prevention of any form of crime should be the major aim of law and society both and it cannot be ignored.

**4. Reformatory Theory:**

This theory is also known as corrective or rehabilitative theory. Reformation means 'the effort to restore a man to society as a better and wiser man and as a good citizen.' This theory endeavors to make the criminals harmless by supplying him those things which he lacks and to cure him to those drawbacks which made him to commit crime. By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty.

Any person who commits a crime and suffers punishment for that comes back to the society and lives in along with his other fellow beings. Therefore, punishment must aim at making a man worthy of living in the society. A men are not born criminal. One commits a crime because he suffers from some disease. All sorts of criminal behavior are because of some personality defect which they treat as a disease and like other diseases it also needs cure. Therefore, criminal needs sympathy of the society and not punishment for his misdeeds.

According to Reformation theory, the purpose of punishment is to reform criminals. This theory attempts to change the attitudes of criminals in order to rehabilitate them as law-

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<sup>4</sup> 1996 AIR 1388, 1996 SCC (2) 336

abiding members of society. Perpetrators do not stop being human when they commit a crime under certain circumstances. The situation in which he committed the crime must not be repeated.

Rehabilitation Programs:

- Vocational Training
- Educational Training
- Counselling
- Medical treatment
- Religious Sessions

**Criticisms:**

1. There are people who are incurably bad. To them crime is habit and they are beyond the reach of any reformative programme.
2. If offenders are given comfortable lifestyle in prisons, then people will lose their trust on judiciary.
3. In modern times reformative measures are adopted in cases of juvenile offenders.
4. In prison they are given some education and are made to learn something so that they can earn their livelihood after coming out of prison.
5. The advocates of this theory emphasizes that when the prisoner goes to the jail he finds himself quite cut off from the rest of the world.

**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 favor 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 reformative theory.”

### **5. Compensatory theory:**

According to this theory, the purpose of punishment is not only to prevent further crimes, but also to compensate victims of crimes. It hypothesizes that the causes of crime will dry up if ill-gotten criminal gains are forced to return. It should be pointed out that we tend to oversimplify our motives.

Criminal motives are not necessarily economic. Crimes against the state, crimes against the judiciary, crimes against religion, crimes against marriage, and even crimes against individuals do not necessarily have to be economically motivated.

#### **Case law:**

In *State of Gujarat and Anr. V. Hon'ble High Court of Gujarat*, Justice Thomas had held that, "the Reformative and reparative theories deserve serious consideration, where the victim of crime or his family members should get compensated from the wages that is earned in prison by the criminal." The Court suggested that the particular State should enact a comprehensive legislation in respect of his compensation payable to victim of a crime.

## **IV. CONCLUSION**

By way of Conclusion, it may be said that the administration of criminal justice cannot have any of the above aims or theories as its sole or sole criterion for punishment. A perfect criminal law must wisely combine these different punitive purposes. Punishment theory is not a complete answer to itself, and not all of the above punishment theories are mutually exclusive.

There is no uniform, generally recognized and universal theory of punishment for all ages and for all people exists. Therefore, punishments that were appropriate in the past may no longer be appropriate today, and this may also vary from country to country.

Therefore, we have to study the criminal before prescribing the proper form of punishment to him according to his physical, social, educational or cultural make-up because the same punishment may not suit all the criminals.

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