

# Theories of Punishment: Changing Trends in Penology

Sagar Shelke, Jyoti Dharm



**Abstract:** *From the ancient time it is the fundamental duty of the state to protect its citizens. The quantum of punishment used to be based on the theories of punishment. It has been observed in the modern times with the advent of administration of justice that there has been a shift from traditional punishments to the new trending concern of victimology. The focus is now on the victim's plight and giving him fair justice and compensation. This paper contains various theories of punishment and the elaboration of whether it's effective in modern times.*

**Keywords:** *theories of punishment, retributive, deterrent, preventive, reformative.*

## I. INTRODUCTION

In society we can see people of different sects and class. As not all the fingers are same, in the society too, there are citizens who abide by the law and others who flung the laws for their evil motive. It is the responsibility of the state to protect its interest. The person who does any act which is forbidden by natural justice or statutory law commits a crime. When any crime is committed it is not committed against the person but a state at large. What exactly constitutes a crime is defined in the laws of every state. Some acts may be a crime for some state and not for some other states. If the crime is committed it attracts punishment for commission of such offence so that it should not get repeated. To have its effect on the society the punishment used to be based on the objective it wanted to serve at large.

Since time long punishments were based on the various theories of punishment, whose object ranged from deterrent, reformative, preventive and retributive. Whichever may be the punishment the prime purpose of giving justice to the society was important. The focus was always to punish the criminal. Is it only sufficient to punish the criminal? What about the reformation? The compensation to victim needs an equal attention. In this paper the author has tried to elaborate the theories of punishment in modern time and how the shift in criminal justice system from the criminal to the plight of victim that is victimology.

## II. METHODOLOGY

The research work done in this study is doctrinal in nature and is qualitative research. The doctrinal research methodology, which is based in this paper, includes various legal principles and concepts of all kinds such as legal statutes, commentaries, articles etc. the researcher has also studied various theories of punishment. Thus the paper includes qualitative research of various national and international books, and journals on the same topic.

The researcher would like to draw everyone's attention to the plight of the victim and justice to the victims.

1] The theories of punishment are proving to be ineffective to curb down the crime rate.

2] More attention is given to the reformation of criminal which is less effective.

3] The main sufferer of the crime that is victim is ignored in the process as focus remains on the criminal.

4] Steps are required to be taken to make the victim secure.

## III. FINDINGS

From the time old to punish the criminal and to prevent him to commit the crime again, the main purpose for punishing the criminals where to deter, prevent, reform or retributive or compensatory, and this purpose is also known as theories of punishment. These theories are explained briefly as follows:

### THE DETERRENT THEORY OF PUNISHMENT

The main object of a punishment is to inflict deterrent effect on the criminal himself from repeating the crime and on others so that they don't commit the crime fearing the consequence i.e. the punishment. To have the deterrent effect the punishments used to be of a very rigorous nature. Hands were chopped of theft or robbers, sexual offenders organs were cutoff etc. If the punishment is severe then only it would serve the deterrent effect. It should inflict fear in the minds of people that if I commit this crime I'll go through this punishment fearing which he restrains from doing it. In the bargain of punishment this theory has proved that it is not profitable to the offender to commit the crime. As Locke has observed: "it is an ill bargain the offender".

However the deterrent theory fails to have its effect on the hardened criminals as they are accustomed to the severity of punishment. As far as new offenders are concerned it is less or not at all effective as there are certain crimes which get committed in a flip, unplanned. Sometimes the deterrent punishment is blended with other punishments so as to reform the criminal if he is not a habitual offender.

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In Phul Singh V. State of Haryana [1] the supreme court has observed, “the incriminating company of lifers and others for long may be counterproductive and in perspective, we blend deterrence with correction, and reduce the sentence to rigorous imprisonment for two years.”

### THE PREVENTIVE THEORY OF PUNISHMENT

If the deterrent punishment would not solve the sole purpose of punishment the other mode is preventive method of punishment. By preventive the criminal is prevented from committing the crime either by putting him into imprisonment, by inflicting death penalty or by ending the modes by which he used to commit crime. With imprisonment, he is away from the society, and hence no chance of committing the crime as he is not free. Secondly, the modes by which the crime was committed are chopped off like hands of robbers and thief, organs of sexual offenders etc. Thus, by preventing the criminal he is abstained from committing the crime. To derivate the offender is the ultimate remedy is the principle of this theory.

### THE REFORMATIVE THEORY OF PUNISHMENT

According to this theory to commit crime is disease and to cure it reformation serves as a medicine. In this the offender is cured morally as well as changing few physical habits. As far as this theory is concerned the aim is to make the offender so mentally strong that he can stop himself from the temptation of committing crime. He is reeducated and disciplined so that he become a strong person altogether. And for this the imprisonments should have a healthy environment so as to transform the criminal. In country like India as it is over populated and the number of crimes and criminals are also on rise it is difficult to say that imprisons will have an healthy environment. And secondly if imprison is a good place to live and as poverty is flourishing in India people will purposely commit crime so that at least they get shelter and food in imprison. In Sunil Batra II V. Delhi Administration [2] on prevailing conditions of Indian jails the court has observed that, “the rule of law meets with its waterloo when the state’s minions become law breakers, and so the court as a sentinel of justice and the voice of the Constitution, runs down the violators with its writ, and serves compliance with human rights even behind iron bars and by prison wardens.”

### THE RETRIBUTIVE THEORY OF PUNISHMENT

This is the most ancient mode of punishment. This was prevailed at times when private vengeance would take place. Like blood for blood, eye for eye, tooth for tooth. To administer such private vengeance the state had taken administration of justice in its hands. And accordingly the punishment used to be inflicted as hand for hand etc. though this theory or this punishment never served any purpose of punishment it wasn’t advocated that much by the criminologists.

No theory in itself is sufficient to curb crime and it has been observed that mostly the combination is used to curb down the problem of rising crime and to have a deterrent effect on the society that will prevent the commission of crime.

In Narindersingh&Ors. V. State of Punjab&Anr.[3] there was a brief narration of the jurisprudential theories of Punishment:

➤ Firstly, there are certain acts which are prohibited by the law. Such prohibited acts are offences. Whoever commits an offence has to face the consequences of his wrong doing. Such consequences are in penal form. It may be an imprisonment, monetarily or both and for serious offences capital punishment. In fact even imprisonment has its gravity. It may be simple one or rigorous.

➤ Secondly, the question arose as to why the persons who commit crime have to be subjected to the penal consequences. Many philosophies/jurisprudence justify the penal consequences as having retributive, rehabilitative, deterrence or restoration effects. Any or combination of this is the ultimate goal of sentencing.

➤ Thirdly, sentence guidelines are provided to guide the judges in awarding sentences in various countries. Such guidelines are provided statutorily or otherwise. Whereas till date in India we do not have such policy.

➤ The aim of such policies might not only aim at achieving consistencies in awarding punishment but to prescribe sentence policy or purpose for awarding it, like whether deterrence, retribution etc.

➤ In India the courts go by their own perception on awarding sentences. If the nature of a judge is to give punishment in form of retribution he’ll grant that. If other judge is of different outlook and believes in rehabilitation he’ll follow that. It depends on all the philosophy of the judge.

➤ In cases of crime against society and heinous crimes the deterrent theory of punishing the offender becomes relevant.

However now the focus of criminologists and penologists is on victimology and it was observed in following case by the hon’ble court:

In Hari Singh V. Sukhbir Singh and Ors [4] the court has observed the failure of awarding compensation to the victims in terms of section 357 (1) of Cr.P.C. and said

“43. The 154th Law Commission Report on the CrPC devoted an entire chapter to ‘**Victimology**’ in which the growing emphasis on victim’s rights in criminal trials was discussed extensively as under:

“1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to **victimology**, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

xxxxxxxxxx 9.1 The principles of **victimology** has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38).

Article 41 mandates inter alia that the State shall make effective provisions for “securing the right to public assistance in cases of disablement and in other cases of undeserved want.” So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia ‘to have compassion for living creatures’ and to ‘develop humanism’. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for **victimology**.”

#### IV. CONCLUSION

No theory in itself sufficient in the criminal justice system to curb down the crime rate and number of criminals. In this the plight of the victim gets ignored who should be primary as the offence has been committed against him and his family. Victimology will prove to be effective as far as giving justice is concerned as till now the victims were not put into the light. The criminal justice system of modern time is more facilitative and thus is kind a way molding two or more theories to meet the end of justice. With victimology we can say that now the justice system is getting more justifiable and reachable thereby people can restore their confidence in the system. With the focus on victims now the justice we can truly say is ‘served’.

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