

THEORIES OF PUNISHMENT

AKSHARA S NAIR
LLM CRIMINAL LAW
SREE NARAYANA LAW COLLEGE

ABSTRACT

There are various theories trying to explain the purpose of punishment. These theories create different shades and effects in criminal jurisprudence. The aim of inflicting punishment is to curtail crime. It seems that committing a crime is a human vice, making it impossible to eradicate this suffering completely from society. However, it is necessary for the welfare of society and its survival that it can be curtailed to the lowest level. With this aim, the application of these theories has evolved with the ages and governments, but the objective behind the policy of inflicting punishment has remained unchanged. The purpose of punishment is to deter crime and ensure the security of society. Though each theory has a separate effect on the offender/convicts. With the passage of time, different types of punishment were imposed upon convicts/accused as corporal (flogging, mutilation, branding, stocks and pillories), transportation, capital punishment, imprisonment, and monetary punishment. Some of those barbaric practices were abolished over time. Today, convicts are detained not only in prisons but also in other approved detention centres, such as female reformation homes, mental asylums, juvenile care homes, and remand homes run by governments.

INTRODUCTION

Punishment is imposed on an offender who has committed a legal wrong. Its purpose is not only to deter the person responsible but also to discourage others from committing similar offenses. For punishment to be justified, it must address a legal wrong, involve some form of discomfort, and have consequences that are unpleasant. The authority to inflict punishment must come from a legally constituted body. Hans Kelsen, in his General Theory of Law and State, described a sanction as "socially organized deprivation of life, freedom, or property." Jeremy Bentham viewed punishment as an "evil in the form of a remedy which operates by fear." Johan Finnish emphasized that delinquent behaviour should be addressed firmly rather than leniently.

Today, the responsibility of administering punishment lies with the State. In earlier civilizations, victims or society at large could punish offenders as they saw fit. Societal reactions to crime have evolved over time, shaped by changing attitudes and emotions. Three main approaches to punishment have emerged:

1. The traditional approach views criminals as inherently dangerous and seeks to protect society through punitive measures.

2. A more recent approach sees criminals as victims of circumstance and products of various factors within themselves and society; this view regards offenders as individuals in need of treatment rather than punishment.

3. The preventive approach focuses on addressing and removing the root causes of crime.

These approaches are not mutually exclusive and often coexist within a society's legal system, providing different perspectives that influence theories and practices of punishment.

THEORIES OF PUNISHMENT

With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the ultramodern position and the pivotal problems relating to them Kenny wrote: "it cannot be said that the theories of criminal punishment current amongst our judges and legislators have assumed...."¹

According to Taylor, "a herd of wolves is quieter and more at one than so many men, unless they all had one reason in them, or having one power on them."²

In the words of Sir John Salmond "the end of criminal justice are four in number, and in respect to the purposes served by the punishment can be divided as" –

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

DETERRENT THEORY

According to this theory the object of punishment is to discourage the lawbreaker from repeating the same course of conduct so that the persons and property of others may not be harmed.³ The act that takes down the power of committing injury is called incapacitation, is in the form of remedy operated by the fear should be the object of discipline which is called deterrent theory. Bentham went to the extent of depriving the criminal's power of doing injury by awarding death sentences. Bentham treats the committed offences as an act of past, that should be used as opportunity of punishing the offenders in such a way that the future offences could be prevented Glanville Williams says, deterrence is the only ultimate object of punishment. "Punishment (sanction) is before all things

¹ Rishabh raj, jurisprudence- theories of punishment, <http://www.quadlegal.in/jurisprudence%20theories%20of%20punishment.pdf> last accessed on 26 December 2025

² Shikha Mishra, theories of punishment- a philosophical aspect, IJIR, 2, 2016, <https://www.onlinejournal.in/IJIRV2I8/014.pdf>, last accessed on 26 December 2025

³ Dr. S.S.Srivastava, Criminology, Penology & Victimology 4th Edition Central Law Agency 273 page

deterrent, and the chief end of the law of crime is to make the evildoer an example and warning to all that are like minded with him.” This kind of threat is commonly described as ‘specific’ or ‘individual’ deterrence.

Specific deterrence works in two ways. First, a lawbreaker would be put in captivity to help him from committing another crime for specific period. Alternate, this incapacitation is designed to be so unwelcome that it’ll discourage the other lawbreaker from repeating his felonious geste. When individual deterrence is used as means to shoot communication across society is called ‘general’ or ‘community’ deterrence. Crime does not pay and honesty is the best policy. That is the message deterrent theory tries to communicate to society. Once deterrent as painful sanction is accepted, it would oppose better facilities in prison as suggested by the reformist.

In *State of Karnataka vs. Krishnappa*⁴, the court held that the measure of punishment does not depend upon the social status of offender or of victim. It must depend upon the conduct of accused. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate punishment. The same view was retreated by the court in the case of *State of M.P. vs. Ghanshyam Singh*⁵ the court held that the motive for the commission of crime, the conduct of the accused, the nature and weapon used in committing crime would be taken into consideration. Undue sympathies to impose inadequate sentence would do more harm to the justice system to decline the public confidence in the efficacy of law.

RETRIBUTIVE THEORY

The essence of the retributive theory of punishment has been well described by Professor Hart “This older conception of punishment is sharply distinguished from mere social hygiene: it does not make primary, as modern thought does, the reduction of crime or the protection of society from the criminal; instead, it makes primary the meting out to a responsible wrongdoer of his just deserts.”⁶

Retributive is based on the Roman doctrine of *Poena sous tenere debet actors etnon alios* means punishment belongs to the guilty, and not others. It punishes voluntary acts and excludes involuntary acts based on less blame worthy acts like, act of insane person or immature person. Once criminal pays his debt to the society in the form of punishment, his sin is expiated and admitted back to mainstream of society again. Retribution connects the offender to correct values; it sends values to the wrongdoer that what he did was wrong. All variation of retributivism most usually adheres to the principle of *lex talionis*, “eye for an eye, and tooth for a tooth”. *Lax talionis* says that one should be punished exactly to the extent that one harmed the victim. According to Hegel, punishment ‘annuls’ the crime. It aims at restoring the social balance disturbed by the offender.⁷ The criminal should accept as much pain and sufferings as inflicted by him on his

⁴ 2000Cr.L.J.1793 at 1799(SC)

⁵ AIR 2003 SC 3191

⁶ Punishment and the Elimination of Responsibility, Athlone Press, 1962, p. 1.

<https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1964.tb02242.x> last accessed on 26 December 2025

⁷ Supra note 2

victim. For Immanuel Kant, human being is free man, and enjoys rights in the legal system based on the decorum of humanity. When any person interferes with another's right, he forfeits and gives up his own right and submits him to others intrusion in his life as rightful.

The retributive theory propagates human being belief that justice is mainly essential for satisfying legal order in society. The prime feature that attracts us to retributivism over the utilitarian rationalization for punishment is that retributivism ties punishment to what the individual deserves, thereby avoiding the trouble of over-punishing, under-punishing, and punishing the innocent. However, quite a few challenges to a strictly retributivist theory of punishment arise. Reasonable people cannot (and do not) believe that every person should lie, steal, and murder so these actions are erroneous. This is where retributive punishment comes in as it serves to give them what they seem to be asking for —execution. Retributive claims for punishment can arise not only when a harm to others has been committed (the standard case) but also when someone violates the “minimal standards of decency and consideration for others.”⁸

PREVENTIVE THEORY

In England, utilitarians as Bentham, Stuart Mill and Austin supported preventive theory because of its humanizing influence on criminal law. The profounder of this theory held that the object of punishment is to prevent the offences. The offences can be prevented when the offender and his notorious activities are checked. The check is possible by disablement. The disablement may be of different type. To keep inside the jail is the limited form of disablement. It suggests that prisonization is the best mode of crime prevention as it seeks to eliminate offenders from society thus disabling them from repeating crime. The death penalty is also based on this theory. This theory is another form of deterrent theory. One is to deter the offender while another is to prevent him from committing the crime.

The preventive mode of punishment works by stimulating all prospective wrong-doers with the fear of punishment, by disabling the criminal from immediately committing any crime; and by transforming the criminal, by a process of reformation and re-education, so that he would not execute crime again. The effect of preventive theory much depends upon promptness and fraction factors. The delay in inquires or investigation by the public authority makes sanction unproductive. The efficiency of sanction is supplementary scaled down as courts grants bail to accused on the ground that accused supposed to be innocent until guilt is proved. There is substantial dispute, as to who should be controlled and how long. Confinement should engross the least restraint needed to furnish rational protection against crime. The bare truth is that protection can never be absolute. Certain amount of crime is inevitable and community must take chance against them. Incapacitation affects capability and an opportunity to commit criminal act, but has no influence on emotional and criminal objective and expectation of profit. Therefore, incapacitation is being transitory than permanent.

⁸ Punishment- retribution, rehabilitation and deterrence, <http://web.uncg.edu/dcl/courses/viceCrime/pdf/m7.pdf> last accessed on 26 December 2025

REFORMATIVE THEORY

The essence of reformatory theory lies on “An eye for an eye will turn the whole world blind” – Mahatma Gandhi. In prehistoric time punishment used to be very ruthless but later with time people started to think about accused person’s rights also. The very fundamental purpose of this theory is to reform/rehabilitate the offenders into law abiding citizen. According to this theory, crime is interrelated with the existing psychological or physical description of the offenders and with the environment and circumstance of the society.

This approach discards the deterrence and retributive elements of punishments and effortlessly advocates reformatory approach on uncomplicated idea that, ‘we must cure our criminal, not kill them’. The reformatory theory is reaction to the deterrent theory, which has failed to take into consideration of the welfare of criminal.⁹ The purpose of punishment has been considerably under the process of changes from the last centuries because of the Welfare State concept. Reformist looks at sanction as tool of rehabilitation and tries to mold the behaviors of criminal on the place that criminal is not born but made by the environment of society. The motive behind the offences must be examined there should be a way so that offender could go back to main stream. Reformation requires combination of too many disciplines and their effort has failed to deliver goods yet hunt is on for right combination to make theory productive. Reform in the deterrent sense implied that through being punished the criminal accepted his guilt and wished to change. But, although this is definitely one aspect of rehabilitation, as a theory rehabilitation is more generally associated with treatment of the offender.¹⁰

EXPIATORY THEORY

The object of this theory is “to pay for the sin committed”. These days this theory has become close to Retributive. “On this view, crime is done away with, cancelled, blotted out or expiated by the sufferings of its appointed penalty. To suffer punishment is a debt due to the law that has been violated. Guilt plus punishment is equal to innocence”.¹¹ It is the concept behind this theory is that offender will serve the victims and their dependents to compensate the deprivation which will create the sense of repentance and cleansing of heart. Expiatory theory states that compensation is awarded to the victim from the wrong doer, awarding compensation from the accused though accused is not physically punished. He is punished economically and compensation is awarded to the victim or family members of victim. The purpose of this theory is that the victim is not taken into consideration. The present criminal justice system aims at punishing only the criminals. The courts are not in a position to point out the grievances of the victim or his family members. The objective of this theory is “to pay for the sin committed”. Now-a-days this theory has become close to Retributive. “On this view, crime is done away with, cancelled, blotted out or expiated by the

⁹ P.J Fitzgerald, Salmond on Jurisprudence, 12th Ed., Universal Law Publishing Co Pvt, 2008). p.95

¹⁰ Mohd. Imran, theories of punishment with special reference to preventive and reformatory theories, IJSARD 3, 85 , <http://ijsard.org/wp-content/uploads/2017/05/THEORIES-OF-PUNISHMENT-WITH-SPECIAL-REFERENCE-TO-PREVENTIVE-REFORMATIVE-THEORIES-By-Mohd-Imrancompilation-volume-3-issue-2.pdf> accessed on 26 December 2025

¹¹ Salmond on Jurisprudence, edited by Fitzgerald 12th ed. Page 99

sufferings of its appointed penalty. To suffer punishment is a debt due to the law that has been violated. Guilt plus punishment is equal to innocence".¹²

Experimentation of this theory is too expensive in terms of public safety and security. It could not be a solution to the serious offences. It is sufficient to meet the less serious type offences. However, it is regrettable to say that the theory is not applicable to any system of law. It is held impracticable because of being idealistic. Although, In Criminal Procedure Code, 1973 this theory is also being implemented. Section 320 of the said Act describes certain crimes which can be compoundable. The accused can compromise with the victim by paying money or through apology.

CONCLUSION

In *Dr Jacob George v. State of Kerala*¹³, the Supreme Court held that the object of punishment should be deterrent, reformatory, preventive, retributive and compensatory. Preferring one theory to other is not sound policy of punishment. Each theory of punishment should be used independently or combined according to the merit of the case. Human beings neither are angels capable of doing only good nor are they demons determined to destroy each other even at the cost of self-destruction. Taking human nature as it is, complete elimination of crime from the society is not only impossible but also unimaginable. It is stated that 'every saint has a past and every sinner has a future'¹⁴ Criminals are very much part of the society and society has to reform and correct them and make them sober citizens. Every theory has its own merits and demerits each theory have been criticized on various grounds, like if we talk about deterrent theory it has been criticized on the ground that excessive harshness tend to defeat his own purpose of punishment and it also proved ineffective in maintain balance or checking crimes. Hardened criminals are not afraid of punishment. Whereas retributive theory points out that punishment itself is not a remedy for the disobedience caused by the offender. It merely aggravates the mischief. Punishment itself is evil and can be justified only on the ground that it procures better result. Revenge is wild justice. Retribution is only a secondary purpose served by punishment.

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¹³ 1994 Cr.L.J. 3851 SC

¹⁴ Jeremy Bentham, 'An Introduction to the Principles of Morals and Legislation' J. H. Burns & H. L. A. Hart eds., 1970) (1789) cf Pillai, P S A, Criminal Law, 9th Ed., Butterworths India, New Delhi, 2000, p. 286.

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