

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 5

2024

© 2024 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Theories and Modes of Punishment in Indian Penal System

ANUJ KUMAR¹ AND ARTI²

ABSTRACT

An act committed in violation of law where the consequences of conviction by court is punishable, is especially when punishment is a serious one such as imprisonment. A serious offence, especially one in violation of morality. Initially the civilization does not distinguish between civil law and criminal law. The development of criminal justice system was in early 18th century, where the criminal law had been formalized and effective mechanism for prevention, control, prohibition and punishing the criminal was made. The law focused on the behavior of criminal which leads to the crime and the methods to prevent the crime. Whenever there is a commission of a crime in the society, the immediate consequence that follows the criminal act is known as punishment.

Punishment is the most prominent feature of criminal law. The punishment involves all or few from suffering, loss, pain, penalty, image tarnish. The most prudent form of punishment is imprisonment. In the recent trends, elimination of the crime from the society is ought to be achieve by reformation, education of criminal.

Keywords: *Crime, Penal, Theories.*

I. INTRODUCTION

In simple terms, crime can be understood as the intentional commission of an act that is deemed to be shortly harmful and also prohibited under the criminal laws. The crime is the collective term denoted to Actus reus and Mens rea. Crime is caused by various factors such as poverty, social influence, mental health, biological factor and criminal & societal behavior and upbringing. There are various theories of punishment which are as follows-

1. Deterrent Theory

The word 'deter' means to prevent. Deterrent theory refers to restraining from doing a particular act. It is an ancient theory of punishment. It means object is to fear criminals by punishment and create fear among other person of society. So that they do not commit any offence. Under this, hard punishment such as torture are given to criminals. The main object

¹ Author is a student at Geeta Institute of Law, Panipat, Delhi NCR, India.

² Author is a student at Geeta Institute of Law, Panipat, Delhi NCR, India.

of the principle is to prevent crime by fear of punishment.

But it is not acceptable in the present times because many reasons are considered to commit offence. Many time man commits offence due to compulsion or unawareness. This theory focuses on how to stop criminals from future crimes and create fear among other mischievous people in society. This theory is supported by-

1. Plato
2. Locke
3. Fische

In other words, the object of this theory is not only to prevent the wrong doer and from doing a wrong subsequently but also to make him an example for society and other tendencies.

a. Types of deterrence

1. **Specific deterrence-** This is on a specific individual. It as the use of punishment for criminal activity intended to discourage a specific individual from committing the crime again. For example, if an armed robber is sentenced to 8 years in prison the specific deterrence makes it less likely that he will come it another armed robbery when he is eventually released.
2. **General deterrence-** It refers to the public from committing the same crime as those already convicted of such offences. General deterrence is more focused on teaching lessons to the public and not just individual is severally punished.

b. Deterrent theory in India

Case- state of M.P v. Union of India

Supreme Court stated that the sentence must be commensurate with the crime and it is the court responsibility to impose an appropriate sentence based on the extent of the crime and desirability of imposing such punishment.

c. Criticism

When a person is dying of Hunger, he will not be bothered on death punishment. In India, the Supreme Court accepted this theory in recent times due to increment in murders dowry, death, rape etc.

2. Retributive Theory

Retribute means to give in the return. The theory is also known as Vengeance theory, which means that criminal should receive the same sufferings which are given by him to the victim.

Retributive theory is the most prominent and leading more of punishing a criminal. The theory basically stands on the principle of Revenge. It is based on the doctrine of Lex Talionis, the states that the loss occurred to victims could only be compensated if the same loss is made to the offender.

Sir John Salmond propounded the theory, according to him the main purpose of punishment is to retaliate the harm inflicted by criminal to the society. Thus the society was of opinion that the person doing the wrong should suffer the same proportion of pain. The theory is coned by the multiple phrases such as, an eye for eye, tooth for tooth, limb for limb.

According to Salmond, revenge is not a remedy or cure of the crime but it is a reason in the crimes. Mahatma Gandhi said that an eye for an eye makes the whole world blind. The objective of this theory is to make that usually the suffering of the pain by subjecting him to the same kind of pain as he had given to the victim.

a. Aspects of the Theory

1. Penalty is grievance.
2. Crime is blameworthy culpable.
3. responsible for crime is responsible for punishment

b. Criticisms of The Theory

1. It expedites the offender.
2. There is no relief for the offense committed by the offender.
3. This type of punishment reflects the wild character of the justice.

Punishment are not always the revenge full but punishment should be the way of compensating the loss occurred to the victim.

3. Reformative Theory

It is modern theory of punishment. Its main object is to reform the criminals. This theory supports the principles that criminal can be prevented from crime by changing their heart. According to this, theory many times people commit crimes due to compulsion poverty, emotions, family conditions etc. These persons have feeling of guilt and they should be provided opportunity to reform themselves. This theory is based on Gandhian principle " Hate the sin, not the sinner". This theory was helpful to some extent in case of juveniles.

a. Object of this theory

1. The country should be to transform the criminals rather than simply penalize them.
2. The ideology behind the notion of punishment is not just to offer fairness to victim but also to preserve safety and security in the community.
3. It transforms the criminal into a human.
4. The idea of punitive action is commonly associated with the law of crimes.

b. Law dealing with Reformatory Theory

- Article 72 and article 161 of the Constitution of India.
- Article 72 provides for the President of India to pardon a wrong doer. Governor of State also has the same authority under Article 161. The authority of pardon arises to provide fairness whether it be from severe and unfair laws or from verdict that leads to injustice.
- The juvenile justice-The Act focus to restore children and make them capable member of community. This is demonstrated by fact that children under the age of 18, who commit a crime are termed delinquent rather than criminals.
- The code of criminal procedure, 1973-
 1. Section 27- state that any crime not punishable with life imprisonment or if committed by any individual who is below the age of 16 on the day he appears.
 2. Section 360- enable Court to grant discharge on probation on good behavior or after admonition.
 3. Section 432- the government can suspend or remit the punishment in entirety or in proportion at any period.

c. Case law

Sunil Batra v. Delhi Administration, 1980 AIR 1579

The court observed that humane treatment will enhance their personality rather than to affect or regulate their life.

d. Drawbacks of theory

- If theory is applied to criminals. The prison will lose its meaning rather become a dwelling house.
- The theory fails to meet its objective on criminals who are habitual offenders.

- If a good citizen is punished for what he has not done, then this theory may have adverse effects.

4. Preventive Theory

Preventive theory focuses on the prevention of the prisoner from offending the offence again in the future. The death penalty serves the purpose of Preventive theory. The death penalty, life imprisonment etc. is awarded to the criminal under this theory. This theory focuses-

- By putting the fear of punishment in the mind of the criminal.
- By permanently or temporary disabling the criminal.
- By the public at large about the threat of punishment.

5. Theory Of Compensation/ Expiatory Theory

The word expiry means 'amend or propitiate' theory focuses on morals. This theory is supported by Hagel and Kohler. According to Hagel, 'the punishment makes the criminal to expiate for the wrong done'.

II. PUNISHMENT AND ITS MODES

Punishment is a way of penalizing the wrong doer for the harm which has been committed by him against the society. The crime is always against the society and it is a duty of the state to prevent the crime and the prevention of the crime is achieved by way of creating fear in the mind of criminal which is done by punishing the wrong doer.

Punishment has been awarded because:

- In the past to ensure that crime is not repeated.
- In the present to create the fear.
- In the future to prevent the crime.

(A) Objectives of the Punishment

The main purpose of the punishing the criminal is to protect the society from the mischievous elements and this can be achieved only by deterring the potential offenders. The main objective of punishment is to eradicate evils and reform the criminal and change them into the law abiding citizens.

(B) Punishment in ancient India

According to the historical texts and criminal literatures of prison system, the punishment in the ancient India were brutal and cruel. The punishment goals were to take revenge for the

wrong done to the society. Penalties fall under the following categories;

- **Death Penalty and Capital punishment:** It refers to the punishment which was of extreme nature. In this kind, a person is executed to the death by the state for the heinous crimes committed against the government and humanity.
- **Corporal Punishment:** It refers to the punishment by harming the offender physically, it is also sometimes referred as physical torture to the culprit. The meaning of the punishment is to set example into the society and in the front of potential law breakers.
- **Social Punishment:** It is a punishment in which the offender is prohibited from entering into the society and he is made as stranger to the society by dislocating him to the isolated and remote places. The main purpose of the punishment is to restrict the social bonding of the prisoner.
- **Financial Sanctions:** Occasionally referred to as imposition of fine. The financial sanctions are typically penalties that are not in severe nature but are to cover the expenses of the criminal investigation and the loss occurred to the victim.

(C) Current Trend of Punishment in India

The harshness of the punishment now is determined by the seriousness of the crime. If any person commits a serious crime he subjected to the harsh punishment and for the minor and petty offences the punishment is less severe.

1. Death Sentence

The most severe punishment available in the modern Indian Criminology is that sentence is granted in the case of serious offences, which are threat to the humanity and are treated as the rarest of the rare crime. According to the Indian Penal Code, it is given out in the rarest of the rare situation to set an example that the crime is always threat to the civilization.

2. Life in Prison / Life Imprisonment

A person gets a sentence to life in prison for the crimes which are committed by him unlawfully. These are also of great severity but less than the death sentences. Life Imprisonment is termed as alternative to the death sentences. According the Indian Penal System, there us fixed term of life imprisonment, although in some cases of fractional duration, the sentence is usually till the natural life.

3. Imprisonment

The literal meaning of the imprisonment is to detain the criminal into the jails for the time as

decided by the judicial authorities. The main objective behind keeping the criminal into the jails is to restrict the basic fundamental freedom of criminals. Imprisonment is sub headed into 3 categories-

- a) **Rigorous imprisonment:** It is denoted by hard labor.
- b) **Simple Imprisonment:** In this kind of imprisonment, the offender is merely kept in custody and are not required to perform any kind of labor or hardship.
- c) **Solitary Confinement:** It is the most severe kind of imprisonment in which the culprit is kept isolated from outside. The main isolated criminals are usually the terrorist and habitual law breakers who are kept into these confinements. They are usually dark small rooms.

4. Forfeiture and Fine

It is denoted by loss or surrender of the any property or goods in reciprocal of the punishment. Basically, the property is attached and fine is imposed in perceive of crime committed.

5. Community Service

It is newly added mode of punishment in the penal system. The focus of judicial system in now shifting to reformation of criminal for betterment of society rather than punishment him physically and by traditional modes. According to the Bhartiya Nyaya Sanhita 2023, the main purpose of Community Service is to make the convict a better citizen and his reformation should be utilized for goodwill of society.

III. CONCLUSION

As discussed above, crime can be understood as intentional commission of an act that is deemed to be socially harmful and also prohibited under criminal law. It is also dynamic concept and its ambit keeps on changing with development of new criminal behavior and punishments.
