

THEORIES OF PUNISHMENT WITH SPECIAL REFERENCE TO PREVENTIVE & REFORMATIVE THEORIES

Mohd Imran,
Assistant Professor,
School of Law and Constitutional Studies, Shobhit
University, Meerut.
mohdimran.imran6@gmail.com ,
imran@shobhituniversity.ac.in

INTRODUCTION

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. 'The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.' Punishment has the following features:

- It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant;
- It is consequence of an offence;
- It is applied against the author of the offence;
- It is applied by an organ of the system that made the act an offence.

The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. Debunking the stringent theories of punishment the modern society is seen in loosening its hold on the criminals. The present scenario also witnesses the opposition of capital punishment as inhumane, though it was a major form of punishing the criminals earlier. But it may also be observed till recently the TALIBANS used quite a harsh method for suppression. The law says that it does not really punish the individual but punishes the guilty mind. As punishment generally is provided in Criminal Law it becomes imperative on our part to know what crime or an offence really is. Here the researcher would like to quote Salmond's definition of crime: Crime is an act deemed by law to be harmful for the society as a whole though its immediate victim may be an individual. He further substantiates his point of view through the following illustration a murderer injures primarily a particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family.

Thus, it becomes very important on behalf of the society to punish the offenders. Punishment can be used as a method of reducing the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. Theories of punishment contain generally policies regarding theories of punishment namely: Deterrent, Retributive, Preventive and Reformative. Punishment, whether legal or divine, needs justification. Because the justification of legal punishment has been given greater consideration by philosophers than has the justification of divine punishment by theologians, the philosophical concepts and 'theories of punishment' (i.e. the justifications) will be used as a basis for considering divine punishment. Many a time this punishment has been termed as a mode of social protection. The affinity of punishment with many other measures involving deprivation by the state morally recognized rights is generally evident. The justifiability of these measures in particular cases may well be controversial, but it is hardly under fire. The attempt to give punishment the same justification for punishment as for other compulsory measures imposed by the state does not necessarily involve a particular standpoint on the issues of deterrence, reform or physical incapacitation. Obviously the justification in terms of protection commits us to holding that punishment may be effective in preventing social harms through one of these methods. As punishments generally punish the guilty mind it becomes very important on the part of the researcher to what crime really is. But it is quite difficult on the part of the researcher to say whether or not there must be any place for the traditional forms of punishment. In today's world the major question that is raised by most of the penologist is that how far are present 'humane' methods of punishment like the reformative successful in their objective. It is observed that prisons have become a place for breeding criminals not as a place of reformation as it was meant to be.

In this paper, it is proposed to analyze various theories of punishment. Austin considered sanction as an essential ingredient of law. It is only through sanction that obedience to law can be secured. Sanction is nothing but inflicting pain or injury upon the wrong doer. This in a way can be called punishment. The immediate consequence of a criminal act is punishment. The term punishment is defined as, "pain, suffering, loss, confinement or other penalty inflicted on a person for an offence by the authority to which the offender is subjected to."^[1] Punishment is a social custom and institutions are established to award punishment after following criminal justice process, which insists that the offender must be guilty and the institution must have the authority to punish. In this article an attempt is made to discuss the policy of sentencing vis-à-vis various

theories of punishment and their efficacy and effectiveness in the light of modern penology.

Punishment

Punishment is a term used in operant conditioning to refer to any change that occurs after a behavior that reduces the likelihood that that behavior will occur again in the future. While positive and negative reinforcement are used to *increase* behaviors, punishment is focused on reducing or eliminating unwanted behaviors.

Types of Punishment

Behaviorist B. F. Skinner, the psychologist who first described operant conditioning, identified two different kinds of aversive stimuli that can be used as punishment.

- **Positive Punishment:** This type of punishment is also known as "punishment by application." Positive punishment involves presenting an aversive stimulus after a behavior as occurred. For example, when a student talks out of turn in the middle of class, the teacher might scold the child for interrupting her.
- **Negative Punishment:** This type of punishment is also known as "punishment by removal." Negative punishment involves taking away a desirable stimulus after a behavior as occurred. For example, when the student from the previous example talks out of turn again, the teacher promptly tells the child that he will have to miss recess because of his behavior.

Is Punishment Effective?

While punishment can be effective in some cases, you can probably think of a few examples of when punishment *does not* reduce a behavior. Prison is one example. After being sent to jail for a crime, people often continue committing crimes once they are released from prison.

Why is it that punishment seems to work in some instances, but not in others? Researchers have found a number of factors that contribute to how effective punishment is in different situations. First, punishment is more likely to lead to a reduction in behavior if it immediately follows the behavior. Prison sentences often occur long after the crime has been committed, which may help explain why sending people to jail does not always lead to a reduction in criminal behavior.

Second, punishment achieves greater results when it is consistently applied. It can be difficult to administer a punishment every single time a behavior occurs. For

example, people often continue to drive over the speed limit even after receiving a speeding ticket. Why? Because the behavior is inconsistently punished.

Punishment also has some notable drawbacks. First, any behavior changes that result from punishment are often temporary. "Punished behavior is likely to reappear after the punitive consequences are withdrawn," Skinner explained in his book *About Behaviorism*. Perhaps the greatest drawback is the fact that punishment does not actually offer any information about more appropriate or desired behaviors. While subjects might be learning to not perform certain actions, they are not really learning anything about what they should be doing.

Another thing to consider about punishment is that it can have unintended and undesirable consequences. For example, while approximately 75 percent of parents in the United States report spanking their children on occasion, researcher have found that this type of physical punishment can lead to antisocial behavior, aggressiveness and delinquency among children. For this reason, Skinner and other psychologists suggest that any potential short-term gains from using punishment as a behavior modification tool need to be weighed again the potential long-term consequences.

NATURE OF PUNISHMENT

The primary operation of punishment consists simply in announcing certain standards of behavior and attaching penalties for deviation, making it less eligible, and then leaving individuals to choose. This is a method of social control, which maximizes individual freedom within the coercive framework of the law in a number of different ways. The first moral duty of the community or of the State on its behalf is to reassert the broken moral laws against the offender who has broken it. For this reason, it must affirm his guilt and deal with him in accordance with it. To forgive may be right: to condone is always wrong. A criminal act must not be condoned. It must be punished.

Government prohibits taking life, liberty or property of others and specifies the punishments, threatens those who break the law. The intended effect of all legal threats obviously is to deter people from doing what the law prohibits. The threats must be carried out. Otherwise, the threats are reduced to bluffs, and become incredible and therefore ineffective. Thus, all states punish people whom they identify as criminals. How a punishment should be is still a question to be answered. Neo-Kantians proposed the concept of proportionality. When we say that the aim of the punishment is to prevent crime, then the "Punishment must fit the crime". We must accept that man avoids criminal behavior if that behavior

elicits swift, severe and certain punishment. Many studies by many sociologists and criminologists such as Gibbs, Chiricos and Waldo and Tittle suggest that the severity and certainty of punishment are additive factors. But, evidence suggests that the severity and certainty of punishment are inversely related. Jeffrey states that severity of punishment can be gained only by sacrificing certainty and that increasing the penalties for crime has had negative effect of making the punishment less certain.

John Bright throughout his life argued that certainty of punishment was more important than severity of punishment in preventing the development of crimes. William C. Bailey, Assistant Professor of Sociology, The Cleveland State University and Ronald W. Smith, Assistant Professor of Sociology, University of Nevada conducted extensive research in finding whether the severity and certainty of punishment really deter the criminals. They concluded that the severity and certainty are not substantially inversely related for the index crimes nor are changes in their level.

Another facet of the punishment is that it cannot be benign to the criminal. But for the society punishment is and should be a benign process. So punishment is necessarily adverse to the interests of the criminal, but to the society it is not necessary. The first duty of the state is to dissociate itself from the acts of its own member. To do this it must act, not only upon but also against the member. While acting so, it must exhibit no antagonism in its will against the will of the offending members. This is necessary for the preservation of its own character, on which the character of its citizens largely depends.

All punishments properly imply moral accountability. Community wants the punishment to reach the criminal's mind as well as his body; it wants him to suffer remorse for his evil deed: to realize that he had against him right as well as might. Unless, the community believes these conditions are attained it is unsatisfied and the object of punishment is not fully realized.

PURPOSE OF PUNISHMENT

In primitive times, crimes were mainly attributed to the influence of evil spirits, and the major purpose of punishment was to placate the gods. Later, in the evolution of punishment more stress was laid on social revenge, because crime was considered a willful act of a free moral agent. Society, outraged at an act of voluntary perversity, indignantly retaliated. Thus, we started punishing primarily for vengeance or to deter or in the interest of just balances of accounts between "deliberate" evildoers on the one hand and an injured and enraged society on the other.

According to Gouldner, members of the society identify themselves with the victim. Hence, human have the urge to punish the offender. Take rape as an illustration. Since, the victims of rape are females, we might hypothesize that women would express greater punitive ness towards the rapist than men, and that degrees of hostility would correspond to real or imaginary exposure to rape. Thus, young girls might express more punitive ness towards rapists than homely women. Among males, we can predict those with more reason to identify with the victims would express that greater punitive ness. Thus, males having sisters or daughters in the late teens or early twenties might express more punitive ness towards rapists than males lacking vulnerable hostages to fortune. [2]. This notion in a broader perspective is well expressed by Sir James F. Stephen. According to him the purpose of punishment is to gratify the desire for vengeance by making the criminal pay with his body. To quote him "The criminal law stands to passion of revenge in much the same relation as marriage to the sexual appetite." [3] Punishment gratifies the feeling of pleasure experienced by individuals at the thought that the criminal has been brought to justice. That desire ought to be satisfied by inflicting punishment in order to avoid the danger of private vengeance. It is plain that however futile it may be, social revenge is the only honest, straightforward and 4 logical justification for punishing the criminals. To carry out this purpose we need an authority. A criminal has a right to be punished. Because he is treated as a moral agent - a person who chooses between right and wrong- he is capable of choice.

In the words of Jeremy Taylor "A herd of wolves is quieter and more at one than many men, unless all have one reason in them or have one power over them." Hobbes says, "Without a common power to keep them all in awe, it is not possible for individuals to live in society. Without it justice is unchecked and triumphant and the life of the people is solitary, poor, nasty, brutish and short."

According to Jackson Toby punishing the criminals is necessary

1. a) for preventing crime
2. b) for sustaining the morale of conformists and
- c) for rehabilitation of offenders.

PUNISHMENT AS A MEANS OF CRIME PREVENTION

Those who have violated the moral norms of the society cannot commit crimes because their self-determined concept would not permit them to do so. Only unsocial

zed (and therefore amoral) individual fit the model of classical criminology and is deterred from expressing deviant impulses by a nice calculation of pleasures and punishments. Other things being equal, the anticipation of punishment would seem to have more deterrent value for inadequately socialized members of the group. According to Durkheim minute gradation in punishment would not be necessary if punishments were simply a means of deterring the potential offender. Even though punishment is uncertain, especially under contemporary urban conditions the possibility of punishment keeps some conformists law-abiding.

THEORIES OF PUNISHMENT UNDER CRIMINAL JUSTICE SYSTEM

There are four theories of punishment, namely, retributive theory, deterrent theory, preventive theory and reformatory theory. Of all the four theories retributive theory is the first and foremost. A child, who falls down, kicks the floor inadvertently. Generally, it is believed to be a form of taking revenge and would not serve any penal purpose. Deterrent theory by punishing the offenders deters the wrongdoer specially and deters the general public also by punishing him and refrains them from committing an act, which is an offence. Preventive theory incapacitates an offender from repeating the crime, while reformatory theory serves the purpose of rehabilitation of the offender. Modern penologists do not believe in purposeless punishment. They believe that a criminal is a patient and he be treated with humanity. All these four theories have their own merits and demerits.

DETERRENT THEORY:

Retributive theory is based on the assumption that punishment is for the sake of punishment. It is suggested that evil should be returned for evil without any regard to consequences. Beginning with the Age of Reason in the eighteenth century, the aim of the criminal law has gradually changed from punishment for its own sake to punishment as a means of improving social behavior. Punishment is designed not to take revenge but to terrorize the future offenders. An exemplary punishment should be given to the criminal so that others may learn a lesson from him. According to Manu "Penalty keeps the people under control, penalty protects them, penalty remains awake when people are asleep, so the wise have regarded punishment as a source of righteousness." He continues, "People are in check by punishment, for it is difficult to find a man who by nature sticks to the path of virtue." An eighteenth century judge, while awarding death sentence to a person guilty of stealing a sheep observed: "You are to be hanged not because you have stolen a sheep but in order that other may not steal sheep.[4]

Noted criminologist Sutherland divided this theory into two categories:

1. General Deterrence and
2. Specific Deterrence.

GENERAL DETERRENCE:

Punishment is designed to deter future crime by making an example of each defendant, thus frightening citizens so much that they will not do what the defendant did. The basic argument for general deterrence is that inflicting suffering upon those convicted of crime serves to terrorize others, and the punishment has great value for that reason, even if some individuals are not deterred. When Ohio's Attorney General William J. Brown made a claim though dramatically that "The mandatory type penalty structure deters crimes of intent. The criminal when he commits a crime should know that the judge does not have any discretion. The guy who used a gun should know that he will be put in jail forever. That is the only way to solve the crime problem, he," he not only reflected the mind of his own but of the law enforcement officers worldwide, with few exceptions. If prevention of crime is the chief object of law, terror alone can achieve this goal, opined Lord Chief Justice Ellenborough. Many criticize this theory of deterrence. The deterrence principle is mechanistic, holding that varieties of crimes and varieties of punishments are to be finely balanced that each punishment imposed on a criminal will have a significant impact on citizens at large, as well as directly on the criminal. In this view, the calculus of deterrence is the basis of criminal law; lawmakers and others need only do their sums carefully in order to ensure that appropriate amounts of pain are inflicted on wrong doers, thus convincing bystanders, that the cost of committing a crime outweighs the benefits.

Besides this, the principle of general deterrence is stated in economic terms, such as "pay the price of crime" and "pay his debt to the society". Thus, the economic hypothesis seems to be based on the hedonistic assumption that people regulate their behavior by calculations of pleasure and pain. This is a misplaced faith. It supposedly follows that if the pain element is increased by severe punishments, people will turn from crime to righteousness. Believing this lawmakers and public laid their faith in the cruelty and severity of the punishment.

But, extreme and indiscriminate severity is worse than ineffectiveness. It defeats its own end by outraging public opinion and rousing sympathy with the criminal. Where ordinary people do not regard an offence with horror, they will not co-operate in subjecting the offender to a horrid fate, witnesses will not give evidence, juries will not convict, and, even after

conviction, the advisers of the Crown will hesitate to allow the law to take its own course. Giving severe punishment is like bending the bow till it snaps back.

All said and done, the parameters of deterrent theory - certainty and severity - are psychological variables. They vary depending upon various factors present in an individual and society as well. When general deterrence was regarded as the principle purpose of punishment, penalties were made as public and brutal as possible. Anyhow, if protection is the sole purpose of any punishment, the truth is that the busiest hangman can do little to protect society in comparison with an efficient police force. Inspire of such arguments from criminologists against the deterrence theory whenever a community experiences a significant increase in its crime rate - however that rate may be produced - a demand for an increase in certainty and severity of penalties arises, based on the assumption that if more criminals are punished more severely, other persons will be effectively deterred from similar crimes. But, it is proved that it is to pay with a "certain evil" for a "very uncertain good".

SPECIFIC DETERRENCE:

Beyond serving the above-mentioned purpose, punishment is designed to educate and therefore to reform the criminals subjected to it. It is also maintained that punishment reforms criminals and that it does it by creating fear of repetition of the punishment. It is also maintained that punishment reforms criminals and that it does this by creating fear of repetition of the punishment. The belief is that hurting criminals changes them into non-criminals. When a boy touches a hot stove, he is painfully burnt, and in that way learns to avoid hot stoves. The philosophy of specific deterrence is very simple. Pain must be inflicted to get results. All over the world many parents believe in this philosophy and practise it upon their children. Law enforcement authorities practiced the same upon criminals.

Recently, thousands of experiments in human learning have been run in the effort to determine the relative values of rewards and punishments in human learning and performance, and these studies are considered pertinent to policies for the reformation of criminals. But, the effects of punishment, even in these experimental situations, cannot be stated as a simple proposition. A mild punishment may promote learning, but a more severe punishment may cause terror and panic, which interferes with the whole learning process. Moreover, the social situations in which punishments for crime are inflicted involve variables, which are lacking in punishments administered in experimental laboratories.

A century ago most of the teachers' time was in almost all the schools was devoted to the maintenance of order and infliction of punishment. The behavior of school children in modern schools, in which corporal punishment is seldom inflicted is much better than in schools of a century ago when corporal punishment was extremely frequent. The deterrent effect of the threat of penal treatment in relation to non-criminals and its deterrent or corrective effect upon criminals is modified by many factors, such as: the psychological make-up of the culprit: his previous history: the attitudes of those who administer punishment: certainty and severity: the psychology of the community that is concerned, etc., All these and more work together to determine the effect of punishment upon a given individual. The effect of punishment is a human nature problem and like human nature it admits of no easy analysis.

RETRIBUTIVE THEORY:

Retribution is probably the oldest and most ancient justification for punishment, according to which a wrong is made right by an offender's receiving his just deserts. It involves a "get even" spirit, at least since the formulation (in about 1875 B.C.) Of the Code of Hammurabi ("an eye for an eye and a tooth for a tooth"), it has been urged by leaders and accepted by the general public that the criminal deserves to suffer.[5] Among the ancient Jews even animals which killed human beings were regarded as contaminated and were got rid of for the good from the community. Many authorities have attempted to base the forms of human punishment on instinctive reactions, which might variously be called wrath, anger, resentment or revenge. Both theologians and philosophers advocated the theory of retributive justice. Some have even sought to demonstrate the existence of rudimentary punishment in the animal kingdom, in the effort to validate the instinctive basis of punitive action. But, it is hazardous to seek equivalent of human punishment in animal behavior. But, we often observe, the reaction to crime on the injured party and the public are often indignant and wrathful and fairly spontaneous. In American society a particularly offensive crime such as rape, kidnapping, cold-blooded murder calls out a wave of popular indignation and resentment. Even in the Indian Society we often hear of pick-pickers who are caught red handed and are beaten black and blue. Injuries and wrongs frequently incite a spontaneous instinctive wrath and anger. Immanuel Kant notices that punishment inflicted neither benefits the criminal nor the society, but the sole and sufficient reason for inflicting punishment is the evil doer facing the evil: he did the evil, he suffered the evil. Bentham referring to the concept of vengeance wrote, "The pleasure of vengeance calls in my mind sermon's riddle.... It is sweet carrying out of terrible, it is the honey dropping from the lion's mouth." In the evolution of

punishment more stress was laid on social revenge. Society is outraged at an act of voluntary perversity and indignantly retaliated. It is plain that, however, futile it may be, social revenge is the only honest, straightforward and logical justification for punishing the criminals.

Retribution theory intends that a man deserves punishment because he has acted wrongfully. What retribution has insisted upon is that no man can be punished unless he has broken the laws. To be more precise, retributionists consider that the offender performed an action of certain culpability;

1. ii) That the penalty will give satisfaction equivalent to the grievance caused by his action;
- iii) That similar ones have been and will be imposed on similar offenders;
1. iv) That he was responsible for his action and performed it with knowledge of possible consequences according to a penalty system and,
2. v) That unlike non-offenders, he has gained satisfaction on the commission of an As it stands it is worth consideration as a sufficient argument for punishing a man.

Retaliation fulfils a religious mission of punishing the offender it reestablishes the social harmony affected by the offence and offender's guilt is washed away through suffering. Even if a civil society were to dissolve itself by common agreement of all its members, the last murderer remaining in prison must first be executed, so that everyone will duly receive what his actions are worth and so that the blood guilt thereof will not be fixed to insist on carrying out the punishment, for if they fail to do that, they may be regarded as accomplices in this public violation of legal justice.

Plato observed that "it could never be really to harm anyone, however he may have harmed us." To quote Prof. Sidwick, "It seems still to be widely held that justice requires pain to be inflicted on a man who had done wrong, even if no benefit results even to him or to others from the pain. Personally, I am so far from holding this view that I have an instinctive and strong moral aversion to it: and I hesitate to attribute it to common sense, since I think that it is gradually passing away from the moral consciousness of educated persons in the most advanced communities." In Greek civilization, Protogaras protested emphatically against atrocious retaliation as the basis of theory of punishment. He proclaimed humanitarian correctional approach to be adopted. The abolition of the concept of physical torture and public punishment in the modern

society is an indication that goes against this theory. According to him the theory of deterrence is proper theory of punishment.

Plato adumbrates, "Justice is the good and health of the soul as injustice is its shame and chastisement is the remedy for the disease. Every culpa (guilt) requires expiation; the culpa is ugly and contrary to justice and social order. The expiation is beautiful; to suffer for justice is beautiful." According to Plato he who punishes rightly punishes justly. Just is noble, nobility is good, and therefore either pleasurable or useful. Plato continues, "Since punishment does not give pleasure, it must be useful." If punishment were not useful, then as Plato says, it would not be just: and therefore everything that is useless in punishment should be avoided. However, the demand for punitive reaction still lurks in the minds of individuals. Only aspect is that we want some justification or rationalization or sentiment for taking revenge. Even the oldest reformer could not dare to completely breakaway from the tradition based upon retribution.^[6]

At the outset, no penal reformer or legislator can afford to disregard popular notions of good or ill desert, even if he himself believes them to be quite illusory. Even in advanced societies the punishment of crime, if it is to be genuinely preventive, must carry popular sentiment with it and to do so, it must appeal to the popular sense of justice. Today's society inspire of the boasted civilization expects revenge. But, in the heart of hearts it feels that State agencies should look after the matter. That is why Stephen observed: "The criminal law stands to the passion of revenge in much the same relation as marriage to sexual appetite." The sentence of law is to the moral sentiment of the public in relation to any offence is what a seal is to hot wax.

PREVENTIVE THEORY:

This theory was meant to restrain an offender personally from repeating a criminal act by incapacitating him, by such punishments such as imprisonment, death or exile. In ancient times this form of punishment had a bearing on the nature of the crime and member of the body most responsible for commission of such an offence thereof used to be incapacitated. For example the hands of a thief have a major role in an offence of theft. Chopping the hands of the thief would hence incapacitate him from repeating theft.^[7] The punishment for perjury was cutting one's tongue. Capital Punishment and exile served the purpose of incapacitating an offender whatever may be the crime. This does not act much on the motive of the offender, but disable his physical power to repeat the offence. However, now the criminal justice system does not turn to barbaric punishments such as mutilation and exile, though death penalty is in the statute books of many countries.

The notion that punishment is necessary to protect the society from criminal had been growing in importance. Punishment is for social defence and solidarity. In such a background prisons came handy to serve the dual purpose of protecting the society and punishing the criminal. The incarceration of the culprit has the result of severing him from the society and eventually preventing him from laying his hands again on similar crime or other crimes at least temporarily for the period of incarceration. This is attended with the smug belief that the isolation and some sort of rigorous labor which will give a feeling of degradation and self-remorse. It may help in eradication of any future motive in his mind. Prisons not only serve the purpose of severing the culprit from the society, it further deprives him of his personal liberty, which one values most after one's own life. Thus, incarceration serves three purposes: protection of the society, incapacitating the offender without turning to barbaric mutilations, and punishing the offender by deprivation of liberty. Thus pressurization of criminals was considered to be the best method of prevention of crime.

Sutherland, as well as Barnes and Teeters, the modern criminologists observed preventive theory from a different angle. First realizing the necessity of removing the social and economic forces that induce attitudes leading to delinquency and crime, and secondly, focusing attention on the individual who shows potentialities for anti-social behavior either because of biological and psychological handicaps or lack of social or economic opportunities for attaining a desirable integration. The first goal, which aims at creating such social and economic conditions in the society, which prevent the offender to commit a crime, is very difficult to achieve. Removing social and economic forces that induce attitudes leading to delinquency and crime is the aim of social reformers, social workers and above all politicians. Nobody could do it till date - not even Marxists and nobody can do it in the near future. Though Marxists hold that crime generates from economic inequalities that is not the only fertile ground for criminality. The behavior of man is unpredictable. Criminality depends on various other factors, psychological and personal also, which is nothing to do with economics. At any rate, removing such social and economic forces, which generate crime, is ruled out. Then remains the second goal focusing the attention on the individual. That is what precisely the modern criminologists advocate. As Krishna Ayer J. stated the attention should be on criminal and not on the crime.[8]

REFORMATIVE THEORY:

“But that is the beginning of a new story--the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life.” This excerpt underlines the basic principle of the reformatory theory. It emphasizes on the renewal of the criminal and the beginning of a new life for him. The most recent and the most humane of all theories is based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crimes. Though it may be true that there has been a greater onset of crimes today than it was earlier, but it may also be argued that many of the criminals are also getting reformed and leading a law-abiding life all-together. Reformatory techniques are much close to the deterrent techniques. Reform in the deterrent sense implied that through being punished the offender recognized his guilt and wished to change. But, although this is indeed one aspect of rehabilitation, as a theory rehabilitation is more usually associated with treatment of the offender. A few think that all offenders are 'ill' and need to be 'cured' but the majority of criminologists see punishment as a means of educating the offender. This has been the ideal and therefore the most popular theory in recent years. However, there is reason to believe this theory is in decline and Lord Windlesham has noted that if public opinion affects penal policy, as he thinks it does, then there will be more interest shown in retribution in the future. This theory aims at rehabilitating the offender to the norms of the society i.e. into law abiding member. This theory condemns all kinds of corporal punishments. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. These prisons or correctional homes as they are termed humanly treat the inmates and release them as soon as they feel that they are fit to mix up with the other members of the community. The reformation generally takes place either through probation or parole as measures for reforming criminals. It looks at the seclusion of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism. Retribution and deterrence are the philosophies of the classical and neo-classical schools, with their emphasis on "let the punishment fit the crime". The positive school on the other hand, emphasizes the importance of the "punishment fitting the criminal". It is the individual criminal, not the crime that is the focal point in the positive thinking.

Reformatory theory emerged of such positive thinking. According to this theory the object of punishment should be the reformation of the offender. This is not virtually a

punishment, but a mere rehabilitative process. It aims at making the criminal as far as possible a better citizen by means of moral and ethical training that is teaching him to go straight as an upright man and meaningful citizen. This is founded on the surmise that a crime is not the result of an original sin in a criminal but is much more a product of its environment, his lack of opportunity and training.[9] Until the present century, almost all attempts to change criminals were mass methods designed to modify the criminal in some mechanical manner.

The classical theory suggested that reformation would occur if enough pain were inflicted on the offender. A second method designed to change criminals was meditation, generally enforced by isolation: for some it may work, but generally this procedure has not been effective. Third method was moralizing by sermons in the name of God, mother, country etc., Fourth method was asking the offender to sign a pledge or in some other way make resolutions to live a law abiding life. Fifth method of reformation was mechanical habituation, produced by various punitive regimes including hard and dreary work in the prison and rigid prison discipline.

These five methods were examples of the effort to change the criminal in the past.

Although they have been carried over to the present, they reveal the importance of knowing more about human behavior than was known in the last century.[10] The present century researches in the field of criminal science brought about a radical change; the new approach focused greater attention on the individual who committed crime rather than the crime itself. The five methods explained above were also meant for reformation of the offender. But, the difference between last century approach and present century approach is that in the last century reformation was taken up on the mass level, and in the present century every individual is treated separately and attended to individually. The present day reformists advocate that sympathetic, tactful and loving treatment of the offender would bring a revolutionary change in them. They want to punish criminals "as little as possible" and improve them as much as possible. The advocates of this theory emphasize on rehabilitation of the convicts in peno-correctional institutions, so that they are transformed into good citizens.[11] In furtherance of this theory, Borstal Schools had been set up. Probation of Offenders Acts was enacted throughout the world. Parole Boards came into existence. Indeterminate sentences, furlough, suspension of sentence - are all the by-products of this theory. The reformatory theory stretched further in 20th century and "Open Air Institutions" emerged as a novel idea for reforming the criminals without inflicting any

pain. The open prisons, which accommodate primarily the life convicts, most of them being murderers, prove that no man is a born criminal. Salmond criticizes this theory by observing that if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places. However, he observes that reformatory element must not be overlooked but neither must it be allowed to assume undue prominence. It is submitted that modern prisons must transform into reformatories with a program of work, education, and religious services with the purpose of rehabilitating the offenders and preparing him for adjusting himself into a law-abiding citizen. Though this theory works stupendously for the correction of juveniles and first time criminals, but in the case of hardened criminals this theory may not work with the effectiveness. In these cases come the importance of the deterrence theories and the retributive theories. Thus, each of these four theories has their own pros and cons and each being important in it, none can be ignored as such.

PREVENTIVE POLICY IN CAPITAL OFFENCES

The preventive theory, which is known as Incapacitative theory, also is a good weapon in the armour of retentionists. Their argument is not to keep the offender behind the bars, though that amounts to incapacitation. They argue murderers are hanged not merely to deter people from meeting similar end but to eliminate such offenders, lest they repeat their crime. In case of life imprisonment the chances of parole, remission, pardon, commutation etc., are available. Retentionists do not want any of such privileges to be available for a killer. Killing the killer is the best method of prevention, according to them. This theory is a two edged weapon, used for the argument of abolitionists also. They advocate that life imprisonment serves the purpose of prevention of crime. Incapacitating the prisoner behind the bars throughout his life is the best method of prevention. Professor Conrod argues that wife killers, who commit murders at the spur of the moment, once in the prison are docile, guilty and the survivors of an irreversible tragedy. They never repeat their crime.

REFORMATIVE THEORY AND CAPITAL PUNISHMENT

The global winds are blowing in favour of reformatory and rehabilitative process of punishment, as a result of progressive changes in the penological field. The concept of retribution is outdated. The object of punishment is neither to torture the criminal nor to undo his crime. The purpose of punishment is to deter others and reform the criminal. The punishment should be such, which makes strong impression on the minds of others with least

suffering to the criminal. As a result of pathological studies in the field of criminology and penology, it has been proved that there is no direct connection or relation between crime and punishment. On the other hand there is no substantial proof of the fact that the ratio of crime increases because of soft or civilized punishment. The civilized goal of the criminal justice is the reformation of the criminal and death penalty means abandonment of this goal for those who suffer it.[12] Prof. Conrod observes this aspect from a totally different angle. According to him, it is the lifer who becomes a man. Condemned prisoners cannot think of others. They seldom express regrets for their killing. They could only think of themselves and their scheduled deaths. But, some of the lifers achieve a sort of goodness, as though atonement for the atrocities committed in the past can be achieved in the calm monotony that is possible for life prisoners. Obviously, death penalty cannot serve the reformatory goal, because it extinguishes life and puts an end to any possibility of reformation. It defeats the reformatory end of punishment. A sentence that provides for unpaid public services or monetary compensation to the victim's family or personal services to them when monetary compensation is not feasible serve the purpose of punishment better than simply taking away the life of the offender. In fact, this we find in Sukraniti, according to which this bad practice of Capital Punishment violates the Vedic injunction and should be replaced by imprisonment for life, if necessary, and a natural criminal should be transported to an Island, or fettered and made to repair the public roads.[13]

Conrod further observes "I have seen many murderers who have chosen service to others - as best as they could with limited opportunities - as their way of expiating guilt for an offence - a guilt with which they must live for the rest of their lives." The most famous such case is that of Nathaniel Leopold, convicted for a crime of the utmost atrocity, who dedicated himself to the education of criminals and to research leading to their better understanding. Less gifted murderers have chosen to make their lives as useful as possible to others - to fellow prisoners, to a large society when they can. The case of Pan. Ham Singh is a very good example to illustrate this. Pancham Singh Chauhan was a dreaded bandit, who headed a 60 - member gang of hardcore dacoits in the notorious Chambal Valley. The police so desperately wanted him that they announced a hefty reward of Rs.1.30 lakhs to anyone who gave them information, which might eventually lead to his arrest. Some of the offences he had committed were murders, kidnappings and dacoities. When the police turned the heat on him Pancham Singh and his band of bandits finally surrendered to them. Though they surrendered, the Court, which tried their offences sentenced them to death in view of the gravity of their offences. But for the late Jayaprakash Narain, Pancham Singh and his gang would

have been dead by now. The Government reduced their death sentence to life imprisonment. But, they were released after eight years, in prison obviously for their good behavior.

Pancham Singh, who afterwards became a Rajayogi in Brahma Kumari movement, spent the booty he had looted for charitable purposes. He constructed a school in Madhya Pradesh. Now, he is 66 years old and leading a peaceful life with his wife and two sons and two daughters. He is eking out his living by growing a vegetable garden in the six and half acre land allotted to him by the Government under the ex-dacoits rehabilitation scheme. Krishna Iyer makes a mention of Valmiki and Aurobindo, the first being a hunter in a forest and turned the great epic writer and the second was implicated in a conspiracy to murder and in prison he became Krishna conscious and enriched global life with a boundless light. To hang a man is to deny an embodied soul the sublime honor to transform himself and humane. It is a path that they cannot follow when they must go to a scheduled death.

Some people experienced in the handling of prisoners have concluded that murderers are among the best-behaved prisoners.[14] Statistics show that most persons convicted for murder are successful parolees. Of 36 persons under life sentence who were paroled between 1943 and 1958 in New York only two were returned to prison - one for technical offence and the other for burglary. Most of these prisoners would have been executed if their sentence had not been commuted. The hope of reforming even the worst killer is based on experience as well as faith and to legitimize the death penalty even in the so called exceptional cases where a killer is said to be beyond reformation would be to destroy the hope by sacrificing it at the altar of superstition and irrationality.[15] Even the Royal Commission on Capital Punishment concurred with this view. "Not that murderers in general are incapable of reformation, the evidence plainly shows the contrary. Indeed, the experience of countries without Capital Punishment indicates that the prospects of reformation are at least as favorable with murderers as with those who have committed other kinds of serious crimes. The released murderers who commit further crimes of violence are rare, and those who become useful citizens are common." [16] So long as the offender can be reformed through the rehabilitative therapy which may be administered to him in the prison or other correctional institution and he can be reclaimed as a useful citizen and made conscious of the divinity within him by techniques such as meditation, how can there be any moral justification for liquidating him out of existence?

PUNISHMENT AS MEANS OF REFORMING THE OFFENDER

Now, the trend is towards treatment of the offenders. Criminologists all over the world profess that criminals are as good or rather as bad as patients, and they need to be treated, not punished. It would be an error to suppose that the criminal invariably experiences punishment as painful whereas the psycho-pathological offender always experiences treatment as pleasant. On this assumption, punishment may be a necessary preliminary to a rehabilitation program in as much the same way that shock treatment makes certain types of psychotics accessible to psychotherapy. Those offenders who regard punishment as a deserved deprivation resulting from their own misbehavior are qualitatively different from offenders who regard punishment as a misfortune bearing no relationship to morality. The former accepts punishment as legitimate and the other bows before the superior force, because he has no option.

Immanuel Kant, the German philosopher sounds pessimistic when he says: "Judicial punishment can never serve merely as a means to further another good, whether for the offender himself or for society, but must always be inflicted on him for the sole reason that he has committed a crime." The object of punishment must be to substitute justice for injustice. According to **N.V. Paranjape**, the principle which underlies the doctrine concerning the desirability and objectiveness of punishment is to reduce the incidence of criminal behavior either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law abiding citizens.[17] All said and done we do not yet generally punish or treat in the sense that scientific criminology would imply, namely, in order to change antisocial attitudes into social attitudes.

CONCLUSION

To conclude, punishment is the proper immediate consequence of the criminal act, a stage in the criminal justice system. It should be administered in such a way that the criminal's reconciliation to the community is not impeded. Perhaps, in future, in imposing the punishments, authorities should take this point into consideration. Our probation laws, parole system, open prisons etc., are aimed at this goal only.

The researcher at the end of this seminar paper finds punishment as a method of social control. He would like to summarize his understanding about the theories of punishment:

1. There is an attempt to portray punishments as a method of inflicting of unpleasant circumstances over the offender;
2. Though certain theories like the reformatory and preventive rely upon humanitarian modes of punishment, but these have a weakness against the hardcore criminals;
3. Punishments such as the retributive and deterrence though the use of fear as an instrument to curb the occurrence of crime helps in controlling the criminals up to a certain extent. As these employ the idea of revenge and vengeance these are much more harsher than others;

The researcher would like to add his own views on this very controversial topic. We all know that truth is stranger than fiction and so is the practice of these theories. Though prisons are meant to be the place where the criminals would be corrected or for that case deterred from committing a wrong in the future, but the present day witnesses the prisons to have become redundant in their objective and becoming sites of breeding for hardcore criminals. This is a fact that the penologists must look into. Furthermore the techniques applied in executing the punishment are not fool proof, for e.g. the criminals are able to carry on their illegal activities even during serving the period of sentence. Thus, the criminals should be treated first of all as human beings and should be secured with their right to life as enshrined under Article 21, Constitution of India and therefore, preventive and reformatory theories of punishment should be applied by the prison authorities as how to prevent the commission of crime in the society and how to reform the criminal who has committed the crime and has been sentenced to imprisonment.

"Can punishment be in the form of reform": an age-old controversy. 'Hate the crime and not the criminal' very rightly said by Mahatma Gandhi. What ever be the ultimate aim of punishment in the first instance it is the imposition on an evil. Punishment as Bentham said is itself and evil; it is a negative concept. Any power of punishment to reform is widely and strongly denied on the dual grounds of principle and of experience. Experiments have shown that punishment ordinarily do not reform. On the contrary it often degrades, coarsens and brutalizes. Men commonly come out of prison worse, than they went in. Punishment tends to search for an answer but more often ends up raising more questions. It should, however, be borne in mind that reformatory idea must be kept within sensible limits. In its extreme application, the reformatory idea will not secure its goal and might lead, as farce reformation should go hand in hand with retribution and deterrence. The majesty of law must be maintained through punishments, which has to be exemplary also. A certain amount of terror is also

desirable, and at times, evens necessary. So the idea of deterrence cannot be ignored. Deterrence cannot be wholeheartedly and completely substituted by reformation pure and sole. The perfect blend of deterrence and reformation can be seen in Indian Jurisprudence. Some of the legislative provisions, which deal with reformative concept, are as follows:

- Reformative schools act, 1897
- Juvenile justice act, 2000 (amended)
- Probation offender act, 1958
- Parole rules

To sum up, we should stress that currently two discussions are held within the framework of Estonia's reform of criminal law. One of them represents the subject matter of this article – legal political bases of the reform which are often expressed in the mentality. Declaratory provisions, which at the first glance seem to be of secondary importance (the tasks of the code, the concept of punishment, the ranking of punishment objectives), may become the main points of the reform ideology. The modern thought of punishment is based on the reformative theory. The main philosophy of reformative theory is “The main object of punishment is to reform the offender”.

Thus the object of punishment is-

- Stop the criminal from committing further crimes.
- Give a message to the people that society disapproves the offence and offender.
- Discourage the people from doing wrong.
- Protects the society from dangerous and dishonest persons.

References

1. Chaturvedi & Chaturvedi, ‘Theory and Law of Capital Punishment’, (1989), Wadhwa and Company, Nagpur.
2. Edwin Sutherland and Donald R. Cressey, *Criminology*, 1974 ed., Philadelphia: Lippincott, New York.
3. Giriraj Shah, *Crime and Criminology*, 1999, Anmol Publications Pvt, New Delhi.
4. J.P.S. Sirohi, *Criminology and Criminal Administration*, 6th ed. 2007, Allahabad Law Agency, Faridabad.
5. J W Cecil Turner, *Kenny's outlines of Criminal Law*, 19th ed. 1966, 4th Indian Reprint 2010, Universal Law Publishing Co., New Delhi.
6. James F. Stephen, *A History of the Criminal Law of England*, (1883).
7. N.V. Paranjape, *Criminology and Penology*, 14th ed. 2010, Central Law Publications, Allahabad.

8. S.M. Afzal Qadri, *Ahmad Siddique's: Criminology: Problems and Prospectives*, 5th ed. 2005 (reprint 2007), Eastern Book Company, Lucknow.
9. Subhash C. Gupta, ‘Capital Punishment in India’, 1980, Deep & Deep Publications, New Delhi.
10. Jackson Toby, *Is Punishment Necessary?*, The Journal of Criminal Law, Criminology and Police Science, Vol. 55, 1964.
11. Julican P. Alexander, *The Philosophy of Punishment*, The Journal of Criminal Law, Criminology and Police Science, Vol.13: 235 (1922-23).
12. Timshaff, *The Retributive Structure of the Punishment*, The Journal of Criminal Law, Criminology and Police Science: Vol.28: 396.
13. William O. Hochkammer, Jr, *The Capital Punishment Controversy*, The Journal of Criminal Law, Criminology and Police Science, Vol.60, 1969.

[1] Julican P. Alexander, ‘The Philosophy of Punishment’, The Journal of Criminal Law, Criminology and Police Science, Vol.13: 235 (1922-23)

[2] Jackson Toby, ‘Is Punishment Necessary?’, The Journal of Criminal Law, Criminology and Police Science, Vol. 55, 1964 ed., pp.553]

[3] James F. Stephen, ‘A History of the Criminal Law of England’, (1883), pp.81-82

[4] Ahmad Siddique, ‘Criminology: Problems and Perspectives’, (1983), pp.69-70.

[5] Edwin Sutherland and Donald R. Cressey, ‘Criminology’, 1974 ed., p.335.

[6] Timshaff, ‘The Retributive Structure of the Punishment’, The Journal of Criminal Law, Criminology and Police Science: Vol.28: 396, pp.1937-38.

[7] Chaturvedi & Chaturvedi, ‘Theory and Law of Capital Punishment’, (1989), p.16.

[8] Rajendra Prasad v. State of Uttar Pradesh: AIR 1979 SC 916]

[9] Chaturvedi & Chaturvedi, ‘Theory and Law of Capital Punishment’, (1989), p.116.]

[10] Edwin H. Sutherland and Donald R. Cressey, ‘Criminology’, (1978), pp.665-667.

[11] Paranjape, N.V, ‘Criminology’, 1983 ed., p.117.

[12] Subhash C. Gupta, ‘Capital Punishment in India’, 1980, p.38.

[13] Subhash C. Gupta, ‘Capital Punishment in India’, 1980, p.21.

[14] William O. Hochkammer, Jr, ‘The Capital Punishment Controversy’, The Journal of Criminal Law, Criminology and Police Science, Vol.60, 1969, p. 369.

[15] Subhash C. Gupta, ‘Capital Punishment in India’, 1980, p.40

[16] Balbir Singh v. State of Punjab: AIR 1979 SC 1384 at 1386

[17] Paranjape, N.V, ‘Criminology and Penology’, 14th ed. 2010, p.115.