

Theories of punishment

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Introduction

Punishment is the most prominent feature of criminal law. Every society has its own way of social control for which it frames certain laws and also mentions the deterrents attached to them. Punishment is the consequence of an unpleasant act that the wrongdoer commits. Simply put, the fundamental aim of punishment is to give relief to the aggrieved party and to maintain law and order in society. Punishment can also be termed as the imposition of some form of deprivation by withholding rights that a person is legally entitled to. This article aims to bring to its readers a simple explanation of the theories of punishment that helps the criminal justice system function from time to time.

Objects of punishment

1. To protect society from mischievous elements by deterring potential offenders.
2. To prevent actual offenders from committing further offences.
3. To eradicate evils and reform criminals and turn them into law-abiding citizens.
4. To administrate justice partly by inflicting pain to deter criminals and others from indulging in crime and partly by reforming criminals.
5. To maintain rules and regulations for a crime-free country.

An insight of theories of punishment

Theories of punishment generally contain policies regarding the handling of crimes and criminals. The theory of punishment deals with the principles on the basis of which punishment is to be given to the offender, with the object of safeguarding a society deprived of law and order. There are four types of theories of punishment.

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

Deterrent theory of punishment

The founder of this theory is Jeremy Bentham, and this theory is based on the [principle of hedonism](#) which says that a man would be deterred from committing a crime if the punishment applied was swift, certain, and severe.

This theory focuses on deterring offenders from criminality or repeating the same crime in the future. This theory is a lesson to members of society who experience the consequences of that crime. It creates fear of punishment in like-minded people.

There should be a nexus between the crime committed and the punishment inflicted for that. While deciding on the punishment, the following should be taken into consideration;

- 1) **The seriousness of the crime** – Punishment should be given according to the seriousness of the crime committed, for e.g one can't award a death sentence for pickpocketing.
- 2) **The gravity of crime** – The consequences of the punishment inflicted have to be taken into consideration alongside taking into account the victim's satisfaction concerning the same. For e.g, if Mr.X is murdered by Mr.Y then if Mr.Y is giving one-time compensation of Rs.5 lakhs to X's family, is it sufficient if he is the only bread earner of the family?
- 3) **Impact on the general public** – It is most important to consider what will be the effect of that punishment in the minds of the general public. Are they taking lessons from that? For example, traffic police are collecting fines for not wearing helmets, but do people follow this rule? Are they really serious about fines and rules?

In the case of the *State of H.P.v. Nirmala Devi* (2017), the court of law had opined that if the crime done is heinous and serious against society then the deterrent theory becomes more relevant, for those guilty will be punished to deter other prospective offenders.

Criticism of deterrence theory

1. Though this theory intends to deter people from committing crimes or repeating the same crime, it has failed to serve its purpose. It has proved ineffective in checking crimes and the fact that excessive harshness of punishment tends to defeat its purpose by arousing the public's sympathy towards those who are subjected to such punishment.
2. Punishment loses its essence once the criminal is punished. For example, in the Delhi gang rape case, familiarly known as the *Nirbhaya case*, all 4 accused were hanged for their heinous crime but the offence of rape continues to happen. Thus the question as to whether the deterrent theory of punishment serves its purpose remains arising in people's minds.
3. It does not give a chance to reform the accused.

Retributive theory of punishment

This theory is based on the famous saying that a 'Tit for Tat', 'Eye for Eye' or 'Teeth for Teeth'. The main motive of this theory is to inflict a similar amount of pain endured by the aggrieved party because of the offender's activity. Put simply, it can be said that every punishment is retributive to a certain extent for the purpose of punishment itself is to restore peace and harmony in society. This theory is harsher than other theories.

Owing to humanitarian grounds, this theory of punishment is not much on the favourable side for it causes harm to the accused in a greater way. Therefore, the most important thing to consider while awarding punishment is the balance between the aggravating and the mitigating factors involved in the offence committed.

Criticism of the retributive theory

As per the development of society, this type of punishment was banned due to the following criticism.

1. It is difficult to determine the proportion of pain or revenge in this type of punishment, meaning to what and to what extent the pain should be returned.
2. The entire natural justice principle will collapse if everyone takes revenge on each other according to their hate and the injury caused.

Preventive theory of punishment

Unlike other theories, this theory aims to prevent crime rather than take revenge. This theory is also called the disablement theory. Put simply, we can understand the nature of this theory with a simple example: when we were in school, our teachers used to make the mischievous students stand out of the classroom, for disturbing the whole class. This punishment by the teacher prevents other students from disturbing the class due to fear of punishment. In the same way, this theory talks about eliminating the accused from society to prevent the repetition of his crime again. By preventing those criminals, society protects itself against anti-social order in general. Prevention of these criminals can be done by giving them death punishment or life imprisonment. Separation of these criminals from society prevents other prospective offenders from committing crimes.

In the case of *Sunil Batra v. Delhi Administration* (1978), the court of law observed that if the prisoner is violent or dangerous, solitary confinement is necessary to prevent and segregate these offenders from society, thereby abiding by the retributive theory of punishment.

Criticism surrounding the retributive theory of punishment

While the retributive theory promotes the dissertation of the offender, the same has severe consequences and difficulties inflicted upon the accused. It is ideal to note that the concept of morality being subjective by its very nature makes it difficult to deliver punishments for crimes committed. Therefore, the immorality of crimes needs to be comparable.

Reformative theory of punishment

The name of this theory itself implies what its nature has to say. This theory helps to reform criminals, thereby transforming them into law-abiding citizens. Nobody is indeed a criminal by birth, crimes sometimes happen accidentally or situationally. In this case, the offender should get another chance to rectify his mistake. For this, there is the facility of correctional homes, juvenile homes, training schools, and reformatories. The main object of this theory is the rehabilitation of inmates.

It was the case of *Dharambir v. State of Uttar Pradesh* (1979), which became the initiation of the concept of open jails in India which generally helps in reforming young offenders. Further, the Supreme Court of India, while deciding the case of *Musa Khan v.*

State of Maharashtra (1976), had observed that the reformatory system prevented juveniles from becoming hardened criminals.

Criticism surrounding the reformatory theory of punishment

1. This theory only works for juvenile and first-time offenders and not for hardened criminals who have committed multiple crimes.
2. The reformatory theory of punishment is sometimes considered not justifiable for the aggrieved party subjected to prejudice by the offender.

Conclusion

The main purpose behind inflicting punishment on the offender, accused of an offence, is to restore law and order in society. In this process of awarding punishment, both the interest of the aggrieved party as well as the accused needs to be taken into consideration. One must not forget that awarding punishment should be directly proportional to the gravity of the crime caused by the offender. Keeping the same in mind, alongside the need to curb crime from happening at a rampant rate in society, punishment needs to be awarded. When it comes to the theories discussed in this article, they serve as a jurisprudential value for the criminal justice system to frame punishments according to the crime committed. These theories have been significant in helping the legislators and the judiciary frame and interpret provisions of punishment, respectively, for a better tomorrow.

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