

**LL.M IIInd Sem**  
**Jurisprudence II (L- 2002)**  
**Theories of Punishment**

**Punishments**

**Introduction**

Punishments are imposed on the wrong doers with the object to deter them to repeat the same wrong doing and reform them into law-abiding citizens. A Punishment is a consequence of an offense. Punishment generally is provided in Criminal Law. It is a social control.

- According to Salmond's: Crime is an act deemed by law to be harmful for the society as a whole though its immediate victim may be an individual.
- Sutherland and Cressey have mentioned two essential ideas while defining the concept of punishment:
  - a) It is inflicted by the group in its corporate capacity upon one who is regarded as a member of the same group. War is not punishment for in war the action is directed against foreigners.
  - b) It involves pain or suffering produced by design and justified by some value that the suffering is assumed to have.

**Types of Punishment**

- A) Deterrent Theory
- B) Retributive Theory
- C) Preventive Theory

- D) Reformative Theory
- E) Expiatory Theory
- F) Theory of Compensation

### **A) Deterrent Theory**

The term “Deter” means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

The basic idea of deterrence is to deter both offenders and others from committing a similar offence.

### **Criticism:**

There is a lot of criticism of the deterrent theory of punishment in modern times. It has been criticized on the grounds that it has proved ineffective in checking crimes and also that excessive harshness of punishment tends to defeat its own purpose by arousing the sympathy of the public towards those who are given cruel and inhuman punishment. Hardened criminals are not afraid of punishment. Punishment loses its horror once the criminal is punished.

## **B) Retributive Theory**

This theory of punishment is based on the principle-  
“An eye for an eye, a tooth for a tooth”.

Retribute means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and transformation.

This theory has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and barbaric.

"Kant argues that retribution is not just a necessary condition for punishment but also a sufficient one. Punishment is an end in itself. Retribution could also be said to be the 'natural' justification”,

According to **Justice Holmes** 'It is commonly known that the early forms of legal procedure were grounded in vengeance.'

According to **Salmond** the retributive purpose of punishment consist in avenging the wrong done by the criminal to society.

### **Criticism**

The main criticism of this theory is that punishment per se is not a remedy for the mischief committed by the offender. It merely aggravates the mischief. Punishment in itself evil and can be justified only on the ground that it yields better result. Revenge is wild justice. Retribution is only a subsidiary purpose served by punishment.

### **C) Preventive Theory –**

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. The criminal under this theory is punished with death, life imprisonment etc.

while sending the criminals to the prisons the society is in turn trying to prevent the offender from doing any other crime and thus protecting the society from any anti-social elements.

According to **Justice Holmes** " There can be no case in which the law-maker makes certain conduct criminal without his thereby showing a wish and purpose to prevent that conduct. Prevention would accordingly seem to be the chief and only universal purpose of punishment. The law threatens certain pains if you do certain things, intending thereby to give you a new motive for not doing them. If you persist in doing them, it has to inflict the pains in order that its threats may continue to be believed."

According to **Paton** " The Preventive theory concentrates on the prisoner and seeks to prevent him from offending again in the future. The death penalty and exile serve the same purpose.

### **Criticism**

The main criticism of this theory is that Preventative Punishment has the undesirable effect of hardening first offenders, or juvenile offenders, when imprisonment is the punishment, by putting them in the association of Harden Criminals.

#### **D) Reformatory Theory –**

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. Gandhi ji said that “Hate the sin not sinner “. The idea behind this theory is that no one is a born Criminal and criminals are also humans. The main purpose of this theory, to treated a criminal like a diseased person. it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

#### **Criticism**

The main criticism of this theory state that if Criminals are sent to prison to be transformed into good citizens, a prison will no longer be a 'prison' but a dwelling house.

This theory has been proved to be successful in case of young offenders.

#### **E) Expiatory Theory –**

Under this theory, it is believed that if the offender expiates or repents and realizes his mistake, he must be forgiven. This theory was prevalent in the ancient era in India. Manu smriti declared that ‘when an offender is found guilty of a crime and is sentenced to imprisonment by king, he becomes pure and goes to heaven like a good virtuous man.’ It implies that his crime is expiated. this theory is no longer prevalent in the modern era.

## **F) Theory of Compensation**

According to Theory of Compensation the object of punishment must not be merely to prevent further crimes but also to compensate the victim of the Crime.

### **Criticism:**

The main criticism of this theory is that it tends to oversimplify the motive to crime.

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