

## Theories of Punishment

### Abstract

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 human society is a cooperative endeavor secured by coercion. By coercion we mean a state where a recognized authority is compelled to punish individual who contravenes the rules and regulation of the commonwealth. As a result, individuals who composed a society enjoy a number of benefits and share burdens available only because of the cooperation of their fellows. The social order then enables people to work together for common purposes and to pursue in peace their private interests. But this is realized when everyone, through cooperation, helps to maintain this order.

As Hobbes said that in the state of nature people were nasty, brutish and their life was short<sup>1</sup>. Locke viewed that the people in the state of nature agreed a social contract in order to establish a formal law. In Rousseau's view, the social contract was done for the security of property and liberty. Thus from the very beginning of the origin of state, the concept of crime and ways of preventing it or if not, punishing the wrong-doer existed<sup>2</sup>. The punishment system is an integral part of criminal justice and for maintaining social security. The progress of civilization has resulted in the change in the theory, method and motive of punishment

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<sup>1</sup>[en.wikipedia.org/wiki/Retributive\\_justic](https://en.wikipedia.org/wiki/Retributive_justice)

<sup>2</sup>[dictionary.reference.com/browse/theo](https://dictionary.reference.com/browse/theo)

## The Concept of Punishment

The general impression is that the concept of punishment involves the deliberate infliction of some kind of pain on an offender by a person or body of persons who claims the authority to do so. That is to say punishment is an institution for social protection, and one that does not impose unjustified burdens on individuals who commit crimes because they have consented to them<sup>3</sup>; and these results from the belief that man lives in a community of persons where each pursues his own interest, yet each is expected to respect the interests of others in order to make possible the sharing of the benefits and burdens of life in a civilized society. People must be encouraged not to shift their burdens of restraint on others as they seek their own ends<sup>4</sup>. When this is done, it becomes imperative that acceptable remedies be applied to undo the harm as much as possible. In other words, it is important to take steps that will reduce the possibility of harms being done in the future. This calls for holding to account those, and only those, who properly are accountable when something unpleasant occurs. John Rawls compliments thus that:

A person is said to suffer punishment whenever he is legally deprived of some of the normal rights of a citizen on the ground that he has violated a rule of law, the violation having been established by trial according to the due process of law, provided that the deprivation is carried out by the recognized legal authorities of the state, that the rule of law clearly specifies both the offense and the attached penalty, that the courts construe statutes strictly, and that the statutes was on the book prior to the time of the offense<sup>5</sup>.

Disproportionate benefits to burdens ratio by imposing greater than normal burdens upon her'.<sup>6</sup> That is to say 'when I do something bad, I can lose or forfeit some of my normal moral rights against some unwelcome forms of treatment. Similarly, when I do something good, I may add to my rights certain special rights to form of treatment to which I am not normally entitled'<sup>7</sup>.

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<sup>3</sup> Alexander, 1986:178

<sup>4</sup>[www.hforcare.com](http://www.hforcare.com) wiki/Punishment

<sup>5</sup>ibid

<sup>6</sup> Garcia, 1989:270

<sup>7</sup> Garcia, 1989:263 - 264

This engenders the fact that only those who enjoy the benefits and burdens of society owe their cooperation and rights to the other members of society. But, if an individual fails to partake in these acts of cooperation, then such an individual has taken unfair advantage of others. For this reason, punishment must be enforced on such an individual as a means of addressing this contractual agreement. This is to say that the practice of punishment is necessary for the maintenance of this social cohesion.<sup>8</sup>

### **Retributive Theory of punishment**

Blood for blood is the basis of this theory. The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory underlines the idea of vengeance and revenge rather than that of social welfare and security. Retributes means to give in return. The objective of the theory is to make the offender realize the suffering or the pain. "Eye for eye and tooth for tooth" was a very popular maxim in those days<sup>9</sup>. Such maxims are still in some of the tribes living in border areas between Afghanistan and Pakistan.

### **Modern Theory of punishment**

Modern theory is the combination of all theories of punishment. Such as-

#### ***Deterrent Theory:***

'Deter' means to abstain from doing an act. The main objective of this theory is to deter (prevent) crimes. It serves a warning to the offender not to repeat the crime in the future and also to other evil-minded persons in the society. This theory is a workable one even though it has a few defects.

#### ***Preventive Theory:***

The idea behind this theory is to keep the offender away from the society. The offenders are punished with death, imprisonment for life, transportation for life etc. Some Jurists criticize this theory as it may be done by reforming the behavior of criminals.

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<sup>8</sup><http://essencelibrary.org/journals/papers/008080.pdf>  
<sup>9</sup>[www.redwoods.edu/...tiveTheoryofPunishment.pdf](http://www.redwoods.edu/...tiveTheoryofPunishment.pdf)

### ***Reformative Theory:***

The idea behind this theory is that no one is born as a Criminal. The criminal is a product of the social, economic and environmental conditions. It is believed that if the criminals are educated and trained, they can be made competent to behave well in the society. The Reformative theory is proved to be successful in cases of young offenders. From this point of view death is no fitting penalty, for We must spare our criminals, and not kill them. The objective is to reform the behavior of the criminals

There is another theory of punishment called “Theory of compensation”.

### **Retributive "Theory of Punishment"**

...An eye for an eye would turn the whole world blind- Mahatma Gandhi  
The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory is based on the idea of vindictive justice, or a tooth for a tooth and an eye for an eye. The principle is that if a man has caused the loss of a man's eye, his eye one shall cause to be lost; if he has shattered a man's limb, one shall shatter his limb; if a man has made the tooth of a man that is his equal fall out, one shall make his tooth fall out. This is to pay back the wrong-doer for his wrong-doing. It means that the wrong-doer has to be made to suffer by way of retaliation, even if no benefit results thereby to him or to others. Historically, at first the instinct or the impulse of revenge was gratified by retaliatory measures on the part of the individual who suffered by the crime committed, or in the case of murder, by his relatives<sup>10</sup>.

Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else .... He must first of all be found to be deserving of punishment before any consideration is given of the utility of this punishment for himself or his fellow citizens. This theory underlines the idea of vengeance and revenge rather than that

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<sup>10</sup>[legal-dictionary.thefreedictionary.com/...ina](http://legal-dictionary.thefreedictionary.com/)

of social welfare and security. Punishment of the offender provides some kind solace to the victim or to the family members of the victim of the crime, who has suffered out of the action of the offender and prevents reprisals from them to the offender or his family. The only reason for keeping the offender in prison under unpleasant circumstances would be the vengeful pleasure of sufferer and his family.

Hominines argues in favor of retributes by mentioning it as a balance of fairness in the distribution of advantages and disadvantages by restraining his will<sup>11</sup>. Retributivists believe that considerations under social protection may serve a minimal purpose of the punishment. Traditional retributes relied on punishing the intrinsic value of the offence and thus resort to very harsh methods. This theory is based on the same principle as the deterrent theory, the Utilitarian theory. To look into more precisely both these theories involve the exercise of control over the emotional instinctual forces that condition such actions. This includes our sense of hatred towards the criminals and a reliance on him as a butt of aggressive outbursts<sup>12</sup>.

Sir Walter Moberly states that the punishment is deemed to give the men their dues. "Punishment serves to express and to and to satisfy the righteous indignation which a healthy community treats as transgression. As such it is an end in itself."

"The utilitarian theories are forward looking; they are concerned with the consequences of punishment rather than the wrong done, which, being in the past, cannot be altered. A retributive theory, on the other hand, sees the primary justification in the fact that an offence has been committed which deserves the punishment of the offender." As Kant argues in a famous passage:

"Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else... He must first of all be found to be deserving of punishment before any consideration is given of the utility of this punishment for himself or his fellow citizens."

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<sup>11</sup>[www.lawlibrary.ie/viewdoc.asp?Docid=14](http://www.lawlibrary.ie/viewdoc.asp?Docid=14)

<sup>12</sup>ibid.

"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'<sup>13</sup>, in the sense that man thinks it quite natural and just that a bad person ought to be punished and a good person rewarded.

However 'natural' retribution might seem, it can also be seen as Bentham saw it, that is as adding one evil to another, base and repugnant, or as an act of wrath or vengeance. Therefore, as we consider divine punishment we must bear in mind, as Rowell says, *The doctrine of hell was framed in terms of a retributive theory of punishment, the wicked receiving their just deserts, with no thought of the possible reformation of the offender. In so far as there was a deterrent element, it related to the sanction hell provided for ensuring moral conduct during a man's earthly life*<sup>14</sup>.

The utilitarian theories are forward looking; they are concerned with the consequences of punishment rather than the wrong done, which, being in the past, cannot be altered. A retributive theory, on the other hand, sees the primary justification in the fact that an offence has been committed which deserves the punishment of the offender. Thus the researcher concludes that this theory closely related to that of expiation as the pain inflicted compensates for the pleasure derived by the offender. Though not in anymore contention in the modern arena but its significance cannot be totally ruled out as fear still plays an important role in the minds of various first time offenders. But the researcher feels that the basis of this theory i.e. vengeance is not expected in a civilized society. This theory has been severely criticized by modern day penologists and is redundant in the present punishments.

Later, the state took away the right of retaliation from individuals because it was believed that since the criminal has broken the law and hurt someone, he deserves to suffer. It was also argued by those who were in favor of retribution that the victim of crime and/or his relatives and friends will refuse to cooperate with society if the offender is not brought to justice. Thus, assuming the function of revenge by the state really constituted the beginning of criminal law.

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<sup>13</sup>[.msmary.edu/...Kant%20Retributive%20Theory.pdf](http://msmary.edu/...Kant%20Retributive%20Theory.pdf)

<sup>14</sup>[www.jstor.org/stable/202547](http://www.jstor.org/stable/202547)

Morris Cohen (see, *Crime and Justice*, Vol. II, op. cit., 1971: 27) has said that it is easy to dismiss the retributive theory with the remark that it is a remnant of the barbaric conception of vengeance. But the fact is that the early Greeks and many ancient spiritual books decried that one has an obligation to avenge the killing of a kinsman.

The traditional code of honors still prevalent in many societies is that a gentleman must, at the risk of life, resent an insult to the extent of seeking to remove it with the blood of the offender. Even in the modern times, popular sentiment is that if a wife of a person is insulted or violated, he need not wait for a policeman; it is his duty to knock the offender down. Such a view prevails in almost all enlightened nations.

But the problem with the retributive theory is that it fails to suggest an acceptable criterion whereby to discriminate between just and unjust punishment. Kant offers us the principle of equality between the crime and the penalty. This sounds simple in the case of murder—a life for a life. But it is obviously not capable of being extended.

Morris Cohen (ibid. 28) asks: can crime and punishment really be equated? What penalty can equal the crime of rape, kidnapping, forgery, dishonesty and so on? For the state to exercise the same amount of brutality against the criminal that the criminal exercised against his victim would be demoralizing to any community<sup>15</sup>.

This theory of vengeance was, however, rejected with the ingress of the idea of refinement and the humanizing of society. It came to be argued that the passion of revenge cannot be allowed to drive out reason.

The feeling of retaliation will create demand for making punishment as severe as possible. It will only array man against man. The idea of treatment of criminals on the other hand will place a premium upon violence against criminals.

Besides, in modern society, neither the victims of crime support the idea of physical torture of criminals nor the public opinion would tolerate sanguinary methods of punishment. In fact, now the popular demand is to eliminate all methods of punishment that cause physical suffering. The idea of doing away with severe punishment for taking revenge does not mean

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<sup>15</sup>[www.philosophy.ox.ac.uk/...cture\\_6\\_handout.do](http://www.philosophy.ox.ac.uk/...cture_6_handout.do)

that the offender will escape all pain. Punishment will be awarded to the criminal but it would be devoid of the idea of vengeance.

The argument is that if a criminal is not punished, the public would feel frustrated and its obedience of the law would appear meaningless. Punishment of criminals would help to unify society against crime and criminals and also maintain respect for law. If law-violators and law-conformists receive the same treatment, there would be no reason to abide by the law.

Thus, punishment of the criminal will make people rally in support of law enforcement, encourage them in their fight against crime, and help the authorities to maintain the public sense of justice. Today, not only the idea of revenge in punishment is rejected but even the idea of punishing the offenders is criticized by many scholars. The argument that is most accepted is that we should hate the crime but not the criminal.

There are many ways for achieving social solidarity. What is needed is the measures designed to prevent crime. The idea of retribution is to be totally rejected. Further arguments against retribution are:

1. It is now scientifically established through various empirical studies that the functioning of social systems and social structures is more responsible for crime than individual himself. As such, would it be logical to give retributive punishment to those who commit crimes due to force of circumstances rather than their personality traits?
2. Protecting the interests of criminals is as important today as protecting the interests of society or the victims. The punishment should therefore be proportional to the loss incurred.
3. The present society stresses humanitarianism and scientific progress. The movement in such a society should be to prevent crime rather than make criminal suffer, which is largely repressive.
4. Since almost all prisoners return to society, it is necessary that they must not be so stigmatized that they cannot take up lawful pursuits upon their release. Retributive punishment only makes criminals confirmed enemy of society.

5. Religious conscience and moral and ethical principles have always emphasized the importance of forgiveness, pity, mercy, charity, and considered these values as supreme values. It is, therefore, only moral and proper to pardon the criminal.

6. Holding that if society fails to punish the offender, the victim and his relatives may take the law in their own hands is not correct. Today, the victims of crime tend to shrink from the idea of subjecting criminals to physical torture. In fact, the victim feels satisfied if his loss is restored or he is properly compensated. He disregards the causes that produce a criminal or the measures adopted for dealing with criminals.

7. Resorting to the argument that a person can be prevented from indulging in crime by awarding him retributive punishment is invalid. Mackenzie has stated that it is only when an offender sees the punishment of his crime to be the natural or logical outcome of his act that he is likely to be led to any real repentance and it is only this recognition that is likely to lead others to genuine abhorrence of crime.

In spite of these arguments, it may be pointed out that though reformation and in some cases deterrence receive more attention, yet retribution too continues to remain one of the purposes of punishment.

There are cases where retributive punishment is still considered necessary. The retributive punishment of imposing death penalty on offenders like Range and Bilal in Delhi who had killed Chopra children was not condemned by society, nor has the retributive punishment to the terrorists of Punjab and Kashmir who had killed a large number of innocent persons of all religions Hindus, Sikhs, and Muslims been described as severe and unjustified.

Rather, people look forward to having such offenders punished severely. It is in such cases of crime that retribution stands out distinctly as a purpose of punish.

### **Criticism of Retributive Theory**

This theory of punishment is very cruel and inhuman. It does not seem to be fit for human beings. It is fit only for unclosed people or animals. These days no individual enjoys the right to avenge the murderer of his relative. The state conducts the trial and permits the relative to

put forward their arguments and imparts justice by punishing the criminal. If the individual is permitted to take revenue, this doctrine will lead him to anarchy. Anarchy and chaos will prevail in the state. This is the reason why the state has taken this right back from the individual.

### **Deterrent theory of Punishment**

Deterrence has two purposes: (i) to restrain the wrong-doer from repeatedly indulging in crime, and (ii) to set an example for others to deter and prevent them from committing crimes or violating laws.

Just as a wild animal cannot be allowed to range at will in the city streets, similarly assuming that there is a danger that the criminal may again commit crime, the penalty of law is imposed upon him and his liberty is restrained until the danger of his giving indulgence to his criminal propensities is past. In certain cases, imprisonment may not be sufficient for the protection of society, or restraint by imprisonment may not be wholly effectual, therefore, if it is reasonably considered necessary to terminate criminal's life, even that is done for the purposes of deterrence. This requires going into the history of the criminal and investigating the circumstances in which crime was committed.

If it is found that he is indeed a dangerous criminal, or that he is a man of uncontrollable violence or of homicidal tendency, or that he habitually commits serious crimes, or that he has a savage nature, or that he has committed crime with inhuman brutality, or that he is likely to escape from prison if imprisoned and may again make innocent people his prey, or that his existence is a danger to community, then the sentence of death is justifiable and advisable. If death penalty is considered not necessary, a long term of imprisonment or imprisonment for the remainder of his life may be awarded to protect society from any further depredations on his part.

Deterrent punishment may also aim at frightening others from violating law. Where crime is committed in a planned way and not under impulse or emotion, or where murder is deliberately planned with a motive of vengeance, the extreme penalty works a deterrent effect.

Typical examples for deterrent punishment could be terrorism, bank or highway robberies, and murders committed and the bodies cut into pieces either to get rid of persons or to attain isometry benefits.

In cases where crimes are not the result of reasoning or of weighing considerations for or against the intended crime, punishment with the intent of setting an example may not serve any purpose<sup>16</sup>.

Deterrent punishment is in fact based on the doctrine of freedom of the will, according to which a person is free to do as he pleases. Society should, therefore, try to discipline him and to bring his behavior into conformity with generally accepted standards by giving him deterrent punishment for violating laws.

Not only must he be taught a lesson but others may also be frightened through his punishment to obey the law. The believers in the doctrine of freedom of the will are known as 'libertarians'.

There are, however, scholars who reject this doctrine and argue against deterrence in punishment. Their arguments are:

1. In spite of the fact that capital punishment is awarded mainly for murder yet hundreds of murders are committed every year. This point out that punishment is not always deterrent.
2. To say that "man is free to do as he pleases" is not correct because his behavior is determined by values which he derives from his culture. What is considered right by one may be considered wrong by other or what pleases one may be disagreeable to other?

How can, therefore, one be expected to imitate others, particularly when one accepts the values of his culture and is also susceptible to a wide range of educational programmers.

Denying the role of education as well as the role of one's experiences in determining one's 'choice' of action/behavior would be placing man beyond the influence of education and send him bounding through life like an utterly unpredictable person. Assuredly, this is not correct.

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<sup>16</sup>[plato.stanford.edu/entries/punishment](https://plato.stanford.edu/entries/punishment)

3. It is empirically established today that criminal behavior, like all human behavior is the result of heredity and environmental causes, i.e., an individual does not have a single choice for determining his behavior but it is determined by various factors.

In such a situation, fear of law and punishment alone cannot deter a person from indulging in what is considered as anti-social behavior.

The policy of detection and apprehension is given little thought by many violators of the law, and often the penalty is not even thought of, assuming it is known to him. Most normal persons do not order their lives by thoughts of the future.

4. Man does not live by fear alone. Economic insecurity, loyalty to family and friends, and ambition, anger, and resentment many a time compel him to face the greatest dangers in violating the law. No wonder many people defy the law and risk arrest and imprisonment in order to satisfy their desires.

Moreover, it cannot be denied that if punishment is quickly, uniformly, publicly, and severely inflicted, it undoubtedly would prevent many crimes that are being committed by those who pay no heed to the punishment that they may receive for their acts.

## **Preventive theory of punishment**

Another object of punishment is preventive or disabling. We know that "prevention is better than cure". The main purpose of preventive theory is to take such step as the accused person does not repeat the offence after enjoyment of sentence. This theory justifies capital punishment as an extreme form of punishment because of its deterrent effect. A man has taken the life of another man. So he ought to be deprived of his life.

The offenders are disabled from repeating the offences by such punishments as imprisonment, death, exile, forfeiture of office etc. By putting the criminal in jail, he is prevented from committing another crime. By dismissing a person from his office, he is deprived of an opportunity to commit a crime again. Paton writes, "the preventive theory concentrates on the prisoner but seeks to prevent him from offending again in future. Death penalty and exile serve the same purpose of disabling the offender." Justice Holmes writes, "there can be no case in which law 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.

An example of preventive punishments is the cancellation of the driving license of a person. As he has no license, he is prevented from driving.

Bryan A. Garner in Black's Law Dictionary stated that the purpose of punishment is to prevent a repetition of the wrongdoer by disabling the offender.<sup>17</sup> It is based on the proposition not to avenge but to prevent it. Its objective is to deprive the offender either temporarily or permanently, of the power to repeat the offence through measures like imprisonment, death sentence, exile, forfeiture of office etc.

According to Justice Holmes<sup>18</sup> "there can be no case in which the law-maker makes certain conduct criminal without his thereby showing a wish and purpose to prevent the conduct. Prevention would accordingly seem to be the chief and only universal purpose of punishment."

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<sup>17</sup> [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1600858&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1600858&download=yes)

<sup>18</sup> Ibid; see also: 4V.d. Maharjan, Jurisprudence and Legal Theory, 5th Edi., Eastern Book Company, Lucknow, P.g. 138

Suspending the corrupt officer from his/her post, cancellation of driving license, awarding death penalty to hardened criminals are the examples of the theory.

### **Reformative theory**

Miller, in his work 'the theory of Punishment', refers the traditional theories of punishments as the ease and the bareness. To rehash, he views the ease, in respect of retribution, as concerned with the infliction of pain without further justification other than the guilt of the offender. While the bemuse, on the other hand, holds punishment as justifiable because it helps to deter and reform offenders as well as prevent anti-social behavior. Indeed, it is for the good of society<sup>19</sup>.

However, Miller is worried about the underlying effectiveness of the above theories as a deterrent or reformative instrument of control<sup>20</sup>. Hence he aspires to incorporate what is important in the two theories with the aim to showing that it is a protection to society in that it holds both the judge and the judged to be responsible agents. Thus the concept of punishment is related to the nature of man and society wherein sufficiently reasoned-out proposition of a 'certain kind' be acceptable to man in such a way that he heeds the law of his community effectively. This 'effectiveness' is the sole aim of a regulative instrument of control but in a situation where this cannot be accomplished, it hardly makes sense to insist on retaining it. So, Miller suggests a third view calls the Paleness.

Paleness, according to Miller, represents, as opposed to the exclusiveness of the ease and the bemuse, a justification of punishment 'akin to prescriptive language and aimed at influencing behavior'. It aims to show that an individual has the right to his own style of existence but not in respect of deterrence or reform in terms of retaliation but rather to emphasize that the society has also the right to express its disapproval, and if necessary, attempt to restrain such a life style. Indeed, a good action is that which is willed by 'means of the conception of reason' which is acceptable and 'valid for every rational being as such'.<sup>21</sup> It is a form of an apodictic principle enhanced by reason itself. This is an end sound for every rational being, so long as individual's reflection is free from the attraction of desire and inclination. In other words,

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<sup>19</sup>[www.gu.se/...s/1316/1316460\\_avhandling\\_gdo.pdf](http://www.gu.se/...s/1316/1316460_avhandling_gdo.pdf)

<sup>20</sup>Miller, 1966:258-259

<sup>21</sup> Kant, 1990: 256.

Paleness requires that not only should the views of society be pronounced but recognition must be accorded that of the individual, who may not share the views of his society, but with the intent that the individual works for a change of attitudes within the confine of the societal laws; and society, in turn, can work for a change of attitudes within that of the individual.

Thus the punishment of those who offend against the laws of society is a means of expressing this disapproval. The unpleasant experiences may restrain an individual from further pursuit of his style, or even the threat of it may deter him from adopting it. (Miller, 1966: 259-260) In other sense, its prescription is not intended to determine anti-social behavior but rather to suggest the justifiable reasons that we ought not to indulge in such behavior<sup>22</sup>. He adds thus:

As a theory and justification of punishment it does not deny that the full development of personality and the full development of society...may require, at times, a little ‘anti-social’ behavior and as such it is different from one which sees the function of punishment as simply to prevent or put a stop to ‘anti-social’ behavior. It, therefore, has regard for the humanity of persons in that it does not see them as objects to be manipulated and controlled by subjects to be addressed.<sup>23</sup>

From this viewpoint, as being akin to the prescriptive language, Miller analogizes with the fact that just as statements or commands can only be addressed and heed by those who understand them, so punishment can only be inflicted on offenders who are ‘capable of appreciating its point’ (Miller,1966: 260). This ‘appreciating’ Miller correlates with Lord Denning’s observation, as quoted by Miller, that ‘the ultimate justification of any punishment is not that it is deterrent but that it is the emphatic denunciation by the community of a crime’ (Miller,1970: 308). To this end, it will influence behavior rather

than changing it. By changing, in this sense, is merely to revert to the “sins” of ease and bemuse but with influencing it, to quote from Miller<sup>24</sup>.

Punishment is a form of denunciation ... like verbal denunciation, it is expressive of an attitude and aims to influence the behavior not only of those to

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<sup>22</sup>[publishing.cdlib.org/...&toc.id=&brand=ucpres](http://publishing.cdlib.org/...&toc.id=&brand=ucpres)

<sup>23</sup> Miller, 1970: 308

whom it is directly applied but to others as well. I prefer to say that the aim of punishment is to denounce and thereby, one hopes, to influence rather than to say that the sole aim in inflicting punishment is to change behavior.<sup>25</sup>

Miller further premises this viewpoint on the ground that Essen and bemuse are enshrouded with the “wrong model” of change which is defective. And as such, for an effective application of punishment, the offender ought to be given reasons of a “certain kind” that he ought to behave in “certain ways” (Miller, 1970: 309). After all, there would be no sense in punishing an imbecile any more than there would be in expecting him to understand all our verbal instructions (Miller, 1966:260) However, he cautions the attitude.

According to reformatory theory, the aim of punishment is to educate or reform the offender himself. The Reformatory theory is supported criminology. Criminology regards every crime as a pathological phenomenon a mild form of insanity, an innate or acquired physiological defect. There are some crimes which are due to willful violation of the moral law by normal persons. Such criminals should be punished adequately to vindicate the authority of the moral law.

Bryan A. Garner in Black’s Law Dictionary stated that “Punishment the purpose of which is to change the character of the offender.”

Kasha Raj Dahl in his book, *FaujdariBidhisashtra*<sup>26</sup>, stated that according to roman jurisprudence, punishment should not be for the sake of punishment; rather it should be for reform.

After the retributive, deterrent and preventive theories could not reduce crime in society, a new theory called reformatory theory was introduced at around 18th century. Especially after the humanist movement under thinkers like Beccaria and Bentham the new theory began to evolve.

The distinct feature of the theory is that unlike others it focused on the criminal rather than crime and sake to bring about a change in the attitude of the offender so as to rehabilitate he /she as law abiding member of society.<sup>27</sup> According to this theory, crime is related with the existing psychological or physical characteristics of the offenders and with the environment

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<sup>25</sup> Miller, 1970:308

<sup>26</sup>Kasha Raj Dahal, *FaujdariBidhisashtra*, Nepal Law Society. Kathmandu, P.g.77

<sup>27</sup>N.V. Paranjape, *Criminology and Penology*, 12th Edi.,Central Law Agency, Allahabad. P.g. 207

and circumstance of the society. Hence, the criminal is treated not as a criminal but rather as a patient.

Thus punishment is not used as a measure to reclaim the offender and not to torture or harasses him/her. Hence it condemns all kinds of corporal punishments. While awarding punishment, the judge should study the character and age of the offender, the circumstance under which he/she committed offence and the object with which he/she committed offence. In doing so the judge becomes acquainted with the exact nature of the circumstance so that he/she may give a punishment which suits the circumstance. Punishment is only justifiable if it looks the future and not the past. It should not be regarded as setting an old account but rather an opening a new one. Prison should not be awarded to an offender for the purpose of isolating and eliminating them from society but to bring about a change in their mental outlook through effective measures during the term of their sentence. It believes that a sympathetic, tactful and loving treatment of offenders can have a revolutionary change in their characters. It is strictly against capital punishment because hanging a criminal is merely an admission of the fact that the human beings have failed to reform the erring citizen. It has proved useful in the case of juvenile delinquents, first offenders and sex psychopaths.

There is another theory of punishment called “Theory of compensation”.

### **Theory of compensation**

According to this theory, the object of punishment must be not merely to prevent further crimes but also to compensate the victim of the crime. The contention is that the mainspring of criminality is greed and if the offender is made to return the ill-gotten benefits of the crime, the spring of criminality would dry up.

In certain cases, the Supreme Court has awarded compensation to persons who have suffered at the hands of government servants. In *Bhima Singh V. State of Jammu Kashmir*, Bhima Singh was a member of legislative assembly<sup>28</sup>. He was arrested while on his way to attend a meeting of the assembly. The result was that he was deprived of his constitutional right to attend the Assembly session. The Supreme Court awarded a sum of Rs. 50,000 as compensation and

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<sup>28</sup>[www.iep.utm.edu/punishme](http://www.iep.utm.edu/punishme)

ordered the same to be paid within two months.

## **Conclusion**

After the above discussion I am of the opinion that punishment as a method of social control. I would like to summarize his understanding about the theories of punishment: there is an attempt to portray punishments as a method of inflicting of unpleasant circumstances over the offender.

Though certain theories like the reformative and preventive rely upon humanitarian modes of punishment, but these have a weakness against the hardcore criminals.

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 harsher than others. We all know that truth is stranger than fiction and so is the practice of these theories. Though in theory all of the punishments discussed above may seem perfect if used collectively, but this all becomes a mere joke when tried to implicate in the practical sense.

## **Reference**

1. R.C. Agarwal: Government and Politics
- 2.V. DMahajan: Government and Politics
- 3.en.wikipedia.org/wiki/Retributive\_justic.
- 4.dictionary.reference.com/browse/theo
- 5.Ibid; see also: 4V.d. Maharjan, Jurisprudence and Legal Theory, 5th Edi., Eastern Book Company,Lucknow, P.g. 138
- 6.msmmary.edu/...Kant%20Retributive%20Theory.pd
7. /docs.google.com/...EOrZq9aPIKf8/edit?hl=en\_U
8. www.lawlibrary.ie/viewdoc.asp?Docid=14

**THE END**