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Approaches to Punishment in Indian Criminal Jurisprudence: A Focus on Retributive, Deterrent and Reformative Theories

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ABSTRACT

Theories of justice has always been a point of debate, especially in modern times, where, with the advent of emerging crimes, varying perspectives have developed regarding which model suits best for combating delinquency. In this research paper, the authors are going to explore the societal understanding of criminal misconduct and administration of criminal justice and theories of punishment with its relevance in administration of criminal justice in India. This paper also studies the foundational approaches to punishment, focusing particularly on the retributive, deterrent, and reformative theories. The retributive theory of justice stems its roots from the notion of vengeance, where it follows the 'an eye for an eye, a tooth for a tooth' ideology, wherein if someone commits a certain crime, they ought to be punished proportionate to the severity of that offence. While the reformative theory bases its origin from the Sociological School of Jurisprudence under Rudolf von Ihering, it mainly focuses on the rehabilitation of the offender, and aims to reclaim him back as a valued citizen. Deterrent theory intends to warn the offender, emphasizing on maintenance of social order by the infliction of fear in the minds of potential criminals.

This paper analyses the aforementioned theories, highlighting their fortes and drawbacks in the modern justice framework, emphasizing on the fact that a singular approach of theory of justice will prove to be insufficient to curb the complex nature of criminal behaviour.

This paper settles that an amalgamated component of retributive, reformative, and deterrent theories is vital, and contributes to safeguarding justice, which can also be transformative and will act as a shield towards preventing the occurrence of crime in society.

Keywords: *Administration of criminal justice, theories of punishment, retributive, reformative, deterrent*

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I. UNDERSTANDING CRIMES AND CRIMINAL JUSTICE

John Austin's notable definition of law describes law as the command of the sovereign. This command essentially demands a strict adherence to a notified code of conduct from its subjects. Even though the Austinian sovereign is understood to have his own vices, including being illimitable and indivisible, the definition is still relevant to describe the modern-day sovereignty exercised by the nation-states worldwide. Whenever there comes any variation in or departure from the strict adherence to the sovereign's command, a wrongful act is said to be constituted. This wrongful act can be a civil wrong or a crime.

Crimes are known to be as something more than just a noncompliance to the command of the sovereign. As well defined by Sir James Fitzjames Stephen describes crime as an act that not only revolts against the moral social sentiments, but also is forbidden by law.[3] The International Classification of Crime for Statistical Purposes, 2015, explains crimes as having an effect of scandalising the whole society. Regardless of the gravity of a crime, it tends to create fear and intimidation in the minds of people privy to its happening. Crimes under criminal law are usually associated with actions or behavioural and contextual attributes that are universally considered to be an offence.[4] The Bharatiya Nyaya Sanhita, 2023, similar to its predecessor, The Indian Penal Code, 1860, does not explicitly define the word "crime" but associates it along with specific offences as an act, either through commission or omission, forbidden by law and punishable by the state.

Owing to the magnitude of threat that crimes induce in the society, even an individual act of crime is rightfully known to be a wrong done to the entire society. Not only does it interrupt the maintenance of law and order, but also disturbs social peace and trust obstructing cohesion, development and protection of legal rights. Be it a burglary committed in a neighbourhood or the 2025 Pahalgam attack, both the incidents have a tendency of creating fear and apprehension in the minds of people, just that the degree of the said fear and apprehension may differ circumstantially. Therefore, in view of this extensive adverse impact of crimes in the society, private vengeance (private justice) of the victims gets stretched to public vengeance (public justice) of the society. Accordingly, public justice becomes the means to private justice, which is the ends. The State takes up the sword and scales of Lady Justice through its courts and tribunals for restoring individual and societal order that was disrupted by the criminal acts.

[3] JAMES FITZJAMES STEPHEN, GENERAL VIEW OF THE CRIMINAL LAW OF ENGLAND 55 (Macmillan and Co., London, 1890).
[4] UNITED NATIONS OFFICE ON DRUGS AND CRIMES, INTERNATIONAL CLASSIFICATION OF CRIME FOR STATISTICAL PURPOSES (ICCS) VERSION 1.0 8 (2015).

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To make it more bearing in the minds of criminals and potential offenders, administration of criminal justice heavily relies on punishments. The State proceeds against the wrongdoers through punishments. However, it is pertinent to note that punishments and the manner in which it is imposed have been different in different times of the society, and also vary ideologically. These competing differences in the theories of punishments are named according to the diverse purposes to be realised through penalties.

II. THEORIES OF PUNISHMENTS

A. Retributive Theory

The age old *lex talionis* (law of retaliation)- an eye for an eye, a tooth for a tooth, summarises the retributive theory of punishment in its entirety. This theory reflects the primitive barbaric society. Retributive theory is one of the oldest commencements of chastisement. It was for long deemed to be a self-sufficient rule of natural justice. Under the retributive model, punishment is considered to be an end in itself and an inevitable consequence of wrongdoing. According to Plato, if justice is to be considered as the good and the health of the soul, and injustice as its disease and shame, then chastisement is to be considered as their remedy. Sir Walter Moberly explains the theory of retribution as a principle of natural justice which ensures that men are given their due when victimised by crimes.[5]

The modern view of retribution does not support the barbaric instincts of vengeance of the individual or the community as the same is not fit for a civil society. While Hegel believed that crime is the denial of a right, therefore punishment must be the annulment of that denial, he was opposed to the theory of retribution, as he believed it to be the display of revenge for a legal injury.[6] Sir John Salmond criticises retributive theory by calling it an aggravation of the offence, instead of a remedy to it.[7] His modification of the theory suggests that punishment must be purposed to elevate the moral feelings and the retributive indignation of not just the victim of the crime but also of the community.

B. Deterrent Theory

The deterrent theory aims to warn the potential offenders of their criminal pursuits by inflicting fear of punishment. It uses punishment to prevent crimes by destroying the conflict of interests between the wrongdoer and the society. The target audience of this theory is the

[5] SIR WALTER MOBERLY, THE ETHICS OF PUNISHMENT 14 (Faber and Faber, London,1968 ed.).
[6] JOHN MCTAGGART ELLIS MCTAGGART, STUDIES IN HEGALIAN COSMOLOGY 133, CITED IN A.C. EWING, THE MORALITY OF PUNISHMENT 73-75 (Methuen & Co. Ltd., London, 1929).
[7] J.W. SALMOND, JURISPRUDENCE: OR THE THEORY OF LAW 94 (P.J. Fitzgerald ed., Sweet & Maxwell, London, 12th ed., 1966).

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would-be criminal outside the dock. This model of penology preserves law and order by making the offender an example or a caution to similar others in the society. The deterrent theory works based on a two-fold level: (a) *specific deterrence*, wherein it aims to discourage the individual offender from repeating their criminal conduct, and (b) *general deterrence*, which seeks to dissuade potential offenders within wider community from engaging in similar activities. India's first law-giver, Manu has remarked that penalty not only keeps the people under control, it also protects them by staying awake when all are asleep, and it is for this reason that the wise regard penalty as a source of justice and righteousness.[8]

Some of the examples of deterrent punishments are public flogging, public hanging, castration, mutation of limbs, including others. Jermy Bentham equates the deterrent theory with hedonism. Under this theory, although punishment is considered an evil, yet it is imperative to maintain social and legal justice.[9] As opined by John Locke, the punishments inflicted under the deterrent theory are an ill bargain to the convict.

This theory believes that punishment must suit the offender: the more hardened the offender, the harsher the punishment. However, as suitably suspected by Cesare Beccaria and Benjamin Hobhouse, such perception may further harden the human minds to offence and make them numb to penalties.

C. Reformative Theory

A product of the Sociological School of Jurisprudence, the reformative theory of punishment gained much traction with the widespread awareness of human rights. It promotes designing of criminal sanctions to suit the criminal and not the crime. This theory focusses on the actual offender before the bench. Also known as the rehabilitative theory, it establishes a new role to punishments- of being a medicine to the sick soul of the criminal. As rightly understood by Sir Paul Gavrilovitch Vinogradoff, as a drug is administered to fit the pathological case of a sick man, so should punishments fit the moral case of the criminal. The reformative model aims at reclaiming the person lost to crimes back as a law-abiding and productive member of the society. The purpose of penology, according to the reformists, is to reform that wrongdoer so that he will desire to do what is right instead of fearing to do what is wrong. This theory paved way for the concepts of parole, probation and suspension of sentences on good behaviour and opened the debate over elimination of capital punishment.

[8] MANU, THE LAWS OF MANU, Ch. 8 Verse 15 in 25 SACRED BOOKS OF THE EAST, (G. BUHLER trans., Oxford University Press, Oxford, 1886) (Original work c. 2nd Century BCE).
[9] *Supra* note 5, at 307.

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Criticized by Sir John Salmond, it is stated that crime should not be treated as a disease because it is a profitable industry, which would flourish exceedingly unless repressed or suppressed by the strong arm of law. Some penologists criticize reformative theory because they claim in the hindsight, this theory is more inhuman, punitive and unjust than the retributive theory itself.[10]

Even though reformative theory of justice cannot always be helpful, especially in the cases of habitual offenders or career criminals, it stands supportive for juvenile offenders, first-time offenders and criminal psychopaths.

D. Preventive Theory

Also known as the incapacitation theory, the preventive philosophy believes that prevention of crimes is the paramount object of criminal justice, therefore upholding the principle that punishments are not to take revenge for the crime, but to prevent it from happening. As per Justice Oliver Wendell Holme, prevention is the chief and the only purpose of punishment. Utilitarians like Jeremy Bentham and John Stuart Mill support the preventive theory stating that only the certainty of law has a real effect on the offender not its severity.[11] As an offshoot of this view, the concept of incarceration and jails gained momentum to be resorted to as a mechanism to prevent the recurrence of an offence. George Whitecross Paton describes the preventive theory as one that concentrates on the prisoner while seeking to discourage him from transgressing henceforward. Other than incarceration, offenders are incapacitated from further breaching the law by preventive punishments such as, *inter alia*, deportation, cancelation of license, forfeiture of office, even capital punishment. Exile and elimination of the culprit *via* death sentences are also subscribed to if the crime committed is so severe that the recurrence of it can never be envisaged or risked.

E. Compensatory Theory

Under the compensatory theory, punishment must not only intend to penalise the criminal, but also recompense the sufferer. This was observed in *Bhim Singh v. State of J and K*.[12] The theory extends the scope of punishment to different restorative actions such as financial compensation and other material reparations. The Bharatiya Nagarik Suraksha Sanhita, 2023, clearly discusses *Order to pay compensation*[13], empowering the courts to order the payment of compensation to the victims of crime. The Supreme Court in *Dilip S. Dahanukar v. Kotak*

[10] *Supra* note 5, at 311.
[11] *Supra* note 5, at 310.
[12] Bhim Singh v. State of J and K, AIR 1986 SC 494 (India).
[13] Bharatiya Nagarik Suraksha Sanhita, 2023 s. 395.

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Mahindra Company Limited & Another[14] extensively discussed compensation as a practical mode of penalty, but strictly stated that no unreasonable amount should be directed to be paid as compensation under the erstwhile Criminal Procedure Code of 1973 in Section 357.

What is necessary to note is that not all crimes are supported with financial motivations. Also, in many cases, the weak economic position of the offender would disable him to be punished under this theory. Therefore, the compensatory theory may at best be a supplement to the other theories of punishment.

III. RETRIBUTION IN MODERN CRIMINAL JUSTICE ADMINISTRATION

"*An eye for an eye will turn the whole world blind*", thus said Mahatma Gandhi. A verbatim application of retributive theory of punishment may sound outdated in the modern society. Since retribution is sourced out of private revenge and self-help, it cannot be accepted as a viable solution to crimes today, unless meted out by the State through its justice administrators and judicial mechanisms.

Nevertheless, retributive sentiments are very visible in the contemporary judicial pronouncements. The International Military Tribunal, while hearing the Nuremberg Trials post the Second World War, incorporated a retributive spirit in deciding the legal accountability of the Nazi Germany in the atrocious war crimes. Retributive theory is also reflective in judicial decisions laying down the 'rarest of rare' doctrine to advance capital punishment, as was in the case of *Bachan Singh v. State of Punjab*[15], wherein the Supreme Court, after extensively debating over the relevance of retribution in present days, concluded by observing that it stands applicable in cases stirring public order. Similarly, in *Machhi Singh v. State of Punjab*[16], the Supreme Court adjudicated the matter with death penalty citing that in the instances of commission of heinous crimes, the collective conscience of the society can rightfully call for judicial execution of the culprit, thereby, subliminally endorsing retributive values.

The only inconsistency in applying the retributive theory is that public demand for vengeance may vary occasionally. It is pertinent to note that "to end violence against women" and preserving "respect for women and her dignity", the Supreme Court in *Mukesh & Another v. State for NCT of Delhi & Others*[17], dismissed the appeal praying for reduction of death sentence to life imprisonment. However, in a similar dealing with a gruesome rape and

[14] Dilip S. Dahanukar v. Kotak Mahindra Company Limited & Another, (2007) 6 SCC 528 (India).
[15] Bachan Singh v. State of Punjab, (1982) 3 SCC 24 (India).
[16] Machhi Singh v. State of Punjab, AIR 1983 SCC 957 (India).
[17] Mukesh & Another v. State for NCT of Delhi & Others, (2017) 6 SCR 1 (India).

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murder of the trainee doctor of R.G. Kar Medical College and Hospital, namely, *State of West Bengal v. Sanjay Roy*[18], the Court of Additional Sessions Judge, 1, 1st Court, Sealdah, was quoted saying, "*In the realm of modern justice, we must rise above the primitive instinct of "an eye for an eye" or "a tooth for a tooth" or "nail for a nail" or "a life for a life*. *Our duty is not to match brutality with brutality, but to elevate humanity through wisdom, compassion and a deeper understanding of justice*"." Sanjay Roy, the accused, was sentenced with life imprisonment.

The above judgments may not refer to retribution as the sole basis for punishment, but the very notion of inflicting punishments proportionate to the crime is essentially the underlying principle of the retributive theory.

Another citation of retribution in diplomatic relations between nation-states is India's response to Pakistan in the light of the 2025 Pahalgam attacks. The Indus Waters Treaty entered into by India and Pakistan in 1960, which withstood multiple tensions between the two countries, including the Indo-Pakistani Wars of 1965, 1971 and 1999, stands suspended following the aforementioned attack.

IV. JUDICIAL APPROACH TO DETERRENT THEORY

The deterrent model is arguably the most frequently applied model in cases dictating criminal sanctions. Contemporary legislations through its codified laws and detailed penalty provisions provide for a ready and explicit deterrence to the society. In its judgement in *TK Gopal @ Gopi v. State of Karnataka*[19], involving the rape of an infant, the Supreme Court observed that deterrent theory is a part of that punitive approach which proceeds on the basis that the punishment should act as a deterrent to the community as a whole and not to the lawbreaker alone[20] The Supreme Court, in *Satish Kumar Jayanti Lal Dabgar v. State of Gujarat*, held that the deterrence theory as a principle for punishing the wrongdoer becomes even more relevant when applied to cases involving heinous crimes.[21]

Although court verdicts declaring death penalty can also be said to have a substantial deterrent effect, the Supreme Court in *Bishnu Deo Shaw v State of West Bengal*[22] questions whether the same has been successful in limiting the occurrences of crimes.

[18] Sessions Trial No. 01(11)2024 Session's case No. 77 of 2024 CNR WBSP07-003708-2024 (R- 77 of 2024).
[19] TK Gopal @ Gopi v. State of Karnataka, (2000) 3 SCR 1040 (India).
[20] TK Gopal @ Gopi v. State of Karnataka, (2000) 3 SCR 1050, 1051 (India).
[21] Satish Kumar Jayanti Lal Dabgar v. State of Gujarat, (2015) 2 SCR 751 para 16 (India).
[22] Bishnu Deo Shaw v State of West Bengal, AIR 1979 SC 964 (India).

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V. REGULATION OF CRIMES THROUGH REFORMATION

The Supreme Court in *Narotam Singh v. State of Punjab*[23] remarks that reformative approach to punishment helps in safeguarding social justice and promoting rehabilitation without offending community conscience. Celebrated jurist, While deciding *Mohammad Giasuddin v. State of A.P.*, the Supreme Court reiterated 47th Report of the Law Commission of India, wherein it stated that a proper sentence would be one which considers "*the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training the offender*".[24] The Court also emphasised on rehabilitative punitive measures like provisional sentences, release on probation, and visits to rehabilitation centres and healing homes. *Mithu v. State of Punjab*[25] is a landmark judgment in the context of reformation, wherein the Supreme Court struck down Section 303 of the erstwhile Indian Penal Code, 1860, which mandated death penalty to a person who committed murder while undergoing life imprisonment, as being unconstitutional because it denies reformative opportunities to the offender. *Sunil Batra v. Delhi Administration*[26] is a significant ruling in prisoners' rights and prison reforms, thereby aiding in rehabilitation of the jail inmates as they serve their judicial sentence.

The reformative outlook crushes the retributive perspective, especially punishments like death penalty, which totally eliminates any possibility of rehabilitation. However, Justice P.N. Bhagwati cautions saying, is the State can positively establish that the offender is "*a social monster",* and that even after suffering life imprisonment and undergoing reformative and rehabilitative therapy, he cannot be reclaimed to the society, only then death penalty may be awarded.[27] Similar was the Court's view in *Shankar Kisanrao Khade v. State of Maharashtra*.[28]

Modern-day approach to the reformative theory includes practical measures like community services as a part of penalty. *Smt. Sunita Gandharv v. State of Madhya Pradesh*[29] is one such example, wherein the High Court of Madhya Pradesh acknowledged community services and other kindred methods for the reformation of the accused. In *Soleman SK v. The State of West*

[23] Narotam Singh v. State of Punjab, AIR 1978 SC 1542 (India).
[24] Mohammad Giasuddin v. State of A.P, (1978) 1 SCR 160 (India).
[25] Mithu v. State of Punjab, AIR 1983 SC 473 (India).
[26] Sunil Batra v. Delhi Administration, AIR 1978 SC 1675 (India).
[27] Bachan Singh v. State of Punjab, (1983) 1 SCR 367 (India).
[28] Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546 (India).
[29] Smt. Sunita Gandharv v. State of Madhya Pradesh, 2020 SCC OnLine MP 2210 (India).

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Bengal[30], the Supreme Court in its Order dated July 12, 2019, directed the juvenile offender to plant a hundred trees in one year as punishment to attempt to commit murder.

VI. CONCLUSION

Theories of punishment have contributed significantly to Indian criminal jurisprudence. They provide a ready framework for revisiting and reforming criminal sanctions. Although the three theories in focus continue in relevance in modern-day administration of criminal justice, yet their application varies with facts of the cases. In *Dr Jacob George v. State of Kerala*[31], the Supreme Court recognised the importance of a combination of different theories of punishment, *inter alia*, retributive, reformative, deterrent and preventive, and suggested that one single theory cannot be the sole basis of any criminal sanction. Also, it will be myopic to compartmentalise judgments into a particular theory of punishment because in the present times, with the rise of technology-enabled crimes, it is only appropriate to devise a mechanism that has the attributes of all the commanding theories that will ensure not only preservation of law and order, but also restoration of justice, accountability of the offender, caveat to the criminal-minded and reintegration of the criminal.

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[30] Soleman SK v. The State of West Bengal, Special Leave Petition (Crl.) No.709 OF 2019
[31] Dr Jacob George v. State of Kerala, 1994 SCC (3) 430 (India).

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