Page 1716 - 1729 **DOI:** *https://doij.org/10.10000/IJLMH.115949*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

Theories of Punishment and Indian Judicial System

PANCHALI RAJKHOWA[1]

ABSTRACT

The underlying objective for introducing the concept of punishment is to bring social order in a society. When an unpleasant act is committed by a wrongdoer, the consequence of such wrongful act is punishment. Thus, the primary aim of the concept of punishment is to provide relief to the aggrieved party and to maintain a balance in the society through effective maintenance of law and order. In this article the researcher aims to understand the concept of punishment by focusing mainly on the various punishment theories. Furthermore, the researcher also makes an attempt to bring to its readers a simple critical analysis of the various theories of punishment so as to understand the functioning of the criminal justice system. This is a doctrinal research with the help of various secondary resources.

Keywords: *Offender, Punishment, Criminal, Justice, Penalty.*

I. INTRODUCTION

Punishment can be divided into two aspects and can be regarded as a method of protecting society by reducing the occurrence of criminal behaviour or it can be regarded as an end in itself. Society can be protected by punishment by deterring potential offenders, by preventing the actual offender from committing further offences and by turning and reforming him into a law-abiding citizen. It is one of the oldest method of controlling crime and criminality.

The problem of crime, criminal and punishment is drawing the attention of criminologists and penologists all around the world. To punish the offenders is an important function of all civil states. The incidence of crime and its retribution has always been an unending fascination for human mind[2]. Thus, punishment is used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens and therefore, theories of punishment contain generally policies regarding handling of crime and criminals. Generally, theories of punishment are divided into four types, namely, deterrent, retributive, preventive and reformative. It must, however, be noted that these theories are not mutually

[1] Author is a Ph. D. Scholar at Alliance University, Bengaluru, India.
[2] N.V Paranjape, *Criminology And Penology*, Allahabad, Central Law Publications, 2007, 216

 [ISSN 2581-5369]

exclusive and each of them plays an important role in dealing with potential offenders.

(A) Theories of Punishment:

To punish criminals is a recognized function of all civilized States for centuries. But with the changing patterns of modern societies, the approach of penologists towards punishment has also undergone a radical change. The penologists today are concerned with crucial problem as to the end of punishment and its place in penal policy[3].

Though opinions have always differed as regards punishment of offenders varying from age-old traditionalism to recent modernism, broadly speaking four types of views can be distinctly found to prevail. Modern penologists prefer to call them 'theories of punishment'[4].

(B) Concept of Punishment:

Before discussing the theories of punishment, it is essential to explain the concept of punishment. Sir Walter Moberly, while accepting the definition of punishment as given by Grotious, suggests that punishment presupposes that: -

a. what is inflicted is an ill**,** that is something unpleasant;
b. it is a sequeal to some act which is disapproved by authority;
c. there is some correspondence between the punishment and the act which has evoked it;
d. punishment is inflicted, that it is imposed by someone's voluntary act;
e. punishment is inflicted upon the criminal, or upon someone who is supposed to be answerable for him and for his wrong doings

Moreover, punishment has been divided into several types. Some of them are the following: -

a. Capital Punishment: The punishment which has occupied a very important place in the history of punishment is the Capital punishment. For dangerous offenders and murderers, death sentence has always been used as an effective punishment because it has deterrent as well as preventive effect.
b. Corporal Punishment: The main objective of this punishment is deterrence. Flogging, mutiliation, branding, chaining, whipping, and torture are included in corporal punishment.
c. Fines and Confiscation of Property: The offences which are not serious in nature are

3. *Ibid.*
4. *Ibid.*
5. N.V Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 217.

 [ISSN 2581-5369]

punished with fine.

d. Deportation: Deportation or banishment means the deportation of criminals to far-off places.

e. Imprisonment: It is the most common and simple form of punishment which is all around the world. This type of punishment can serve all the three objects of punishment - deterrent, preventive, and reforming the character of the offender.

f. Compensation: This theory of compensation says that the object of punishment must not be merely to prevent crimes but also to compensate the victim of the crime.

Thus, these are some of the types of punishment. Although the importance of all these has changed in the modern world yet, it plays significant role in different societies.

II. THEORIES

(A) Deterrent Theory: Earlier modes of punishment were, by and large, deterrent in nature. This kind of punishment presupposes infliction of severe penalties on offenders with a view to deterring them from committing crime. It is the fulfillment of one's vengeance that underlies every criminal act. The deterrent theory also seeks to create some kind of fear in the mind of others by providing adequate penalty and exemplary punishment to offenders which keeps them away from criminality. Thus, the rigour of penal discipline acts as a sufficient warning to offenders as also others. Therefore, deterrence is undoubtedly one of the effective policies which almost every penal system accepts despite the fact that it invariably fails in its practical application. Deterrence, as a measure of punishment particularly fails in case of hardened criminals because the severity of punishment hardly has any effect on them. It also fails to ordinary criminals because many crimes are committed in a spur of moment without any prior intention or design. The futility of deterrent punishment is evinced from the fact that quite a large number hardened criminals return to prison soon after their release. They prefer to remain in prison rather than leading a free life in society. Thus, the object underlying deterrent punishment is unquestionably defeated. This view finds support from the fact that when capital punishment was being publicly awarded by hanging the person to death in public places, many persons committed crimes of pick-pocketing, theft, assault or even murder in those men-packed gatherings despite the ghastly scene[5].

Suffice it to say that the doctrine concerning deterrent punishment has been closely associated

[6.] N.V Paranjape, *Criminology and Penology*, Allahabad, Central Law Publications, 2007, 218.

 [ISSN 2581-5369]

with the primitive theories of crime and criminal responsibility. In earlier times, crime was attributed to the influence of 'evil spirit' or 'free-will' of the offender. So the society preferred severe and deterrent punishment for the offender for his act of voluntary perversity which was believed to be a challenge to God or religion[6].

The punishment was to be a terror to evil-doers and an aweful warning to all others who might be tempted to imitate them[7].

The deterrent effect of a particular type of punishment depends upon several factors.

These are[8]:

1. The social structure and value system under consideration,
2. The particular population in question,
3. The type of law being upheld,
4. the form and magnitude of the prescribed penalty,
5. The certainty of apprehension and punishment, and
6. The individual's knowledge of the law as well as the prescribed punishment, and his definition of the situation relative to these factors.

The deterrence theory finds no justification for action in a past offence, which has more than a certain evidential importance, and it depends upon consequences of punishment other than the immediate satisfaction given to victims of offences and others[9].

Punishment is, therefore, justified to control individual crime and to have a deterring effect on other criminals. Bentham thus goes on to suggest that punishment may help in control of crime in three ways:

1. by making it impossible or difficult for a criminal to commit the offence again, at least in certain ways;
2. by deterring both offenders and others;
3. by providing an opportunity for the reforming of offenders[10].

---

7. Barnes & Teeters, "New Horizons in Criminology",(3rd Ed.) p. 216, cited in *Criminology and Penology* by N.V Paranjape, Allahabad, Central Law Publications, 2007, 218.
8. Supra note 1.
9. John C. Ball, "The deterrence, Concept in Criminology and Law," and "Journal of Criminal Law," *Criminology and Police Science*,pp.347-352, cited in *Criminology and Penology*, by J.P.S Sirohi, Faridabad (Haryana), Allahabad Law Agency, 2004, 149.
10. J.P.S. Sirohi, *Criminology & Penology*, Faridabad(Haryana), Allahabad Law Agency, 2004, 149.
11. *Ibid*

 [ISSN 2581-5369]

We shall be concerned with only the first and second reasons of punishment. It will, however, not be misleading to refer to both of them as the deterrence theory. However, what is now evident is that Bentham and other supporters of the deterrence theory considerably under-estimated the number of offenders whose punishment is unlikely to have an acceptable deterrent effect[11].

a. **Limitations of Deterrence theory:-** The efficacy of criminal punishment as a deterrent has often been doubted by those who assert that many people do become criminals and will continue to do so in spite of threats of condemnation and fear of punishment. Deterrence though important cannot be thought of as the sole or overriding purpose of criminal law. For deterrence is negative, whereas the purpose of law is positive[12].

The next point is that the punishment to be effective and deterrent must be certain. The criminal justice system, which follows the principle that the prosecution should establish the guilt beyond reasonable doubt goes to the accused, has never been able to use the punishment in a deterrent manner. It is said that it is more important that punishment should be swift and sure[13].

In case of general deterrence, so far as the threat of punishment is concerned, a survey of young men carried out by Willcock and Stockes in 1968 suggests that most people over-rate their chances of detection and rank fear of others will think of punishment as deterrent[14].

General deterrence has a limited effect because of the delay in punishing the criminals. It generally takes, 6/7 years to finally dispose of a criminal case as appeals can be filed in the higher courts against the conviction/acquittal. By that time the general public may not remember the offence for which the punishment was awarded. In addition general deterrence depends upon the publicity given the general public about the arrest, convictions and the punishment of the offenders[15].

b. **A case study:** The deterrence theory has some effect on many people cannot be denied. But it will be a difficult task to find out clearly as to who has been deterred, on what occasions, and to what extent, by the apprehension of infliction of

12. *Ibid*.
13. *Ibid* 153.
14. J.P.S. Sirohi, *Criminology & Penology*, Faridabad(Haryana), Allahabad Law Agency, 2004, 153.
15. Willcock H.D. and Stockes, J., "Deterrent to Crime Among Youths of 15 to 21, cited in Rupert Cross, the English Sentencing System , p. 106, cited in *Criminology & Penology*, by J.P.S. Sirohi, Faridabad(Haryana), Allahabad Law Agency, 2004,154.
16. Supra note 1 at 154.
Meru Ram v *Union of India*, A.I.R.1980 S.C. 2162, cited in *Criminology & Penology*, by J.P.S. Sirohi, Faridabad(Haryana), Allahabad Law Agency, 2004, 156.

 [ISSN 2581-5369]

> punishment. Even in the era when extremely severe punishment was imposed for crimes of minor importance, no evidence can be found to support the view that punitive measures materially curtailed the volume of crime[16].

Though deterrence as an aim of punishment has lost much of its former importance, yet the deterrence theory cannot be entirely eliminated from the penal system. The question was whether rehabilitation is such a high component of punishment as to render arbitrary, irrational and therefore, unconstitutional, any punitive technique which slums over prisoner reformation[17].

It was observed that correctional strategy is integral to social defence which is the final justification for punishment of the criminal[18].

In *Charles Sobraj*[19] case, it was observed that it is now well-settled, as a stream of rulings of Courts proves that, deterrence both specific and general, rehabilitation and institutional security are vital consideration. Compassion wherever possible and cruelty only where inevitable, is the art of convictional confinement. When prison policy advances such a valid goal, the court will not intervene officiously.

Therefore, the focus of interests in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive time. Thus, any provision that wholly or substantially discards the relevancy of restoration of the man mired by criminality is irrational[20].

(B) Retributive Theory: While deterrent theory considered punishment as a means of attaining social security, the retributive theory treated it as an end in itself. It was essentially based on retributive justice which suggests that evil should be returned for evil[21] without any regard to consequences.

The supporters of this view did not treat punishment as an instrument for securing public welfare. The theory, therefore, underlined the idea of vengeance or revenge. Thus, the pain to be inflicted on the offender by way of punishment was to outweigh the pleasure derived by him from the crime. It must be stated that the theory of retribution has its origin in the crude animal

---

17. Ibid 155.
18. N.V Paranjape, *Criminology And Penology,* Allahabad, Central Law Publications, 2007, 216
19. J.P.S. Sirohi, *Criminology & Penology*, Faridabad (Haryana), Allahabad Law Agency, 2004, 156.
20. A.I.R. 1978 S.C. 1514: (1978)4 S.C.C. 104, cited in *Criminology &Penology*, by J.P.S. Sirohi, Faridabad(Haryana), Allahabad Law Agency, 2004, 157.
21. *Supra* note 1 at 157.
22. P.K Sen, "Penology Old And New", 27, cited in *Criminology and Penology,* by N.V Paranjape, Allahabad, Central Law Publications, 2007, 218.

 [ISSN 2581-5369]

instinct of individual or group to retaliate when hurt. The modern view, however, does not favour this contention because it is neither wise nor desirable. On the contrary, it is generally condemned as vindictive approach to the offender[22].

Retributive theory is closely associated with the notion of expiation which means blotting out the guilt by suffering an appropriate punishment. It is this consideration which underlies the mathematical equation of crime, namely, guilt plus punishment is equal to innocence[23].

It must, however, be stated that Sir James Stephen defended the doctrine of retribution on the ground that "Criminals deserved to be hated and the punishment should be so contrived as to give expression to that hatred, and to justify by gratifying a healthy sentiment.[24]

Thus, modern penology discards retribution on the ground of vengeance, but in the sense of reprobation it should be an essential element in any form of punishment.

a. Criticisms of retributive theory

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.[25] The idea of retribution is to be totally rejected. Some of the arguments[26] 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

[23]. N.V. Paranjape, *Criminology And Penology,* Allahabad, Central Law Publications, 2007, 218.
[24]. *Ibid*.
[25]. Sir James Stephen, "History of Criminal Law of England", p. 82, cited in *Criminology and Penology* , by N.V. Paranjape, Allahabad, Central Law Publications, 2007, 219.
[26]. Ram Ahuja, "Criminology", New Delhi, Rawat Publications, 2004, 178
[27]. *Ibid* 179.

 [ISSN 2581-5369]

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.

In spite of these arguments, it may be pointed out that though reformation and 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 Ranga and Billa in Delhi who had killed Chopra children was not condemned by society, nor the retribution punishment to the terrorists of Punjab and Kashmir who had killed a large number of innocent persons, has been described as severe and unjustified. It is in such cases of crime that retribution stands out distinctly as a purpose of punishment.[27]

(C) Preventive theory

Preventive philosophy of punishment is based on the proposition 'not to avenge crime but to prevent it'. It presupposes that need for punishment of crime arises simply out of social necessities. In punishing a criminal, the community protects itself against anti-social acts which endanger social order in general or person or property of its members. In order to present preventive theory in its accurate form, it would be worthwhile to quote Fichte who observed, "the end of all penal laws is that they are not to be applied".[28]

The real object of penal law therefore, is to make the threat generally known rather than putting it occasionally into execution. This indeed makes the preventive theory realistic and humane. This effective for discouraging anti-social conduct and a better alternative to deterrence or retribution which now stand rejected as methods of dealing with crime and criminals.[29]

In England, utilitarians like Bentham, Stuart Mill and Austin supported preventive theory because of its humanizing influence on criminal law. They asserted that it is the certainty of law and not its severity which has a real effect on offenders.[30]

As an off-shoot of preventive view regarding crime and criminals, the development of prison institution gained momentum. The preventive theory seeks to prevent the recurrence of crime by incapacitating the offenders. It suggests that prisonisation is the best mode of crime

[28.] Ram Ahuja, "Criminology", New Delhi, Rawat Publications, 2004, 179
[29.] N.V. Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 219.
[30.] *Ibid.*
[31.] *Ibid.*

 [ISSN 2581-5369]

prevention as it seeks to eliminate offenders from society thus disabling them from repeating crime. The supporters of preventive philosophy recognize imprisonment as the best mode of punishment because it serves as an effective deterrent and a useful preventive measure. It pre-supposes some kind of physical restraint on offenders. According to the supporters of this theory, murderers are hanged not merely to deter others from meeting similar end, but to eliminate such dreadful offenders from society.[31]

(D) Reformative theory

Modern penology recognizes the punishment is no longer regarded as retributive or deterrent, but is regarded as reformation or rehabilitative. Reformation is defined as "the effort to restore a man to society as a better and wiser man and a good citizen.[32] Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his concept of prisons and hospitals – mental and moral – is the key to the pathology of delinquency and the therapeutic role of 'punishment'[33] It is, thus, clear that crime is a pathological aberration, that the criminal can ordinarily redeemed, that the state has to rehabilitate rather than avenge.[34]

As against deterrent, retributive and preventive justice, the reformative approach to punishment seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law abiding member of society. Reformative theory condemns all kinds of corporal punishments. The reformative view of penology suggests that punishment is only justiciable if it looks to the future and not to the past. "It should not be regarded as settling an old account but rather as opening a new one". Thus, the supporters of this view justify prisonisation not solely for the purpose of isolating criminals and eliminating them from society but to bring about a change in their mental outlook through effective measures of reformation during the term of their sentence.[35]

It is, therefore, necessary that punishment is replaced by some alternative so that an offender might preserve his self-respect and renew loyalties for group standards. Reformation must involve change of environment which makes a person criminal, reducing his personality adjustments, and create barriers in the inculcation of the principles of good citizenship. Such a programme may even require restriction of liberty and curtailment of rights and privileges. In other words, the reformative procedure must not be so pleasant as to encourage further criminal

32. N.V. Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 220.
33. "Prison Cimmissioners Report", 1912, p.24, cited in *Criminology & Penology,* by J.P.S. Sirohi, Faridabad(Haryana), Allahabad Law Agency, 2004, 158.
34. Justice Krishna Iyer, Mohammad Giasuddin v State of A.P., A.I.R. 1977 S.C 1926 , 1928, cited in *Criminology &Penology,* by J.P.S. Sirohi, Faridabad(Haryana), Allahabad Law Agency, 2004, 158.
35. J.P.S. Sirohi, "Criminology & Penology", Faridabad(Haryana), Allahabad Law Agency, 2004, 158.
36. *Supra* note 1.

activities but it must be so designed as to produce desirable changes in the personalities of offenders.[36]

It may thus be said that: (i) The reformative theory gives importance not to crime but to criminal; (ii) It considers defective functioning of social systems and social structures, defective environment, and lack of opportunities to achieve one's goals as the causes of crime.[37]

a. Criticisms

Undoubtedly, modern penologists reaffirm their faith in reformative justice but they strongly feel that it should not be stretched too far. The reformative methods have proved useful in cases of juvenile delinquents and the first offenders. Sex psychopaths also seem to respond favourably to the individualized treatment model of punishment. Recidivists and hardened criminals, however, do not respond favourably to the reformist ideology. Punishment, therefore, should not be regarded as an end in itself but only as a means, the end being the social security and rehabilitation of the offender in society.[38]

Yet another argument which is often advanced against reformative treatment is that there is no punishment involved in it in the sense of some sort of pain and, therefore, it cannot be regarded as punishment a true sense of the term. But it must be pointed out that though reformative treatment involves benevolent justice, yet the detention of the offender in prison or any other reformative institution for his reformation or readjustment is in itself a punishment because of the mental pain which he suffers from the deprivation of his liberty during the period he is so institutionalized. Therefore, it is erroneous to think that institutional detention for reformation is not a form of punishment. In fact, surveillance and close supervision is itself punitive though it involves no physical pain or suffering.

The authors of an American study also criticized reformist ideology stating that, "it never commended more than lip service from most of its more powerful adherents. Prison administrators who embraced the rehabilitative ideal, have done so because it increased their power over inmates".[39]

On all these grounds, should we accept the reformative ideal and totally forget the punitive aspect of crime? It is, however, not easy to give a clear-cut opinion on how to deal with criminals. Perhaps, punishment policy for some and reformative policy for some other criminals

37. Ram Ahuja, "Criminology", New Delhi, Rawat Publications, 2004, 182.
38. Ibid 275.
39. N.V.Paranjape, *Criminology and Penology*, Allahabad, Central Law Publications, 2007, 220.
40. N.V. Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 221.

 [ISSN 2581-5369]

would be a pragmatic path. It is, thus, clear that punishment cannot be abolished and correction cannot be ignored in dealing with delinquents of differential types.[40]

III. SYSTEM OF PUNISHMENT UNDER INDIAN PERSPECTIVE

Dr P.K. Sen, a well known authority on Indian Penology has given a comparative account of the old and new penal systems. He observed that 'penology embodies the fundamental principles upon which the State formulates its scheme of punishment. He further pointed out that punishment always lacks exactness because it is concerned with human conduct which is constantly varying according to the circumstances. He, therefore, suggested that punishment must be devised on case law so that it could be free from rigidity and capable of modification with changing social conditions. Dr. Sen emphatically stressed that penal science is not altogether new to Indian criminal jurisprudence. A well defined penal system did exist in ancient India even in the time of Manu or Kautilya. In ancient penal system the ruler was expected to be well versed in Rajdharma which included the idea of Karma and Dand. The ancient Indian criminal justice administrators were convinced that punishment serves as a check on repetition of crime and prevents law-breaking. They believed that all theories of punishment whether based on vengeance, retribution, deterrence, expiation or reformation are directed towards a common goal, that is, the protection of society from crime and criminals. Thus, punishment was regarded as a measure of social defence and a means to an end. The modern trend, however, is to replace retributive and deterrent methods by reformative and corrective measures, the object being the rehabilitation of the offender. Commenting on this aspect Dr. P.K. Sen asserted that the concept of punishment has now radically changed in as much as it is no longer regarded as a reaction of the aggrieved party against the wrong-doer but has become an instrument of social defence for the protection of society against crime.'[41]

IV. THEORIES OF PUNISHMENT AND INDIAN JUDICIAL SYSTEM

The penal reforms in India during the past few decades have brought about a remarkable change in the attitude of people towards the offenders. The old concepts of crime, criminal and convicts have radically changed. The emphasis has now shifted from deterrence to reformation of the offenders. Indian penologists are greatly impressed by the recent Anglo-American penal reforms and have adopted many of them in the indigenous system. This does not, however,

41. An American Report crime and punishment entitled. "*Struggle for Justice"* prepared by American Friends Service Committee (New York1971), 112, cited in *Criminology and Penology, by N.V.* Paranjape, Allahabad, Central Law Publications, 2007, 221.
42. Ram Ahuja, "Criminology", New Delhi, Rawat Publications, 2004, 32.
43. N.V. Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 226.

 [ISSN 2581-5369]

mean that India did not have penal policy of its own prior to British influence. In fact, the Indian law givers of the olden times were well versed in the science of penology and attached great importance to penal sanctions. One peculiar feature of the ancient penal system of India was that it acknowledged the supremacy of Brahmins in matters of punishment. Perhaps the reason for this privilege to Brahmins was that they were regarded as the spiritual leaders of Indian society and hence were held in great esteem. The British administrators were basically against any discrimination in penal laws. But they accepted leniency towards Brahmins in matters of punishment perhaps because they wanted to gain the sympathy and support of this prestigious class of Hindu society by conceding certain concessions to them. These concessions were, however, withdrawn in subsequent years of British rule in India.[42]

As to the modes of punishment in ancient India, four main forms were known to have existed. They were:

1. Admonition or warning (Vakdanda),
2. Remonstrance (Prayaschitta),
3. Fine (Art hadanda), and
4. Imprisonment, death or mutiliation (Vadhadanda, Mritudanda, or Aung Vichheda).[43]

The common methods of punishment introduced by British administrators in India included the sentence of death, deportation, transportation, solitary confinement, imprisonment and fines. Petty offences were punishable with fine. A well organized system of police was introduced to suppress crimes and apprehend criminals. The advanced of penology in Anglo- American world during 18th and 19th centuries had its own impact on Indian penal system. The sentence of transportation, mutiliation, solitary confinement, whipping or punishing the offenders in public place are completely abolished and new reformative methods such as parole, probation, open air prisons, borstals, reformatories, etc. have been adopted for the rehabilitation of offenders. Modern penologists generally agree that reformation of offenders should be the basic purpose of every penal system but at the same time the importance of deterrence should not be undermined. Thus, reformation may be used as a general method of treating the offenders but those who do not respond favourably to this corrective method of treatment must be severely punished. The penal measures must be directed to show society's abhorrence to crime.[44]

It must, however, be stated that the Indian penal system seems to be less effective as a control

44. *Ibid* 231.
45. N.V. Paranjape, *Criminology and Penology,* Allahabad, Central Law Publications, 2007, 231-232.
46. *Ibid* at 232-233.

 [ISSN 2581-5369]

mechanism because it leaves many a criminals to enjoy the ill-gotten gains of their criminals acts. Undoubtedly, the Indian penal policy is based on individualized system but it seems to be working unjustly in favour of advantaged groups, particularly the political high-ups[45] and those who are in power with the result the deterrent effect of punishment is considerably diminished. This is truer with punishment in bribery and corruption cases and big financial scams where influential persons are dealt with leniently because they are more articulate and are capable of maneavouring things in their favour.

Mild punishment or no punishment in such cases undermines the effectiveness of punishment as a measure of crime control mechanism.[46]

Thus, in this way, system of punishment in the Indian Judicial System evolved. In modern times, the Judicial System favours rationalization of punishment taking into consideration the different types of approaches in their proper perspective and making use of them suitably in accordance with the requirement of the offender, with the principle of individualization.

V. CONCLUSION

The Theories of Punishment, thus, play a very significant role in the penal system for the prevention of crime and the treatment of offenders. It must be borne in mind that all human being do not respond in the same manner in a given situation, as human nature is complex and hence it is not possible to comprehend it fully. So, this has led to the innovation of a number of treatment methods for the offenders. The prisons are no longer used as custodial institutions but, regarded as training centres for those who violate law. The emphasis is now on training and re-education of offenders for making them responsible citizens of the country. Therefore, an adequate, caring, system of punishment is most vital requirement for an ideal penal system.

Although, there has been a great transformation in the penal policy of developing countries but, still there is need for some changes in the manifestations of crimes and criminals such as the classification of offenders, effectiveness of punishment, working of penal institutions, etc. must be strengthened for putting an end to the inhumane treatment of the offenders, and realizing the actual object of punishment. This is possible only by realizing the dignity and worth of human

[47]. The cases of former Prime Minister Shri Narsimha Rao; former C.M. of Maharashtra Shri A.R. Antuley; Bihar supreme Lallo Prasad Yadav; Jharkhand Leader Shri Sibu Soren; sitting M.P. from Bihar Shri Rajesh Ranjan alias Pappu Yadav; Tantrik Chandraswamy etc. are only a few Illustrations. To support this contention, cited in *Criminology and Penology*, by N.V. Paranjape., Allahabad, Central Law Publications, 2007, 233.

[48]. See, Common Cause, (A Registered Society)v Union of India, A.I.R. 1996 S.C 3538 (Illegal allotment of petrol pumps and gas agencies by the then Petroleum Minister Capt. Satish Sharma). Also see, Shiv Sagar Tiwari v Union of India, A.I. R. 1997 S.C 1483 (Illegal allotment of 52 shops and stalls by the then Housing and Urban Development Minister Smt. Shiela Kaul to her own favourites), cited in *Criminology and Penology*, by N.V. Paranjape, Allahabad, Central Law Publications, 2007, 233.

 [ISSN 2581-5369]

beings. Thus, it has been expected that, by bringing necessary changes in the theories and forms of punishment, there will be proper implementation of the criminal justice system with effectiveness and the actual object of punishment shall be achieved.

*****

 [ISSN 2581-5369]