CHAPTER – 3

PUNISHMENT OF OFFENCES PREVAILING

IN ANCIENT AND MODERN INDIA

The word ‘Punishment’ has not been defined under the Indian Penal Code but it simply provides the forms of punishment. Punishment according to dictionary, involves the infliction of pain or forfeiture, it is infliction of penalty, chastisement or castigation by the judicial arm of the state and according to the E. Westermark 25 “Punishment is limited to such suffering as is inflicted upon the offender in a definite way by, or in the name of the society of which he is a permanent or temporary member.” The main purpose of punishment is not only to punished the wrongdoer but also to maintain peace and harmony in the society.

According to dictionary meaning, the word ‘Punish’ means ‘to make someone suffer for a crime or for a bad behavior or the imposition of penalty as retribution for an offence’. In Criminal law, ‘Punishment’ means 'any pain, penalty, suffering inflicted upon a person by the authority of law and the sentence of the court for some crime committed by him or for his omission of a duty enjoined by law'. The punishment maintains law and order, it protects the person and the property. The offenders refrain from wrongdoing for the fear of punishment and therefore, the punishment and law are inseparable.

The concept of the punishment has also been recognized in the Dharmashstra. In the Hindu shastras, The King had the power to punish the law breaker and protect the law abider. According to Manu,

25 E Westermark : The origin and Development of the moral ideas, p. – 189
King was Danda Chhatra Dhari, i.e. the holder of punishment and protector. For him, punishment was the essential characteristics of law and he justified the punishment to keep the people under control and protects them, Manu says that –

"दण्डः शास्त्रिप्रज्ञा: सर्वा दण्डं एवाभिस्करति।
दण्डं सुमतेशु जागर्ति दण्डं धर्मं विदुर्भवः।"

which means 'punishment remains awake when the people are asleep, so the wise have recognized punishment itself as a form of Dharma’.

Thus, it is clear that the punishment is one of the oldest method of controlling crime and criminality. The object of the punishment is not only to reform the offender but also to deter him and others from committing the offences and to protect the society. There are different forms of punishments and it changes with the changing of times. The methods of executing the sentence are also changed and supporting human rights. As in the past we have seen that the death sentence was awarded for a small- small cause but it has been awarded only in the ‘rarest of the rare case’. Still some societies use ancient forms of cruel punishment but the punishment have also evolved along with civilization and has become less cruel. Now, the severity of punishment depends on the crime and a person is punished with the severe forms punishment only if he commits the serious crimes.

To see the transformation of punishment from the Ancient India to Modern India, the forms of punishments have been divided under the following two heads –

26Manu Smriti VII 8
(1) **Forms of Punishment Prevailing in Ancient India** :

The history of penal system states that during the past the punishment were tortuous, cruel and barbaric in nature. The object of the punishment was the deterrent and retribution. Due to this Penal system, the crimes were less in numbers. Such punishments are categorized in the following heads –

(a) **Capital Punishment**
(b) **Corporeal Punishment**
(c) **Social Punishment**
(d) **Financial Punishment**.

(a) **Capital Punishment** :

According to dictionary meaning, ‘Capital Punishment’ means the ‘legally authorized killing of someone as a punishment of crime, a death penalty for a crime’. In other words it means a government sanctioned practice where a person is put to the death by the state as a punishment for a crime. During the Ancient time, the capital punishment was executed for a small – small crime. It is the most extreme form of punishment. The methods of execution of death penalty have varied from time to time. There were so many forms of executing the death penalty in which some popular forms are –

(i) **Stoning**
(ii) **Pillory**
(iii) **Construct in to wall**
(iv) **Throw under the leg of elephant**.

(i) **Stoning** :

'Stoning' is that method of capital punishments in which a group of people throws stones at a person until they die. In it, the guilty
person is made to stand in a small trench dug in the ground and the people surround him from all sides and throw stones on him until his death. This mode of punishment is still in vogue in some of the Islamic countries, specially in Afghanistan, Saudi-Arabia etc. Although it is barbaric in nature but due to it the sex crimes are well under control in these countries.

(ii) **Pillory** :-

In 'Pillory', the offender was compelled to stand in public place and his head and hands were locked in an iron frame so that he couldn’t move and he could be whipped, branded or stoned or his ears were nailed to the beams of Pillory. Some times, the dangerous criminals were nailed in walls and shot or stoned to death. It is undoubtedly was the cruel and brutal form of punishment which was in practice till 19th century.

(iii) **Construct into wall** :-

In it the offender was constructed into wall. It was the most cruel, barbaric and the most painful form of execution of death penalty. A movie Neel-Komal has stated this kind of brutal punishment.

(iv) **Throw under the leg of elephant** :-

In it, the offender was thrown under the legs of elephant, who was made intoxicated before putting the offender under his legs. A movie ‘Bagawat’ has stated this kind of punishment.

(b) **Corporeal Punishment** :-

Generally, ‘Corporeal Punishment’ means a ‘punishment which is intended to cause physical pain on a person’. It is also known as Physical punishment. It is a punishment for the violation of
law which involves the infliction of pain on or harm to the body. The object behind Corporeal Punishment is not only to punish the offender but also to prevent the repetition of the offence by such offender or by any other person.

The following are the Corporeal Punishment which are given in the ancient times:

(i) Flogging
(ii) Mutilation
(iii) Branding
(iv) Pressured by iron rods
(v) Tied the offender on roaming wheel
(vi) Bilboes
(vii) Rack
(viii) Imprisonment.

(i) **Flogging** :–

‘Flogging’ means ‘beating or whipping’. In other words, it means to beat someone with a stick or whip as a punishment. It was the most common method of punishing the criminal as a corporeal punishment. In India, it was recognized under the **Whipping Act, 1864** which was repealed by the same act in 1909 but it was finally abolished in 1955. The method of flogging was differed from country to country. Some used straps and whips with a single lash while others used short pieces of rubber-house as they left behind traces of flogging. It is one of the most barbarous and cruel form of Punishment.

This method is being used in most of the Middle East Countries till today.
(ii) **Mutilation** :-

Generally, ‘Mutilation’ means ‘to cause severe damage to the body of a person’. In other words it means damaging a person severely especially by removing a part. This mode of punishment was in practice in Ancient India during Hindu period, In it, one or both of the hands of the person were chopped off if he committed theft, if he indulged in sex crimes his private part was cut off, if he tells lie or criticised the God his tongue was cut off, and if he is deceitful or untrustworthy his ears were cut off. This system was also in practice in the European countries. But in modern times this method is completely disregarded because of its barbaric nature.

(iii) **Branding** :-

Generally, ‘Branding’ means ‘searing of flesh with a hot iron’. In this method of punishment the prisoner was branded by the hot iron rod on the forehead of the culprit and the words were used according to the offence committed. This method was commonly used in oriental and classical societies. In Roman Penal Law, criminals were branded with appropriate mark on their forehead so that, they could be identified and subjected to public ridicule. It is a forceful weapon to fight with the criminality. In India, it was in practice during the Moghul rule, which is how completely abolished.

(iv) **Pressed by iron rods** :-

In this method of punishment the body of offender was pressured by the two iron rods in inhuman and cruel manner by which he suffers lot of pain.
(v) **Tied the offender on roaming wheel** :-

In this method of punishment the offender was tied with a wheel, which moved in the speed for sometimes by which the offender was suffering with a lot of pain.

(vi) **Bilboes** :-

According to dictionary meaning, ‘Bilboes’ is an iron bar with sliding shackles, formerly used for confining a prisoner’s ankles. In this method of punishment, the legs of the offender were tied at both the ends of iron rods and was hanged on the roof by which he can’t move.

(vii) **Rack** :-

According to dictionary meaning, ‘Rack’ means ‘an instrument of torture’. In this method of punishment the hands and legs of the offender were tied and were full, sometimes in opposite direction and sometimes by the elephant in the same direction which causes more pain and sometimes his portion also serves.

(viii) **Imprisonment** :-

The Punishment of imprisonment which we have seen today is totally different from that kind of imprisonment which was awarded in the past. As some kingdom was awarding the imprisonment by tiding the culprits with the iron instruments as an animals or put them into the well after tiding their hands and legs or closed them into darken and small room etc.

(c) **Social Punishment** :-

'Social Punishment' is a punishment in which a person is restrained to make any kind of contract from the other persons or to
move him at other places where he has no contact with the other persons and no person can help him in any manner otherwise he is also liable for the punishment for it. Social punishment is divided into two parts :-

(i) **Banishment**

(ii) **Social Boycott**

(i) **Banishment** :-

Generally, ‘Banishment’ means ‘to expel a person’. It is also known as ‘transportation’. In it, the undesirable criminals were transport to far off places with a view to eliminate them from their society. This type of punishment was also in practice at the time of British India. It was popularly known as ‘kalapani’. At that time, the dangerous criminals were transport to the remote island abolished in 1955 and replaced by the “Imprisonment for life”.

(ii) **Social Boycott** :-

Generally, ‘Social Boycott’ means ‘an act of forcing a person to abstain from any kind of contact with the other persons of the society’. In ancient period when the Nyaya Panchayat was in full form, they gave the punishment of social boycot to the offender. In it, no person of the village will share the ‘hukka pani’ with the offender. It means the offender is degraded from his caste and no caste member shares the Hukka i.e., smoking instrument, water and auspicious occasion of happiness etc. with him. In it, the person is expelled from the society completely and restrained the other people to make any kind of contact with such person.
(d) **Financial Punishment** :–

It is also known as imposition of fine. It was the common mode of punishment which was not serious in nature and it was awarded specially for the breach of traffic rules, revenue laws and in the minor offence. It also includes the payment of compensation to the victims of the crime and also the payment of the costs of prosecution.

(2) **Forms of Punishment prevailing in Modern India** :–

Although some societies still use the ancient forms of the punishments but the punishment have also evolved along with the civilization and become less cruel or harsh. Now, the severity of the punishment depends on the crime. If the person commits the serious crime, he shall be liable to be punished with the severe forms of punishment. In the industrialized societies, the forms of punishment are either fines or terms of imprisonment or both. The object behind such punishment seeks to correct unlawful behaviour rather than simply punish wrongdoers. According to Section 53 of Indian Penal Code, the principle forms of punishments to which offenders are liable are as follows:–

(a) **Death sentence,**
(b) **Imprisonment for life,**
(c) **Imprisonment**-
   (i) Rigorous imprisonment (with hard labour), or
   (ii) Simple imprisonment,
(d) **Forfeiture of property,** and
(e) **Fine.**
(a) **Death sentence (Capital Punishment) :-**

As we have already discussed earlier in this chapter that the ‘Capital Punishment’ means ‘the infliction of death by an authority’. In modern times, capital punishment is the most severe punishment of all, which is awarded for the severe offence. In modern times, it is the most debated subject among the modern penologist. It is not awarded for the small – small offences just like as in ancient period. It has been awarded only in case of severe offence. As the society changes, the concept or method of punishment and their severity also changes. Nowadays the death sentence is awarded only in ‘rarest of the rare case’ under Indian Penal Code, the punishment of death sentence is in alternative form for the crime. But **before 1983**, it was mandatory only for offence prescribed under **Section 303 of Indian Penal Code**, which was declared by the Hon’ble Supreme Court as an unconstitutional as it is violative of Article 14 and 21 of **Constitution of India** in the historic case of **Mithu V/s State of Punjab**

So, at present the punishment of death sentence is in alternative form for every crime.

The following are the offences under the Indian Penal Code, in which death penalty may be awarded by the court :-

(a) **Waging War against the Government of India under Section 121.**
(b) **Abetment of Mutiny, if Mutiny committed under Section 132.**
(c) **Giving or Fabricating False Evidence upon which an innocent person suffers death under Section 194.**
(d) **Punishment for Murder under Section 302.**

27 AIR 1983 SC 473
(e) Murder by Life Convict under Section 303, which is declared as unconstitutional in the case of Mithu v/s State of Punjab.

(f) Abetment of Suicide of a Minor or an Insane or an Intoxicated Person under Section 305.

(g) Attempt to Murder by a Person who is under sentence of life imprisonment, if the hurt is caused under Section 307.

(h) Kidnapping for Ransom etc. under Section 364A.

(i) Dacoity with Murder under Section 396.

(j) Abettor or Conspirator of any of the offences punishable with Death and that offence is actually committed in consequences of that abetment under Section 109 and Section 120 B (1) read with Section 302 of Indian Penal Code.

After the Criminal law (Amendment) Act, 2013 the following are the offences under Indian Penal Code in which death penalty may be awarded by the court:-

(a) Punishment for Rape resulting in Death or Permanent Vegetative State under Section 376A

(b) Punishment for Repeat Offenders of Rape under Section 376E.

Besides Indian Penal Code, there are some other special laws in which Death penalty may be awarded such as offences under Armed forces Act, NDPS Act, 1985, Arms Act, 1959, Commission of Sati Act, 1987 and under the Terrorist Acts, etc.
(b) **Life Imprisonment** :-

‘Life Imprisonment’ means ‘a person shall remain in jail for the rest of his entire life’. It is one of the best alternate to the death sentence for those offences in which either punishment can be awarded. There is no fixed term for Life Imprisonment but in case of the fraction of terms, it should be 20 years as per **Section 57 of Indian Penal Code**. The nature of Punishment of Life Imprisonment is rigorous imprisonment only, it can’t be simple in nature as it also decided by the Hon’ble Supreme Court in the case of **Naib Singh V/s State**

In this mode of Punishment, the offender shall remain in jail for the entire period of his life, only his dead body will come from the Jail, but due to his good behaviour in the Jail, such sentence may be commuted by the appropriate Government in any other term of imprisonment which shall not exceed for the period of 14 years

Under Indian Penal Code, the punishment of Life Imprisonment is divided into four categories, which are as follows –

(i) **Imprisonment for life is Minimum Punishment**:–

There are only three offences under Indian Penal Code, which are punishable with minimum of “Imprisonment for life and fine”. These offences are punishable with death, or imprisonment for life, and shall also be liable to fine. These offences are –

(1) Offence against the State under **Section 121**;

(2) Murder under **Section 302**; and

(3) Kidnap for ransom under **Section 364A**.

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29 AIR 1983 SC 855
30 Section 55 of Indian Penal Code read with section 433 of Cr.P.C.
(ii) **Imprisonment for life is with the option of death sentence and some specific term of imprisonment** :-

There are only **Six** offences under Indian Penal Code, which are punishable with “death or imprisonment for life or any term of imprisonment with fine”, namely:-

1. Abetment of mutiny, if mutiny is committed in consequence thereof under **Section 132**;
2. Giving or fabricating false evidence with intent to procure conviction of capital offence and if innocent person be thereby convicted and executed under **Section 194**;
3. Abetment of suicide of child or insane person under **Section 305**;
4. Attempts to murder by life convicts under **Section 307**; and
5. Dacoity with murder under **Section 396**.
6. Repeated offenders of offences punishable under **Section 376, 376A, 376D**.

(iii) **Imprisonment for life is the sole punishment**:-

There is only **one** offence in Indian Penal Code under **Section 311** which states that thug shall be punished with imprisonment for life and fine, it has mandatory punishable for life imprisonment.

(iv) **Imprisonment for life is maximum punishment**:-

Besides the abetment and conspiracy there are **forty nine** offences for which maximum punishment is “imprisonment for life” in the option of less imprisonment in term.
Besides Indian Penal Code, the punishment of Life Imprisonment may be awarded in some other special laws as offence under Anti Hijacking Act, 1982, Arms Act, 1959, Explosive Substance Act, 1908, Commission of Sati Act, 1987, S.C. or S.T. (Prevention of Atrocities) Act, 1989, etc.

(c) **Imprisonment** :

According to dictionary meaning, the ‘**Imprisonment**’ is ‘an act of putting some one in prison or in Jail as a lawful punishment’. In other words, it means to put a person behind the bars because of the offence committed by him. Besides the Life Imprisonment, the punishment of imprisonment is divided into the following categories:-

(i) **Rigorous Imprisonment**
(ii) **Simple Imprisonment**
(iii) **Solitary Confinement**.

(i) **Rigorous Imprisonment** :

Generally, ‘**Rigorous Imprisonment**’ means ‘hard labour’. In Rigorous Imprisonment, the offender is compelled to do hard labour or hard work in the Jail such as grinding corn, digging earth, drawing water, cutting fire wood etc. In British era, it meant for the breaking rocks and making roads etc. But nowadays these kinds of works are not in practice and the offender who is undergone the Rigorous Imprisonment, manufactures the clothes, furniture etc and making the pickle, papad and other food items for which they get the fixed wages.
(ii) **Simple Imprisonment:**

In Simple Imprisonment the offender is confined to Jail simply and he is not compelled to do any kind of work but they can be asked to work at their own choice with wages.

Every offence which is punishable with the imprisonment also provides for the description of imprisonment, it may be either rigorous or simple but where such description has not specialized clearly, then it depends upon the discretion of the court. It means, in every case in which an offender is punishable with imprisonment of either description, the court may direct that such imprisonment shall be wholly rigorous or wholly simple or partly rigorous and partly simple.

(iii) **Solitary Confinement:**

‘Solitary Confinement’ means ‘keeping a person isolated from any kind of contact with the outside world’. It is conflicted with a view that feeling of loveliness may produce an influence on the mind of offender and thus reform him. It is that kind of punishment, which exploits the social nature of the offender and keeps the offender isolated from any kind of contact with any other person. Due to which there is a possibility that the offender might realizes his guilt and may repent.

The **Section 73 and 74 of the Indian Penal Code** provides for the solitary confinement, in which **Section 73** provides that whenever any person is convicted of an offence for which the court has power to sentence him to rigorous imprisonment, the court may order that he

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31 Section 60 of Indian Penal Code
shall be kept in solitary confinement for any portion of his imprisonment which shall not exceed three months in a whole, according to the following scale—

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Terms of Imprisonment</th>
<th>Period of Solitary Confinement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Upto 6 months</td>
<td>1 month</td>
</tr>
<tr>
<td>2</td>
<td>From 6 months to 1 year</td>
<td>2 months</td>
</tr>
<tr>
<td>3</td>
<td>Above 1 year</td>
<td>3 months</td>
</tr>
</tbody>
</table>

According to **Section 74**, the Period of Solitary Confinement shall not exceed-

(a) 3 months in all,

(b) 14 days at a time with intervals of not less than 14 days, and

(c) 7 days in a month, with intervals of at least 7 days if term of imprisonment exceeds 3 months. Solitary Confinement can be awarded by a Magistrate of first class.

(d) **Forfeiture of Property** :-

According to dictionary meaning the word ‘**Forfeiture**’ means ‘something that is lost or surrendered as a penalty’ and the word ‘**forfeiture of property**’ means ‘the loss of property or money because of a breach of legal obligation’. In other words, it means involuntary relinquishment of property without compensation as a consequence of a breach of some legal obligation or the commission of crime. **Forfeiture of Property** under Indian Penal Code was provided for in **Section 61 and 62 which were subsequently repealed in 1921**, But at present, these are three Sections in Indian Penal Code which described about the forfeiture of the property, these are :

(i) Property used or intended to be used in committing depredations on the territories of a friendly country (**Section 126**).
(ii) Property received with the knowledge that the same has been taken by waging war or committing depredations under Sections 125 and 126 respectively (Section 127).

(iii) Property purchased by public servant who is legally prohibited to purchase or bid for such property (Section 169).

(e) **Fine** :

Generally, ‘Fine’ means ‘**imposing of monetary liability on an accused in consequences of the offence committed by him**’. There are some offences which provide fine with imprisonment and some offences are punishable with the term of imprisonment, or with fine, or with both and some offences are punishable with the fine only. Where the amount of fine is prescribed for any offence then the offender is liable for that amount but where such amount is not prescribed then the amount of fine depends upon the discretion of the court.

**According to Section 63 of Indian Penal Code** -

“Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.”

If the court has sentenced the accused for the payment of fine, it shall be paid by him. But if he does not pay the fine, he shall be liable to the imprisonment in default of payment of fine as per the order of the court. The provision relating to the imprisonment in default of payment of fine has been given under **Section 64 to 70 of Indian Penal Code** which provides that -

In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment then in default of payment of the fine, the
offender shall suffer imprisonment for a certain term, which shall not exceed one-fourth of the term of imprisonment and it is in addition to the main term of imprisonment.

If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and it shall be according to the following table -

<table>
<thead>
<tr>
<th>Amount of fine</th>
<th>The term of imprisonment shall not exceed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rs. 50</td>
<td>2 Months</td>
</tr>
<tr>
<td>Rs. 51-100</td>
<td>4 Months</td>
</tr>
<tr>
<td>Above Rs. 100</td>
<td>6 Months</td>
</tr>
</tbody>
</table>

The fine, or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of the period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Besides it, the **Section 30 of Cr. P.C. Provides that**–

(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

Provided that the term -

(a) is not in excess of the powers of the Magistrate under **Section 29**;

(b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.
(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29.

It means when the accused doesn't pay the fine as ordered by the court, then the court may award the imprisonment in default of payment of fine, which shall not exceed 1/4 of the term of imprisonment provided for the offence. It shall be in addition to a substantive sentence of imprisonment provided for the offence. It shall not affect the power of the punishment of the court provided under Section 29 of the Cr. P. C.

There are some other laws which provide the fine for the offence which is not serious in nature. Some laws provide for exemplary fine for the Violation of I.T. Act (upto 5 crores) Violation of Copy Rights, Trademark, Design, N.D.P.S. Act, etc.

Besides the above mode of punishment prevailing in Modern India, the court may order the accused to furnish security bond for good behaviour in case of offences which is not serious in nature. The provisions relating to security bond have been given under Section 106 to 110 of Cr. P.C., 1973. Although it is not a punishment but it may serve a useful purpose to restrain a person from committing a crime and to make him a law abiding citizen. This is better than these who are imprisoned or subjected to institutional sentence.

All these above mode or method of punishment show that the method of punishment has changed with change of the society. Nowadays the mode of punishment become less cruel in comparison with the ancient period. Now, the severity of punishment depends on the nature of the crime. Only those people who commit serious offence, shall be liable to be punished with the severe punishment because now the object of modern penologist and the
law makers is to reform the criminals and to deter them from the commission of crime.

**THEORIES OF PUNISHMENT**

Sentencing the guilty person is most important, albeit a difficult chapter in trial. Theories of punishment are many- Reformative, Prevention, Deterrent, Retributive and Denunciatory. Retributive and Denunciatory theories have lost their potency in the civilized nations. Deterrent and Preventive sentence is sometimes necessary in the interest of society. The modern trend places emphasis on the reformation of an offender and his rehabilitation. Reformation and not retribution is the sentencing lodestar.\(^{32}\) The following are the theories of the Punishment :

(1) **Retributive theory of Punishment** :

Retribution means something done or given to somebody as punishment or vengeance for something he or she has done. It is a just retribution for their crime. This theory says to return the same injury to the wrongdoer, which he had committed against the victim. It says “tit for tat”. Retribution is often assimilated to revenge, but a public rather than a private revenge.

Retributive theory punishes offenders because they are deserving of punishment. It says to offender "you have caused harm to society, now you must pay back to society for that harm. You must atone for your misdeeds." Retribution is probably the oldest goal of criminal punishment. The **Babylonian Code of Hammurbai**, dating from the 18\(^{th}\) century BC, contained this principle of equal retaliation. Similarly, the laws of the ancient Hebrews demanded “an eye for an eye and a tooth for a tooth”. The corporeal punishments used in England and the American colonies were

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based on retribution. The Bible states that when one man strikes another and kills him, he shall be put to death. Whoever strikes a beat and kills, shall make restitution, life for life, when one injures and disfigures his fellow countryman, it shall be done to him as he has done; ‘fracture for fracture’ ; ‘eye for eye’ ; ‘a tooth for tooth’, the injuries and disfigurement that he has inflicted upon another shall in turn be inflicted upon him.  

(2) **Deterrent theory of Punishment** :-

Deterrent or deterrence means something that deters somebody or something, restrain anyone from taking action, to discourage somebody from taking action or prevent something happening, especially by making people feel afraid or anxious. In another word it is a ‘warning’, ‘preventive’, ‘restrictive’, ‘restraining’, or ‘limiting’, someone for any particular act. The word ‘deter’, means ‘abstain from action’, and ‘to deter’ means ‘a variety of motives may deter anyone from an undertaking’. It also means “the prudent and fearful are alike easily to be deterred.”

This is also known as **Utilitarian Preventive Theory**. Utilitarianism assesses punishments on the basis of the good that punishments do for individuals or for society.

(3) **Prevention Theory of Punishment** :-

Prevention means with the purpose of preventing something used or devised to stop something from happening, or to stop people from doing a particular thing. Preventive theory punishes the offenders, to prevent the future crime in the society, by isolating the criminals from society. This theory believes that, the goal of punishment is restraint. If, a criminal is confined, executed, or otherwise incapacitated, such punishment will deny

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33 Leviticus 24 : 17-22 of the New English Bible.
the criminal ability or opportunity to commit further crimes and prevent the society from that harm.

Preventive philosophy of punishment is based on the proposition “\textbf{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 are endangering social order in general or person or property of its member.

(4) \textbf{Reformative Theory of Punishment} :-

Another possible goal of punishment is reformation of the offender. Supporters of reformation seek to prevent crime by providing offenders with the education and treatment necessary to eliminate criminal tendencies, as well as the skills to become productive members of society.\textsuperscript{34}

Reformation is synonymous to the word ‘\textit{improvement}’, ‘\textit{modification}’, ‘\textit{transformation}’, ‘\textit{alteration}’, ‘\textit{change}’, ‘\textit{development}’, ‘\textit{amendment}’. Reform means change and it improves somebody by correcting faults, removing inconsistencies and abuses, and imposing modern methods or values or to adopt a more acceptable way of life and mode of behaviour or persuade or force somebody else to do so. Reformation is the act of process of reforming somebody especially a general improvement in his behaviour.

This theory claims that a criminal can be reformed into a good citizen as law-abider by giving him competent treatment during his imprisonment period.

\textsuperscript{34} Article on Criminal Law- Encarta Reference Library 2005.
(5) **Expiation Theory of Punishment (Theory of Restoration):**

The theory of expiation is also known as theory of restoration. Expiation means "the act of expiating, reparation, amends, compensation". It means atoning or suffering punishment for a wrongdoing. This is not the new concept, if we look towards the epic period. Valia, a famous dacoit, turned into a sage (Maharishi) Balmiki and wrote the Ramayan. It is the greatest example of the expiation and reformation.