

# Punishment as a form of reformation: a critical analysis

[Law](#), [Crime](#)



**Abstract**

One of the most important pillars of state is law. Punishment is inevitable for administering justice. Retributive, restorative, deterrent, preventive, etc are various types of theories of punishment. A controversy arises at a time where the justification of type of punishment is to be given for a specific offence. Different changes have been made in the form of punishment with the passage of time. The most accepted form of punishment is the reformatory form of punishment.

**Introduction**

Punishment is the forceful way to implement the tradition that must be adhered to, which is one of the mainstays of current human advancement. Giving a serene society and life is the obligation of the state. Absence of punishment makes the law lose its power and at the end makes the society unfit to keep up lawfulness and an administration unfit to secure its persons. Nonetheless, the reformatory way to deal with crimes and reform the convicts has come up keeping in mind the end goal to secure the essential rights a human is qualified for. Created by analysts, sociologists and physiologists with a view to make a framework where the convicts could be improved and discharged once more among the general public as residents. This technique has been supported in a few Supreme Court procedures and that the system has been utilized as a part of the case of juvenile offender. Rehabilitation tries to create major changes in wrongdoers and their conduct.

The human culture is a helpful undertaking anchored by pressure. By pressure we mean a state where a perceived expert is constrained to punish person who negates the guidelines and control of the society. Punishment is essential for the support of this social union. Equity is a fundamental duty of the state and it is the obligation of the state to give serene surroundings to its people. The reason behind the idea of punishment isn't just to give equity to the victims but also to maintain security and wellbeing in the society. To punish an offender isn't just to torture him or to embarrass, yet there is a higher target to be accomplished and that is to build up a quiet society. The idea of Punishment under present day statute is normally connected with criminal law.

According to Salmond, " The administration of justice implies the maintenance of right within a political community by means of the physical force. It is a modern and civilized substitute for the primitive practice of private vengeance and violent self-help."

### **Need of punishment**

A society is never and can never be free from crimes. When a crime takes place, a legal violation is bound to occur. If punishment is not imposed on the persons infringing law, a civil order cannot be maintained in the society. If one person is not made subject to law for his violation, a different person would commit an offence the next day and crimes will continue to increase far and wide.

**Reformative theory**

A theory of punishment can be best defined as the approach or reaction of the penologists towards a perpetrator of crime while deciding the question of sentence to him . Reformative theory is a form of punishment which is based on humanistic approach. This theory believes that even though a person commits a crime, he is still a human being. A person may have committed a serious or heinous crime in a situation which might not occur again, so he should be given a chance to be a better person and to return back to the society as any prudent person. Efforts should be made to rehabilitate him during his period of imprisonment. Efforts should be made to teach him various kinds of arts such as cooking, reading, painting, etc.

At the time of the conviction of the offender, the judge must consider the person's gender, age, character, upbringing, education and various other factors. Various jurists and law professionals believe that instead of using deterrent or retributive theory of punishment, reformative theory should be used which might sometimes be more effective than any other form of punishment. They advocate for reformative theory because according to them affectionate, cautious and loving behavior towards them can drastically improve their character and lead them to be a better person. They also believe that even a hardcore criminal can be reformed and transformed into a normal human being.

Severe punishment may undermine or weaken them, which would instead make them more revengeful and evil. Corporeal type of punishment would destroy the feelings and softness in a person which will lead him to the

existence of God and humanity in human beings. Rigorous imprisonment would not be as effective as a reformatory kind of treatment. Kind treatment may produce better results than punishments.

The main aim of this theory is to bring a change in the personality, behavior and character of the offender with an aim to make him useful to the society. Reformatory theory focuses on rehabilitation of the offenders so as to make them law abiding citizens. It believes in humane treatment of the offenders who have been imprisoned for a crime.

In *Narotam Singh V State of Punjab*, Supreme Court was of the view that, “reformatory approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice.”

### **Juvenile Reformation**

A person is said to be a juvenile if he commits a crime and is below the age of 18 years. Such juveniles are known as children in conflict with law.

Children in conflict with law are anyone under 18 years of age who comes in contact with the justice system because of the suspicion or accusation of committing a crime. Most of these children may have committed petty crimes such as vagrancy, truancy, begging or use of alcohol. These offences may not be considered criminal if they are committed by adults.

The Juvenile Justice (Care and Protection of Children) Act, 2015, which replaced the previous act of 2000, caters to the basic needs of children through proper care and protection by adopting a child friendly approach for

their rehabilitation through process and instituted provided under this act. The act categorizes offences committed by children into three categories namely heinous crimes, petty crimes and serious crimes. Heinous offence is an offence where the punishment under Indian Penal Code is imprisonment of more than 7 years; petty offences are those where the imprisonment is not more than 3 years and serious offences are those where the imprisonment is between 3 years to 7 years.

When after an inquiry, it is found that a child, irrespective of age, has committed a petty or serious offence, or a child below the age of 16 years of age has committed a heinous offence, then such a child is not punished for the offence he has committed, but he is sent to a juvenile justice board for rehabilitation which is based on reformatory theory.

Under this theory, it is believed that when a child is under 16 years of age, he is not in a situation to know the seriousness of his acts and so there is a possibility that he can be fully reformed and converted into a normal person. The theory believes that reformation of juvenile is necessary so that his past does not haunt him in the future and he is able to live a normal life ahead.

The Delhi gang rape case led to major changes in the criminal laws of India, especially where the offender is a juvenile. The major change that was made in the Juvenile Justice Act was that the juveniles between 16 years to 18 years will now be tried as adults in case of heinous crimes. The decision to try a juvenile of age 16 years or older, as an adult, will be taken by the

Juvenile Justice Board. If the board decides against it, the juvenile will be sent for rehabilitation.

### **Reformation techniques**

Reformation of offenders can be done using two techniques:

#### 1. Parole

In this technique, the offender is released from the prison earlier than his actual release date with a condition that if he again breaks the law, he shall be sent to prison for the remaining duration of punishment. Here the prisoner is given a chance to rehabilitate himself during the period when he is out of the prison. In case of misbehavior, he shall be sent back to prison and he has to complete his prison sentence. Until then, he cannot return to the society. Generally, after the completion of 1/3 rd of the prison sentence, a parole may be granted to him.

#### 2. Probation

Probation is a method of dealing with offenders, especially young persons guilty of minor crimes or first offenders, by allowing them to go at large under the supervision of a probation officer. In probation, the prisoner is released from the prison with or without a condition. He is given a chance to return back to the society for his self-reformation. Probation is nothing but the postponement of the final sentence of the offender for a period of time to give him a chance to correct his wrongdoings and get adapted back in the society.

The Supreme Court of India, in Ramji Missar V State of Bihar observed,

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“ The purpose of release of youthful offenders on probation is to stop their conversion into stubborn criminals as a result of their association with hardened criminal of mature age. Modern Criminal Jurisprudence recognizes that no one is born criminal & that a good many crimes are the result of socio-economic milieu. Although not much can be done for hardened criminals, yet a considerable emphasis has been laid on bringing about reform of juveniles who are not guilty of very serious offences by preventing their association with mature criminals”

### **Advocates of the theory**

There are various advocates or supporters of this theory who view reformatory theory as the best form of punishment.

#### 1. Psychologists and physiologists

Some psychologists and physiologists believe that the criminals become criminals because of his mental status or insanity. There is no willful violation of laws, but violations occur because of the particular situation at a particular time. That is why criminals should not be punished but they should be treated for reformation. But according to them, some crimes are expressly or intentionally committed. Such crimes are not pardonable. Only in those circumstances, the offenders should be punished.

#### 2. Sociologists

On the other hands, sociologists believe that crimes occur due to inequalities in the society. Sociologists view that without improving the



economic and social condition of the people, prevention of crime cannot be thought of. If there is no poverty or high unequal distribution of income, offences such as theft, burglary, dacoity, housebreaking etc would extinguish.

In the words of Mahatma Gandhi, "Hate the sin, but not the sinner".

According to him, the offender should not be treated cruelly or virulently, but he should be treated with love and compassion. Gandhiji also used a phrase, "An eye for an eye, and soon the whole world is blind" during his satyagrah on the philosophy of non-violence. He was strictly against the ill treatment of people.

### **Criticisms of the theory**

Reformative theory of punishment is advocated by many and accepted by the society. But the theory attracts wide criticisms in various aspects. There are various jurists, academicians, law personnel, etc who do not accept this theory because of various drawbacks.

According to Justice V. R. Krishna Iyer, "Every saint has a past, every sinner has a future. The humanistic approach should not obscure our sense of realities."

There are some offenders and criminals who do not deserve to be reformed and punishment as a form of imprisonment or death penalty is the only alternative. Reformative theory can only be adopted on those people who can be reformed. There are certain people who can never be reformed; such

as hardcore criminals, serial killers, repetitive offenders etc where there is no chance of him to be reformed.

In reformatory theory, the prisoners are to be given proper infrastructure and facilities which are comfortable for the prisoners. If the prisoners are given various skills and a chance to earn money through cooking, art, etc, then the prison would become a dwelling place for them as this gives the poor a chance to remain employed and earn money. This theory is more focused on the incentives for the criminals than the prevention of crimes.

Moreover, if this theory is applied, the victim may not get a proper justice for the loss and suffering that was caused to him as the offenders are treated with love and in such a way that no difficulty or suffering is caused to him. The prisoners must not be treated as guests and luxuries should not be provided to them. They must be punished in a way which would actually seem like a punishment.

According to Justice A. P. Sen, " When a man commits a crime against the society by committing a diabolical, coldblooded, pre-planned murder of one innocent person, the brutality of which shocks the conscience of the court, he must face the consequences of his acts. Such a person forfeits his right to life. "

### **Conclusion**

The practical application of reformatory theory of punishment is acceptable only to some extent. In theory, this form of punishment is not much helpful to hardcore criminals, etc. But it is a fact that this theory has proved more

beneficial which indeed reforms the offenders and makes them a better person and can return to the society as a normal human being.