INTRODUCTION

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. ‘The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.’ Punishment has the following features:

- It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant.
- It is consequence of an offence.
- It is applied against the author of the offence.
- It’s applied by an organ of the system that made the act an offence.

According to Manu, danda was the essential characteristic of law. He urged that “punishment keeps people under control protects them and it remains awake when people are asleep. So the wise has recognised punishment itself as a form of ‘dharma’.” The concept of dharma governed Hindu life since the Vedic age, and everyone from the King down to the common man was supposed to follow it. Kautilya’s Arthashastra1 contained an elaborated account of economic, political, and legal administration in the 4th Century B.C. It describes in detail the procedure to be followed by courts for dispensation of justice, both civil and criminal. The emphasis was on rationality of punishment.

The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. Debunking the stringent theories of punishment the modern society is seen in loosening its hold on the criminals. The present scenario also witnesses the opposition of capital punishment as inhumane, though it was a major form of punishing the criminals earlier. But it may also be observed till recently the TALIBANS used quite a harsh method

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1 The Arthashastra of Kautilya consisted of fifteen chapters, 380 shlokas and 4968 sutras and death with a wide variety of subjects like civil administration, criminal and civil justice system, taxation, revenues, foreign policy, war, defence, etc.
for suppression. The law says that it does not really punish the individual but punishes the *guilty mind*.

As punishment generally is provided in Criminal Law it becomes imperative on our part to know what crime or an offence really is. Salmond’s definition of crime: “*Crime is an act deemed by law to be harmful for the society as a whole though its immediate victim may be an individual*”. He further substantiates his point of view through the following illustration *a murderer injures primarily a particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim’s family.*

Thus it becomes very important on behalf of the society to punish the offenders. Punishment can be 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. Theories of punishment, contain generally policies regarding theories of punishment namely: Deterrent, Retributive, Preventive and Reformative.

*Punishment, whether legal or divine, needs justification.* Because the justification of legal punishment has been given greater consideration by philosophers than has the justification of divine punishment by theologians, the philosophical concepts and 'theories of punishment’ (i.e. the justifications) will be used as a basis for considering divine punishment.

Many a time this punishment has been termed as a mode of social protection. The affinity of punishment with many other measures involving deprivation by the state morally recognized rights is generally evident. The justifiability of these measures in particular cases may well be controversial, but it is hardly under fire. The attempt to give punishment the same justification for punishment as for other compulsory measures imposed by the state does not necessarily involve a particular standpoint on the issues of deterrence, reform or physical incapacitation. Obviously the justification in terms of protection commits us to holding that punishment may be effective in preventing social harms through one of these methods.

It may be clearly said that the enactment of any law brings about two units in the society- the law-abiders and the law-breakers. It is purpose of these theories
of punishment to by any means transform or change these law-breakers to the group of abiders.

**Crime And Punishment**

**CRIME:** an action which constitutes a serious offence against an individual or the state and is punishable by law;

**PUNISHMENT:** Punishing or being punished, penalty inflicted on the offender;

**PUNISH:** Cause to suffer for offence, chastise, inflict penalty on offender for his crime.

One can surely observe how closely are crime and punishment related. The researcher would in this chapter precisely like to stress on this point itself.

*Crime is behaviour or action that is punishable by criminal law. A crime is a public, as opposed to a moral, wrong; it is an offence committed against (and hence punishable by) the state or the community at large. Many crimes are immoral, but not all actions considered immoral are illegal.*

In short we can understand the concept of punishment includes the following areas:

- Punishment inflicted is a feeling of uncomfortable and unpleasant circumstances.
- It is a sequel of a wrongful act
- There must be some relationship between the punishment inflicted and the crime committed.
- The punishment is a form by which a criminal is made answerable to the society.
Administration of Justice (Theories of Punishment)

With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Kenny wrote: "it cannot be said that the theories of criminal punishment current amongst our judges and legislators have assumed....".

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. If the sole purpose behind punishment is to cause physical pain to the wrongdoer, it serves little purpose. However, if punishment is such as leads him to realize the gravity of the offence committed by him, and to repent at once for it, it may be said to have achieved its desired effect.

There are many theories of concerning the justification of punishment. It is clear that the philosophy of punishment will affect the actual standards of liability laid down by the law.

In the words of Sir John Salmond,\(^2\) “The ends of criminal justice are four in number, and in respect to the purposes served by the them punishment may be distinguished as-

- Deterrents Theory
- Preventive Theory
- Reformative Theory
- Retributive Theory

Of these aspects the first is the essential and the all-important one, the others being merely accessory. Punishment before all things is deterrent, and the chief end of the law of crime is to make the evil-doer an example and a warning to all that are like-minded with him.”

- Deterrents Theory-

One of the primitive methods of punishments believes in the fact that if severe punishments were inflicted on the offender would deter him from repeating that crime. Those who commit a crime, it is assumed, derive a mental satisfaction or a feeling of enjoyment in the act. To neutralize this inclination of the mind, punishment inflicts equal quantum of suffering on the offender so

\(^2\) Salmond on Jurisprudence edited by P.J Fitzgerald, (12\(^{th}\) ed.).
that it is no longer attractive for him to carry out such committal of crimes. Pleasure and pain are two physical feelings or sensation that nature has provided to mankind, to enable him to do certain things or to desist from certain things, or to undo wrong things previously done by him. It is like providing both a powerful engine and an equally powerful brake in the automobile. Impelled by taste and good appetite, which are feelings of pleasure a man over-eats. Gluttony and surfeit make him obese and he starts suffering disease. This causes pain. He consults a doctor and thereafter starts dieting. Thus the person before eating in the same way would think twice and may not at all take that food. In social life punishment introduces the element of 'pain' to correct the excess action of a person carried out by the impulse (pleasure) of his mind. We all like very much to seize opportunities, but abhor when we face threats. But in reality pain, threat or challenges actually strengthens and purifies a man and so an organization. Thus the aim of punishment is to dissolve the conflict of interests by making every offence.

"Avail has vargain to the offender"³

"General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence, which has been, committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be only adding one evil to another."⁴

Bentham's theory was based on a hedonistic conception of man and that man as such would be deterred from crime if punishment were applied swiftly, certainly, and severely. But being aware that punishment is an evil, he says, If the evil of punishment exceeds the evil of the offence, the punishment will be unprofitable; he will have purchased exemption from one evil at the expense of another.

But in spite of all these efforts there are some lacunae in this theory. This theory is unable to deter the activity of the hardcore criminals as the pain inflicted or even the penalties are ineffective. The most mockery of this theory can be seen when the criminals return to the prisons soon after their release, that is precisely because as this theory is based on certain restrictions, these criminals are not been effected at all by these restrictions rather they tend to enjoy these restrictions more than they enjoy their freedom. This theory has been criticised on the ground that it is ineffective in cases where crime is

³ Famous words of Corne
⁴ J.Bentham, the founder of this theory.
committed under severe mental stress. In such cases to punish the wrongdoer to deter him is meaningless.

- **Preventive Theory-**

This theory aims to prevent the crime rather than avenging it. Looking at punishments from a more humane perspective it rests on the fact that the need of a punishment for a crime arises out of mere social needs i.e. while sending the criminals to the prisons the society is in turn trying to prevent the offender from doing any other crime and thus protecting the society from any anti-social elements..

Fichte in order to explain this in greater details puts forward the an illustration, - *An owner of the land puts an notice that ‘trespassers’ would be prosecuted. He does not want an actual trespasser and to have the trouble and expense of setting the law in motion against him. He hopes that the threat would render any such action unnecessary; his aim is not to punish trespass but to prevent it. But if trespass still takes place he undertakes prosecution. Thus the instrument which he devised originally consist of a general warning and not any particular convictions.*

Thus it must be quite clear now by the illustration that the law aims at providing general threats but not convictions at the beginning itself.

Thus the basic aim of this theory is not to repeat the crime the crime but this theory takes no note of criminal. It prefers to disable the wrong-doer from committing any more crime but it ignores one of the basic object of the criminal law, i.e. to reform the criminal, one an easily say that preventative theory though aiming at preventing the crime to happen in the future but it still has some aspects which are questioned by the penologists as it contains in its techniques which are quite harsh in nature. The major problem with these type of theories is that they make the criminal more violent rather than changing him to a better individual.

- **Reformative Theory-**

But that is the beginning of a new story- “the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life.”
In the above excerpt underlines the basic principle of the reformatory theory. It emphasizes on the renewal of the criminal and the beginning of a new life for him.

According to this theory crime is like a disease. This theory maintains that you can cure by killing. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society.

This theory aims at rehabilitating the offender to the norms of the society i.e. into law-abiding member. This theory condemns all kinds of corporal punishments. These aim at transforming the law-offenders in such a way that the inmates of the peno-correctional institutions can lead a life like a normal citizen. These prisons or correctional homes as they are termed humanly treat the inmates and release them as soon as they feel that they are fit to mix up with the other members of the community. The reformation generally takes place either through probation or parole as measures for reforming criminals. It looks at the seclusion of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism. Though this theory works stupendously for the correction of juveniles and first time criminals, but in the case of hardened criminals this theory may not work with the effectiveness. In these cases come the importance of the deterrence theories and the retributive theories.

- Retributive Theory-

"An eye for an eye would turn the whole world blind”

-Mahatma Gandhi

This theory is based on the rule of natural justice which is expressed by the maxim- “an eye for an eye and tooth for a tooth.”

This theory suggest that punishment is an expression of society disapprobation for the offender’s criminal act. The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory underlines the idea of vengeance and revenge rather than that of social welfare and security. Punishment of the offender provides some kind solace to the victim or to the family members of the victim of the crime, who has suffered out of the action of
the offender and prevents reprisals from them to the offender or his family. The only reason for keeping the offender in prison under unpleasant circumstances would be the vengeful pleasure of sufferer and his family. “Drama of wrong doing and its retribution has indeed been an unending fascination for human mind.” 5

Today, on the other hand, this theory is based on the idea that punishment is the necessary alkali to neutralize the evil effects of crime. The idea behind the retributive punishment is that of the restoration of the moral character, the appraisement of the disturbed conscience of society itself and the maintenance of the sovereign power of the state which becomes aggrieved when a crime is committed and inflicts punishment to set matters of right. Though the system of private revenge has been suppressed, the instincts and emotion that lay at the root of these feelings are yet present in human nature. Therefore, according to this moral satisfaction that the society obtains from punishment cannot be ignored.

On the other hand, if the criminal is treated very leniently or even in the midst of luxury, as the reformative theory would have it, the spirit of vengeance would not be satisfied and it might find its way through private vengeance. According to this theory eye for eye and tooth for tooth is deemed to be a complete and really sufficient rule of natural justice.

Thus it is concluded that this theory closely related to that of expiation as the pain inflicted compensates for the pleasure derived by the offender. Though not in anymore contention in the modern arena but its significance cannot be totally ruled out as fear still plays an important role in the minds of various first time offenders. But the researcher feels that the basis of this theory i.e. vengeance is not expected in a civilized society. This theory has been severely criticized by modern day penologists and is redundant in the present punishments.

5 Sir Walter Moberly, *The Ethics of Punishment*, (1968), § .27
Conclusion

The researcher at the end of this project finds punishment as a method of social control. He would like to summarize his understanding about the theories of punishment:

- There is an attempt to portray punishments as a method of inflicting unpleasant circumstances over the offender.
- Though certain theories like the reformative and preventive rely upon humanitarian modes of punishment, but these have a weakness against the hardcore criminals.
- Punishments such as the retributive and deterrence though the use of fear as an instrument to curb the occurrence of crime helps in controlling the criminals up to a certain extent. As these employ the idea of revenge and vengeance these are much more harsher than others.

As Mahatma Gandhi ji said- “hate the sin and not the sinner” is merely a philosophical assertion and ca not furnish a practical guide in the administration of justice.

The researcher would like to add his own views on this very controversial topic. We all know that truth is stranger than fiction and so is the practice of these theories. Though prisons are meant to be the place where the criminals would be corrected or for that case deterred from committing a wrong in the future, but the present day witnesses the prisons to have become redundant in their objective and becoming sites of breeding for hardcore criminals. This is a fact that the penologists must look into. Furthermore the techniques applied in executing the punishment are not fool proof, for e.g. the criminals are able to carry on their illegal activities even during serving the period of sentence. Though in theory all of the punishments discussed above may seem perfect if used collectively, but this all becomes a mere joke when tried to implicate in the practical sense.