

THEORIES OF PUNISHMENT IN INDIA- A BRIEF ANALYSIS

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ABSTRACT

Punishment always runs with crime and originates as private vengeance. Only the victim carries out the sentence to satisfy the feeling of revenge. Only the aggrieved person had the right to pardon the offender and no such right was vested in public authority. The purpose of punishment has been to inflict 'hurt'. Punishment is awarded to reduce crimes and maintain peace in society. It is a commonly accepted concept that theories of punishment represent the basis of legitimating for the state's criminal punishment procedures. It starts from retribution and deterrence and now it is rehabilitation of the criminals. It is very much evident that the concept of punishment is as old as mankind. Various theories of criminal behaviour or criminality have recommended justifications for imposition of punishment. The justifications for punishment are deterrence, prevention, retribution, or rehabilitation. The objective of punishment in all legal systems is the avoidance of crime in order to provide a cleaner society.

INTRODUCTION

A Punishment is an outcome of an offense. Punishments are imposed on the wrong doers with the objective to deter them to recur the same wrong doing and transform them into law-abiding citizens. The kind of punishment to be forced on the criminal is influenced by the kind of society one lives in. The endeavour of the different theories of punishments is to convert the law-breakers into law-abiders. Whereas crime denotes an unlawful act punishable by state. To constitute a crime it is essential to have an act which violates the law. The very need of punishment is to establish or maintain the supremacy of law. In every aspect law is supreme no one can break any law prevailing and if any one does so he or she will be liable for punishment. To protect society against criminals and law-breakers the law holds out threats of punishments to prospective lawbreakers and attempts to make the actual offenders suffer. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law.¹

Punishment is undoubtedly the most distinctive feature of criminal law. So, as to understand the basic purposes of punishment, and what society hopes to attain by punishing is necessary for those looking for to understand the criminal law. Criminology traditionally identifies four purposes of punishment. These are, to restrain and eliminate from society, to impose retribution for the harm done to society, to rehabilitate criminal offenders, and, to deter the individual and others in general from further crime.

As for classifications of punishment, there are either corporeal or non-corporeal. Corporeal punishments are any that are inflicted on the body, such as incarceration, thrashing, forced labour or death. Non-corporeal punishments take the form of fines, suspension or deprivation of office of civil rights, forfeitures and so on.

However with the changing times the community norms also change and individuals who are part of this civilization have to agree to this change either by way of negotiation or any other way in order to bend and make them still the element of the very same civilization. In prior

¹Administration of Criminal Justice System in India'<https://www.lawteacher.net/free-law-essays/administrative-law/administration-of-criminal-justice-law-essays.php?vref=1> accessed 3 July 2018 at 7.29 PM

years there was no criminal law in uncivilized society. Every man was liable to be attacked in his person or belongings at any time by any one. The person attacked either succumbed or overpowered his opponent. "A tooth for a tooth, an eye for an eye, a life for a life" was the prototype of criminal justice. As time changes, the injured person agreed to accept reimbursement, instead of killing his foe. Subsequently, a sliding scale came into existence for satisfying usual offences. Such a system gave birth to antiquated criminal law.

It is very much evident from the past punishment administration change is required in our criminal justice system and to adhere to recourse alternative methods of dispute resolution. However punishment has always been a problematic concept because it is able to be understood in multiple ways. There are a variety of normative theories that argue the merits of different approaches of what punishment ought to be and ought to achieve. These theories are important to consider for sentencing policy, but it is equally important to know to what extent they translate into practice.² The end of punishment or as we call it the purpose of punishment is to provide justice to those who have been the victim or innocent person. No innocent person is to be punished. Through punishment we can reform the accused and transform them to be a law abiding citizen of the country.

Punishment is to such that which makes the offender realize the magnitude of the offence committed by him, and to repent for then only it may be said to have achieved its desired effect. Punishment involves the infliction of pain or forfeiture; it is a judicial visitation with a penalty, chastisement or castigation.³ Punishment is forced by those people who have authority to do so—authority is conferred by legal canon, associational standard or social morals. Only public officials have right to punish an offender for breaking the law.

Punishment involves designedly harmful consequences that most people would wish to avoid. The unpleasant, consequences of punishment are usually preceded by a judgment of condemnation; the subject of punishment is explicitly blamed for committing a wrong.

² Esther van Ginneken, The pain and purpose of punishment: A subjective perspective available at <https://howardleague.org/wp-content/uploads/2016/04/HLWP-22-2016.pdf> accessed on 4 July 2018 at 9.34pm

³ Crime and theories of crime, http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09_chapter%204.pdf accessed on 4 Jul., 18 at 9.49pm

Thus, punishment in some cases is a practical necessity for any system in which threats of punishment are to be taken seriously; and to that extent the justification of punishment is inseparable from the justification of threats of punishment.⁴

JURISPRUDENTIAL ASPECT OF PUNISHMENT

The view of various jurists according to punishment is different. The one who has given the various theories of punishment is Salmond, according to him, “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 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.”

Bentham has pointed out in his text various point related to penal theory.

The fact that a theory of punishment does not require a theory of legality is trivial.⁵ For the supporter of a punishment theory, however, establishing this trifling point is not itself trifling. For many of those who are interested in theory of punishment, the point will in fact be a exposure. It matters to the field of punishment theory if consequentiality in punishment theory dismisses natural law jurisprudence out of hand, specifically if she then uses that dismissal as a rationale to discard an archaic theory of punishment as well. To see that discipline hypothesis and law are symmetrical to each other would have the impact of expelling this huge and fanciful requirement on the improvement of discipline hypothesis. The difficulty is that it is not clear that jurisprudence and punishment theory actually are symmetrical to one another. For one thing, the alleged subordination of punishment theory to moral theory is phony. The moral justification of punishment is only one of the standing questions that a theory of punishment addresses, if it is meant to be a comprehensive theory of punishment.⁶

Jurisprudence is focused exclusively on explaining the validity of legal norms, whereas the descriptive questions with which punishment theory is concerned ordinarily do not include the

⁴ Kent greenawalt, Punishment,74, J.Crim. L.& Criminology 347 (1983)

⁵ Kyron Huigens, The Jurisprudence of Punishment, 48 Wm. & Mary L. Rev. 1793 (2007)

⁶ Ibid

question of legal validity. Society at any step of its growth has never been free from the crisis of crime. It is unavoidable since; some violation of the prescribed code of conduct is bound to crop up. Crime in the social order is universal and is indissoluble. Lack of punishment creates a civilization which is incompetent of maintaining civil order and citizen's safety. So punishments must be forced on law violators.

Law exists to unite together the society. It is autonomous and cannot be violated with impunity. *Roscoe Pound* observes; "Law is the body of principles recognized or enforced by public and regular tribunals in the administration of justice". The most essential feature of a State is primarily two:

- War
- Administration of Justice

According to *Salmond*, the administration of justice implies the safeguarding of right within a political society by means of the physical force. It is a modern and sophisticated substitute for the primitive practice of private vengeance and violent self-help.

H.L.A Hart with *Mr. Bean* and *Professor Flew* have defined "punishment" in terms of five elements:

- It must entail pain or other outcome normally considered unpleasant.
- It must be for an offence against lawful rules.
- It must be deliberately administered by human beings other than the wrongdoer.
- It must be definite or supposed offender for his felony.
- It must be imposed and administered by an authority constituted by a legal system against which the felony is committed.

In view of *Dr. W.C. Reckless*, "It is the redress that Commonwealth takes against an offending member." Punishment according to *West Mark* 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.”⁷ According to *Greenhut*, three components must be there “if punishment is to act as reasonable means of checking crime.”

- 1) Speedy and inevitable discovery and prosecution must convince the offender that crime does not pay.
- 2) After Punishment, the wrongdoer must have “a fair chance of a fresh start”.
- 3) “The State which claims the right of punishment must sustain bigger values which offender can reasonably be expected to acknowledge.”

Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory of punishment seeks to punish offender to dampen, or "deter," future wrongdoing. The retributive theory seeks to punish wrong doers because they deserve to be punished.

Under the utilitarian philosophy, laws should be used to maximize the cheerfulness of society. Because crime and punishment are incompatible with happiness, they should be kept to a bare minimum. Utilitarian’s understand that a crime-free society does not exist, but they attempt to inflict only as much punishment as is required to prevent future crimes.

The utilitarian theory is "consequentialist" in nature. It recognizes that punishment has consequences for both the wrong doer and society and holds that the total good produced by the punishment should exceed the total evil. In other words, punishment should not be infinite.

Rehabilitation is another utilitarian underlying principle for punishment. The aim of rehabilitation is to prevent future crime by giving offender the ability to succeed within the limitations of the law. Rehabilitative measures for criminal offenders usually include treatment for affliction such as mental illness, chemical dependence, and chronic violent behaviour.

The retributive theory focuses on the crime itself as the reason for daunting punishment. Where the utilitarian theory looks forward by basing punishment on societal benefits, the retributive theory looks backward at the disobedience as the basis for punishment.

⁷ Tanu priya, reformatory theory of punishment, <https://www.lawctopus.com/academike/reformatory-theory-of-punishment/> last accessed on 16 July 2018 at 2.52pm

A third chief underlying principle for punishment is denunciation. Under the denunciation theory, punishment should be an expression of societal condemnation. The denunciation theory is a cross of utilitarianism and retribution. It is utilitarian because the prospect of being publicly denounced serves as a deterrent. Denunciation is likewise retributive because it promotes the idea that offenders deserve to be punished.⁸

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....".⁹

According to Taylor, "a herd of wolves is quieter and more at one than so many men, unless they all had one reason in them, or having one power on them."¹⁰

In the words of *Sir John Salmond*, "the end of criminal justice are four in number, and in respect to the purposes served by the punishment can be divided as" –

1. Deterrent theory
2. Retributive theory
3. Preventive theory
4. Reformatory theory
5. Expiatory theory

⁸Punishment- theories of punishment, <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html> last accessed on 16th July 2018 at 3.24pm

⁹ Rishabh raj, jurisprudence- theories of punishment, <http://www.quadlegal.in/jurisprudence%20theories%20of%20punishment.pdf> last accessed on 16 July 2018 at 3.30pm

¹⁰ Shikha Mishra, theories of punishment- a philosophical aspect, *IJIR*, 2, 2016, <https://www.onlinejournal.in/IJIRV2I8/014.pdf>, last accessed on July 16, 2018 at 3.55pm

DETERRENT THEORY

The act that takes away the power of committing injury is called incapacitation, is in the shape of remedy operated by the apprehension should be the aim of punishment which is called deterrent theory. Bentham went to the level of scanty the criminal's power of doing injury by awarding death sentences. Bentham treats the committed offences as an act of past, that should be used as opportunity of punishing the offenders in such a way that the future offences could be prevented¹¹

Glanville Williams says deterrence is the only ultimate object of punishment. "Punishment (sanction) is before all things deterrent, and the chief end of the law of crime is to make the evildoer an example and warning to all that are like minded with him." This kind of threat is commonly described as 'specific' or 'individual' deterrence.¹²

Specific deterrence works in two ways. First, a lawbreaker would be put in prison to avert him from committing another offence for precise period. Second, this incapacitation is considered to be so disagreeable that it will dampen the other lawbreaker from repeating his criminal behaviour. When individual deterrence is used as means to send message across community is called general deterrence. The higher percentage of criminals being trapped and punished would augment the credibility of sanctions.

Deterrence theorists believe that if punishment is severe, certain, and swift, a rational person will measure the gains and losses before engaging in crime and will be deterred from violating the law if the loss is greater than the gain.¹³

This theory was the foundation of punishment in England in medieval times. In India also, Manu, the immense Hindu law-giver, has said that penalty keeps the folks under control, penalty protects them, penalty remains awake when individuals are asleep, so the wise have regarded punishment as basis of righteousness.

¹¹ S.G. Goudappanavar, critical analysis of theories of punishment, <http://jsslawcollege.in/wp-content/uploads/2013/05/CRITICAL-ANALYSIS-OF-THEORIES-OF-PUNISHMENT1.pdf> last accessed on 18 July 2018 at 1.40pm

¹² Supra note 11

¹³ Ihekwoaba D. Onwudive, jonathan odo etc., deterrence theory, <https://marisluste.files.wordpress.com/2010/11/deterrence-theory.pdf> last accessed on 18 Jul., 18 at 2.02 pm

UTILITY OF DETERRENT THEORY

Imprisonment as deterrent factor may provide momentary relief as long as offender is inside the prison because purpose of crime cannot be destructed by fear factor. Sanction as pain some time produces ironical results. It is contemplated that punishment would deter criminals; in reality it hardens the offender because once criminals accustomed with punishment, and deterrence loses its force on such criminals. Under these circumstances, reliance on rehabilitation and prison reformation would give enhanced result. The most effectual deterrent punishment is death sentences, whereas imprisonment has not only deterrent value but reformative also. The strongest criticism against deterrent is that it has been unsuccessful in reducing crimes. Bentham justifies death sentences in extraordinary occasions like civil wars.¹⁴ When life itself is at peril, any threat of lesser sanction and confinement is improbable to have any huge impact on the soldier tempted to save his life by deserting the battle of war field.

RETRIBUTIVE THEORY

The essence of the retributive theory of punishment has been well described by Professor Hart “This older conception of punishment is sharply distinguished from mere social hygiene: it does not make primary, as modern thought does, the reduction of crime or the protection of society from the criminal; instead it makes primary the meting out to a responsible wrongdoer of his just deserts.”¹⁵

Retributive theory is established on rights, desert and justice. The responsible deserve to be punished, and no moral contemplation relevant to punishment outweighs the offender’s criminal desert is the values of retributive theory. Retributive theory replaces private punishment by institutionalising punishment on the configuration of law and state in organized manner.

¹⁴ *Supra* note 12 at 9

¹⁵ Punishment and the Elimination of Responsibility, Athlone Press, 1962, p. 1.

<https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1964.tb02242.x> last accessed on 18 Jul., 18 at 2.47 pm

All variation of retributivism most usually adheres to the principle of *lex talionis*, “eye for an eye, and tooth for a tooth”. *Lax talionis* says that one should be punished exactly to the extent that one harmed the victim. According to Hegel, punishment ‘annuls’ the crime. It aims at restoring the social balance disturbed by the offender.¹⁶ The criminal should accept as much pain and sufferings as inflicted by him on his victim. For *Immanuel Kant*, human being is free man, and enjoys rights in the legal system based on the decorum of humanity. When any person interferes with another’s right, he forfeits and gives up his own right and submits him to others intrusion in his life as rightful.

Retribution is not cruel or barbaric because it treats a criminal with dignity. It gives him a chance to compensate his crime by suffering. The doctrine of desert, fairness, and proportionality eliminate cruel, barbaric, and uncivilized punishment of vengeance theory. Retributive theory puts considerable limitation on punishment. When the law and State inflict harm on the wrong-doer in reasonable manner, how retributive theory is called reflection of vengeance theory. Law condemns the act of offender by giving punishment, if incidentally that fulfils the vengeance of sufferer of crime, the retributive theory cannot be criticized for that because they never claimed it.

UTILITY OF RETRIBUTIVE THEORY

The retributive theory propagates human being belief that justice is mainly essential for satisfying legal order in society. The prime feature that attracts us to retributivism over the utilitarian rationalization for punishment is that retributivism ties punishment to what the individual deserves, thereby avoiding the trouble of over-punishing, under-punishing, and punishing the innocent. However, quite a few challenges to a strictly retributivist theory of punishment arise. Reasonable people cannot (and do not) believe that every person should lie, steal, and murder so these actions are erroneous. This is where retributive punishment comes in as it serves to give them what they seem to be asking for—execution. Retributive claims for punishment can arise not only when a harm to others has been committed (the standard case)

¹⁶ *Supra* note 10

but also when someone violates the “minimal standards of decency and consideration for others.”¹⁷

PREVENTIVE THEORY

The real objective of the penal law is to build the threat generally known rather than putting it occasionally into execution. This certainly makes the preventive theory more realistic and gives it human touch. In England, utilitarian's as *Bentham, Stuart Mill and Austin* supported preventive theory because of its improving influence on criminal law. The profounder of this theory held that the aim of punishment is to avert the offences. The offences can be prevented when the wrongdoer and his notorious deeds are checked. The check is feasible by disablement. The disablement may be of different type. To keep inside the jail is the restricted form of disablement. It suggests that prisonisation is the best mode of crime prevention as it seeks to eradicate offenders from society thus disabling them from repeating crime. The death sentence is also based on this theory. This theory is another type of deterrent theory. One is to deter the wrongdoer while another is to prevent him from committing the crime.

The preventive mode of punishment works by stimulating all prospective wrong-doers with the fear of punishment, by disabling the criminal from immediately committing any crime; and by transforming the criminal, by a process of reformation and re-education, so that he would not execute crime again. The effect of preventive theory much depends upon promptness and fraction factors. The delay in inquires or investigation by the public authority makes sanction unproductive. The efficiency of sanction is supplementary scaled down as courts grants bail to accused on the ground that accused supposed to be innocent until guilt is proved. There is substantial dispute, as to who should be controlled and how long. Confinement should engross the least restraint needed to furnish rational protection against crime. The bare truth is that protection can never be absolute. Certain amount of crime is inevitable and community must take chance against them. Incapacitation affects capability and an opportunity to commit

¹⁷ Punishment- retribution, rehabilitation and deterrence, <http://web.uncg.edu/dcl/courses/viceCrime/pdf/m7.pdf> last accessed on 18 July 2018 at 3.13 pm

criminal act, but has no influence on emotional and criminal objective and expectation of profit. Therefore, incapacitation is being transitory than permanent.

REFORMATIVE THEORY

The essence of reformative theory lies on “An eye for an eye will turn the whole world blind” – Mahatma Gandhi, this line by MK Gandhi. In prehistoric time punishment used to be very ruthless but later with time people started to think about accuse person’s rights also. The very fundamental purpose of this theory is to reform/rehabilitate the offenders into law abiding citizen. According to this theory, crime is interrelated with the existing psychological or physical description of the offenders and with the environment and circumstance of the society.

This approach discards the deterrence and retributive elements of punishments and effortlessly advocates reformative approach on uncomplicated idea that, ‘we must cure our criminal, not kill them’. The reformative theory is reaction to the deterrent theory, which has failed to take into consideration of the welfare of criminal.¹⁸ The purpose of punishment has been considerably under the process of changes from the last centuries because of the Welfare State concept. Reformist looks at sanction as tool of rehabilitation and try to mould the behaviour of criminal on the place that criminal is not born but made by the environment of society. The motive behind the offences must be examined there should be a way so that offender could go back to main stream. Reformation requires combination of too many disciplines and their effort has failed to deliver goods yet hunt is on for right combination to make theory productive. Reform in the deterrent sense implied that through being punished the criminal accepted his guilt and wished to change. But, although this is definitely one aspect of rehabilitation, as a theory rehabilitation is more generally associated with treatment of the offender.¹⁹

Reformative theory emerged of such optimistic thinking. According to this theory the object of punishment should be the reformation of the criminal. This is not practically a punishment,

¹⁸ P.J Fitzgerald, Salmond on Jurisprudence, 12th Ed., Universal Law Publishing Co Pvt, 2008). p.95

¹⁹ Mohd. Imran, theories of punishment with special reference to preventive and reformative theories, IJSARD 3, 85 , <http://ijsard.org/wp-content/uploads/2017/05/THEORIES-OF-PUNISHMENT-WITH-SPECIAL-REFERENCE-TO-PREVENTIVE-REFORMATIVE-THEORIES-By-Mohd-Imran-Compilation-volume-3-issue-2.pdf> accessed on 18 July 2018 at 4.09 pm

but a mere rehabilitative process. It aims at making the offenders as far as possible a better citizen by means of moral and ethical guidance that is teaching him to go straight as an upright man and meaningful citizen.

The classical theory recommended that reformation would take place if adequate pain were inflicted on the offender. A second method intended to change criminals was meditation, usually enforced by isolation: for some it may work, but in general this procedure has not been effective. Third method was improving by sermons in the name of God, mother, country etc., Fourth method was asking the criminal to sign a vow or in some other way make resolutions to live a law abiding life. Fifth method of reformation was perfunctory habituation, produced by various punitive regimes including hard and monotonous work in the prison and rigid prison discipline.

The present century researches in the area of criminal science brought about a drastic change; the new approach focused better attention on the individual who committed offence rather than the crime itself. The five methods explained were also meant for reformation of the offender. But, the difference between past century approach and present century approach is that in the past century reformation was taken up on the mass level, and in the present century every individual is treated independently and attended to individually. The present day reformists advocate that concerned, tactful and loving treatment of the offender would bring a revolutionary change in them.

Salmond criticizes this theory by observing that if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual and moral training, prisons must be turned into comfortable dwelling places.²⁰ However, he observes that reformatory element must not be overlooked but neither must it be allowed to assume undue importance.

EXPIATORY THEORY

Expiatory theory states that compensation is awarded to the victim from the wrong doer, awarding compensation from the accused though accused is not physically punished. He is

²⁰ Ibid

punished economically and compensation is awarded to the victim or family members of victim. The purpose of this theory is that the victim is not taken into consideration. The present criminal justice system aims at punishing only the criminals. The courts are not in a position to point out the grievances of the victim or his family members.

The objective of this theory is “to pay for the sin committed”. Now-a-days this theory has become close to Retributive. “On this view, crime is done away with, cancelled, blotted out or expiated by the sufferings of its appointed penalty. To suffer punishment is a debt due to the law that has been violated. Guilt plus punishment is equal to innocence”.²¹ The concept behind this theory is that criminal will serve the victims and their dependents to compensate the deficiency which will create the sense of repentance and cleaning of heart.

Experimentation of this theory is too expensive in terms of communal safety and security. It could not be a way out to the serious offences. It is ample to meet the less serious type offences. However it is lamentable to say that the theory is not related to any system of law. It is alleged impracticable because of being idealistic. Although, In Criminal Procedure Code, 1973 this theory is also being implemented. Section 320 of the said Act describes certain crimes which can be compoundable. The accused can negotiate with the victim by paying money or through apology.

CONCLUSION

Punishment was defined by various jurists in several ways. The consolidated meaning of all the definitions is to matter the offender to fear of pain and loss of purse. The change which will fetch in the mind set of offender due to punishment and his restricted life style will deter other like offenders not to commit any offence. The above discussed theories of punishment have their own importance. At different times each was marked by penologists, but none of them is perfect and cannot work alone. Hence, these theories are in fact corresponding to each other. A penal system needs to have all of them, the only question is that which theory is to be given more priority and in today's context. Reformatory theory seems to be the most suitable. The

²¹ *Supra* note 10

most recent and the most humane of all theories are based on the principle of reforming the legal criminals through individual treatment. Not looking to offenders as inhuman this theory puts forward the varying nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such constant theory, which would prevent the happening of further crime. Reform in the deterrent sense implicit that through being punished the criminal acknowledged his guilt and wished to change. This theory aims at rehabilitating the criminal to the norms of the society i.e. into law-abiding citizen. This theory condemns all kinds of corporal punishments. Though this theory works terrifically for the correction of juveniles and first time offenders, but in the case of a hardened criminal this theory may not work with the efficiency. According to this theory, the aim of punishment is to educate or reform the criminal himself. Punishment is inflicted upon a criminal in a manner to reform or educate him. This theory is commonly acknowledged at the present time, because it is in harmony with the humanitarian sentiments of the age.

Every theory have its own merits and demerits each theory have been criticised on various grounds, like if we talk about deterrent theory it has been criticised on the ground that excessive harshness tend to defeat his own purpose of punishment and it also proved ineffective in maintain balance or checking crimes. Hardened criminals are not afraid of punishment. Whereas retributive theory points out that punishment itself is not a remedy for the disobedience caused by the offender. It merely aggravates the mischief. Punishment itself is evil and can be justified only on the ground that it procures better result. Revenge is wild justice. Retribution is only a secondary purpose served by punishment.