


Subject: **Criminology**

Production of Courseware

 - Content for Post Graduate Courses



Paper : **Penology and Sentencing**

Module : **Reformative and Rehabilitative Theories of Punishment**



### Component - I (A) - Personal Details

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### Quadrant I- Description of the Module

Description of Module	
Subject Name	Criminology
Paper Name	Penology and Sentencing
Module Name/Title	Reformative and Rehabilitative Theories of Punishment
Module Id	Criminology/Penology & Sentencing/07
Pre-requisites	A general understanding of the primary principles of criminal law is required for a proper understanding of this module.
Objectives	<p>To have an understanding of the significance of sentencing in the criminal justice administration.</p> <p>To have an overview of the different theories of punishment such as deterrent, retributive, restorative etc.</p> <p>To have a nuanced understanding of the rehabilitative theory of punishment.</p> <p>To have an understanding of the benefits of the rehabilitative theory of punishment.</p> <p>To have an understanding of the shortcomings of the rehabilitative theory of punishment.</p>
Key Words	Sentencing, deterrence, preventive, retributive, restoration, rehabilitative approach, medicine, external factors, positivist criminology, classical criminology

## Significance of Sentencing in the Criminal Justice System

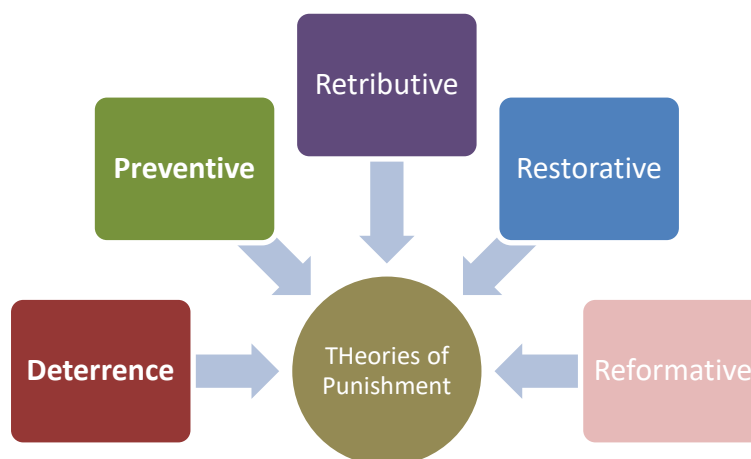
At the core of criminal justice system is the idea of imposing a sanction on a person for wrongs committed by such person. This imposition of sanction is the culmination of the judicial process concerning the commission of a crime. However, the legal process concerning the criminal does not end simply end with the imposition of a sanction. The law must deal with a greater question; what is sought to be achieved through the imposition of a sanction? Whatever may be the answer to this question, the state must make preparation to ensure creation of circumstances in which the aim behind imposition of a sanction can be reasonably achieved.

Ultimately, a punishment is but the imposition of a certain sanction with the intention to obtain certain desired or intended effects, either at a personal level or at a social level. Thus, it is necessary to have a clear ideological foundation in terms of the objectives which are sought to be achieved through the imposition of the punishment. Having a clear ideology behind the objectives sought to be achieved allows the state to formulate specific and appropriate measures to achieve such objectives. It also provides the state with the opportunity to periodically assess the effectiveness of its punitive scheme.

It is in this context that different theories of punishment have evolved. Each theory of punishment is based on a prioritised ideological orientation. Before we discuss the nuances of the Reformatory and Rehabilitative Theory of Punishment, it will be instructive to have a brief understanding of some of the other prominent theories of punishment.

The other prominent theories of punishment can be discussed under the following classifications;

1. Deterrence Theory of Punishment
2. Preventive Theory of Punishment
3. Retributive Theory of Punishment
4. Restorative Theory of Punishment





## **Deterrence Theory of Punishment**

The deterrence theory of punishment is premised on dissuading the commission of crime by imposition of punishment. The targeted dissuasion operates at two levels. (McNeil, 2012) Firstly, the punishment is intended to deter the person who is being punished from indulging in any kind of criminal conduct in future. Secondly, the punishment imposed on an offending individual is also expected to deter people in general from engaging in any kind of criminal conduct. This theory is founded on creating the fear of punishment as the modality to discourage people from engaging in criminal conduct. (McNeil, 2012)

## **Preventive Theory of Punishment**

The main emphasis of the preventive theory of punishment is to ensure that the offending individual is prevented from committing any crime in future. The same is achieved by imposing such punishment which incapacitates the offending individual from perpetrating any crime in future. (McNeil, 2012) Thus, a person found guilty of committing fraud in the trading market may be disqualified from engaging in any kind of trading activities. A person driving under the influence of alcohol may be denied the permission to drive. At an extreme end, the punishments may also range from severance of limb to death penalty. It differs from the deterrence theory in as much as it focuses on the particular individual who has committed a crime and not on the society in general. This theory is fixated on the incapacitation of the individual who has already committed an offence on the premise that it is likely that the said individual will again engage in criminal conduct and thus must be stopped from doing so.

## **Retributive Theory of Punishment**

The retributive theory of punishment is centred on the idea of revenge. So the person who commits a crime is given such punishment which serves as a revenge for the victim or the near and dear ones of the victim. The purpose of this theory of punishment is to make the criminal suffer for his wrongdoing. Here the purpose of the punishment is deeply personalised and revolves around the psychological outlet of the victim or his family.

## **Restorative Theory of Punishment**

Like the retributive theory of punishment, the restorative theory of punishment is also a victim-centric approach but rather than focusing on retribution, it focuses on providing a restorative outlet for the victim. (McNeil, 2012) It seeks to heal the conflict between the offender and the victim. This theory incorporates techniques of punishment which are primarily socially integrative in nature.

## **Reformatory and Rehabilitative Theory of Punishment**



Like the deterrence theory and the preventive theory, the Reformatory and Rehabilitative theory of punishment is also focused on ensuring that the guilty person does not engage in criminal conduct in future. In the deterrence theory, this result is sought to be achieved by the modality of fear of punishment. Thus, individuals who are inclined towards criminal conduct are expected to refrain due to the fear of the punishment which is likely to be imposed on them as a consequence of their crime. The preventive theory of punishment seeks to achieve this result by putting the wrongdoer in a position where he no longer has the capacity to commit such a crime. Thus, both the above theories seek to counter a person's inclination to commit a crime. On the other hand, the reformatory and rehabilitative theory of punishment seeks to neutralise the very desire to commit crimes. The deterrence or preventive theories of punishment are not concerned with whether the concerned individual wants to commit a crime or not. These theories seek to create an environment where the individual would not commit the crime even if he wants to either because of fear or because of incapacity. However, in the reformatory and rehabilitative theory of punishment, the focus is on reforming the wrongdoer so that he does not want to commit crimes any longer. While the deterrence theory seeks to influence the motive of a person, the reformatory theory seeks to influence the character of a person. (Crime and Theories of Punishment, n.d.)

In the reformation and rehabilitative theory of punishment, the focus is on the criminal and not on the crime. This theory treats the offending individual as a person who requires help in order to change his inclination towards criminal conduct. Thus, this theory considers the propensity to commit crimes as an affliction which can be treated. (Crime and Theories of Punishment, n.d.) Thus, the focus is on imposing such punishment which would bring about attitudinal and behavioural changes in the concerned individual. This is achieved through the educational components inherent in the punitive measures. While there are relational similarities in the manifestations of reformatory theory and deterrent theory, there are striking differences in their approach. In the deterrent theory of punishment, other than imprisonment, other forms of punishment such as whipping, death penalty, fine etc are also incorporated into the punitive scheme. However, in the reformatory theory, the only form of permissible punishment is imprisonment or probation.

Rehabilitative punishments are a reflection of same consequentialist philosophy which serves as the foundation of both deterrence and preventive theory. (Robinson & Crow, 2009, 6-8) Consequentialist philosophy seeks to justify the punishment being imposed by the courts in terms of the desirability of future consequences which the punishment is going to lead to. (Robinson & Crow, 2009, 6-8) Rehabilitative theory differs from deterrence and preventive theory in terms of the qualitative nature of the future consequences intended by rehabilitative punishments.

For punishment to have such curative effect, the reformatory theory mandates a more hospitable prison environment. (Crime and Theories of Punishment, n.d.) Provision for vocational or technical training of the offender during the period of imprisonment is essential to the idea of reform and rehabilitation. Educational opportunities and appropriate psychological counselling, facility to maintain links with the family and the community during the period of imprisonment are also considered as essential aspects of a rehabilitative



approach towards punishment. Proponents of the reformatory theory denounce any mode of punishment which is degrading or which does not have a positive influence on the character of a person. Punishment is perceived as a medicinal instrument which is supposed to bring about a change in the personality and character of the offender. (Crime and Theories of Punishment, n.d.)

### **Meaning of Rehabilitation**

In its essence the concept of rehabilitation which is also expressed through multiple associated expressions such as reformation, reintegration, resettlement etc refers to the idea of the person returning to an earlier favourable state. In its conceptual construct, the rehabilitative theory of punishment is similar to the rehabilitation of an individual from a physical injury. (Robinson & Crow, 2009, 6-8) Rehabilitation from physical injury refers to the individual regaining the physical self prior to sustaining the injury. The idea of rehabilitation conceives the injury as an external intervention to an otherwise normal physical state and seeks to rid the body of the said intervention. Similarly, the rehabilitative theory of punishment conceptualises criminal conduct as an aberration to the otherwise normal behaviour of an individual. The theory is premised on the understanding that prior to engaging in criminal conduct, the offender was otherwise a law-abiding individual. (Robinson & Crow, 2009, 6-8) The punishment meted out under the rehabilitation theory is oriented to ensure that the individual gets back to his law-abiding self. The idea behind any punishment which is imposed under the rehabilitative theory of punishment is to ensure that the concerned individual resumes his position as a regular member of the society. (Robinson & Crow, 2009, 6-8)

This resumption of life as a regular member of the society can also be marked by a deletion of the criminal records of the concerned individual. Such an approach is reflected in the Rehabilitation of Offenders Act, 1974 in England. The said statute was enacted in recognition of the stigma which is associated with a criminal record and the problems a criminal record creates in a rehabilitated person seeking a lawful employment. (Robinson & Crow, 2009, 6-8) Under the said Act, majority of the old convictions are wiped off the records as irrelevant to ensure a successful social rehabilitation of the offender.

It is important to note that the rehabilitative approach to punishment is not confined only to facilitate the individual to resume his former self. It also encapsulates the objective of improving the former self of the concerned individual. Thus, rehabilitation is not merely about regaining the status quo prior to the criminal conduct but also about improving on the status quo. Thus, the effort is not only to enable the individual to become the person he was before indulging in criminal conduct but also to become a better individual than he was before engaging in criminal conduct. (Robinson & Crow, 2009, 6-8)

### **Theoretical Foundations of Rehabilitative Approach**

The foundations of the rehabilitative theory of punishment can be traced in the positivist criminological approaches. Unlike the classical tradition of criminology which views an individual as a rational being and as responsible for the choices he makes, the positivist



criminological approach is based on the idea that the offender is a passive being whose actions are influenced by factors beyond his control. (Robinson & Crow, 2009, 6-8) As per this approach, the offender has negligible or no responsibility in relation to his criminal conduct. Less extreme versions of the positivist model stress that though the actions of an individual are not entirely controlled by external factors, his capacity to take decisions is substantially affected by factors beyond his control. (Robinson & Crow, 2009, 6-8) As the positivist model considers the actions of an individual to be influenced by externalities, the rehabilitative perspective on punishment seeks to neutralise such externalities. In this perspective, the offender is also considered as a victim who must be provided appropriate help and treatment to escape the affliction which affects him. When we accept that external factors which the society failed to address such as poverty, discrimination etc. have caused an offending behaviour in an individual, adopting a rehabilitative approach appears not only as a desirable ideal but an obligation of the society towards the offending individual. (Robinson & Crow, 2009, 6-8) The approach of rehabilitative punishments can also gain strength from the utilitarian philosophy of 'greatest happiness for the greatest number'. (Robinson & Crow, 2009, 6-8) Transforming criminals into law abiding citizens provides a greater value addition to the society in general. Such transformation provides greater qualitative augmentation to the society in comparison the scenario where individuals desist from committing crimes only due to fear or incapacitation. In the case of rehabilitation, the participation of the individual towards the betterment of the societal life would obviously be greater.

### **Shortcomings of the Rehabilitative Approach**

A lenient approach towards punishment may not have any effect on people in terms of dissuading them from committing crimes. The reformatory theory is far too individualistic in approach without taking into consideration the wider impact of the punitive scheme on people at large in the society. When a person is assured of a sympathetic treatment from the legal mechanism in case he commits an offence, the propensity to commit offences does not suffer from any strong dissuasion. Another major criticism of the rehabilitative approach to punishments is the highly subjective nature of individualised punishments and the resulting inequity in sentencing outcomes.

An excessive obsession with the reformatory theory is as counter-productive as a dismissive disregard for it. While incorporating reformatory elements within the punitive scheme of the criminal justice system is indeed desirable, to make the same the sole purpose of the punitive scheme would be both impractical and undesirable. Reformatory theory of punishment is much more relevant in the context of young offenders and first time offenders where the chances of reformation are better. (Crime and Theories of Punishment, n.d.) On the other hand, adopting a reformatory approach in relation to habitual offenders is not likely to be a logical approach. (Crime and Theories of Punishment, n.d.) In relation to individuals for whom criminal conduct is not simply a weakness but a compulsive obsession, reformation in character is mostly an unrealistic expectation. An ideal sentencing framework must incorporate a balance of deterrent and rehabilitative elements in its punitive scheme to deal with the variety of offenders.



## Summary

1. This imposition of sanction is the culmination of the judicial process concerning the commission of a crime. However, the legal process concerning the criminal does not end simply end with the imposition of a sanction. The law must deal with a greater question; what is sought to be achieved through the imposition of a sanction?
2. Ultimately, a punishment is but the imposition of a certain sanction with the intention to obtain certain desired or intended effects, either at a personal level or at a social level. Thus, it is necessary to have a clear ideological foundation in terms of the objectives which are sought to be achieved through the imposition of the punishment. Having a clear ideology behind the objectives sought to be achieved allows the state to formulate specific and appropriate measures to achieve such objectives.
3. The deterrence theory of punishment is premised on dissuading the commission of crime by imposition of punishment. The targeted dissuasion operates at two levels. Firstly, the punishment is intended to deter the person who is being punished from indulging in any kind of criminal conduct in future. Secondly, the punishment imposed on an offending individual is also expected to deter people in general from engaging in any kind of criminal conduct.
4. The main emphasis of the preventive theory of punishment is to ensure that the offending individual is prevented from committing any crime in future. The same is achieved by imposing such punishment which incapacitates the offending individual from perpetrating any crime in future.
5. The retributive theory of punishment is centred on the idea of revenge. So the person who commits a crime is given such punishment which serves as a revenge for the victim or the near and dear ones of the victim.
6. Like the retributive theory of punishment, the restorative theory of punishment is also a victim-centric approach but rather than focusing on retribution, it focuses on providing a restorative outlet for the victim. It seeks to heal the conflict between the offender and the victim.
7. In the reformation and rehabilitative theory of punishment, the focus is on the criminal and not on the crime. This theory treats the offending individual as a person who requires help in order to change his inclination towards criminal conduct. Thus, this theory considers the propensity to commit crimes as an affliction which can be treated.
8. For punishment to have such curative effect, the reformatory theory mandates a more hospitable prison environment. Provision for vocational or technical training of the offender during the period of imprisonment is essential to the idea of reform and rehabilitation. Educational opportunities and appropriate psychological counselling, facility to maintain links with the family and the community during the period of imprisonment are also considered as essential aspects of a rehabilitative approach towards punishment.
9. The punishment meted out under the rehabilitation theory is oriented to ensure that the individual gets back to his law-abiding self. The idea behind any punishment which is imposed under the rehabilitative theory of punishment is to ensure that the concerned individual resumes his position as a regular member of the society.





10. It is important to note that the rehabilitative approach to punishment is not confined only to facilitate the individual to resume his former self. It also encapsulates the objective of improving the former self of the concerned individual.
11. When we accept that external factors which the society failed to address such as poverty, discrimination etc. have caused an offending behaviour in an individual, adopting a rehabilitative approach appears not only as a desirable ideal but an obligation of the society towards the offending individual.
12. When a person is assured of a sympathetic treatment from the legal mechanism in case he commits an offence, the propensity to commit offences does not suffer from any strong dissuasion.
13. An excessive obsession with the reformatory theory is as counter-productive as a dismissive disregard for it. While incorporating reformatory elements within the punitive scheme of the criminal justice system is indeed desirable, to make the same the sole purpose of the punitive scheme would be both impractical and undesirable.

## References

1. F. McNeill (2012). When Punishment is Rehabilitation[PDF]. Retrieved from <http://blogs.iriss.org.uk/discoveringdesistance/files/2012/06/McNeill-When-PisR.pdf>
2. Crime and Theories of Punishment [PDF]. Retrieved from [http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09_chapter%204.pdf)
3. G.Robinson & I. Crow (2009), Offender Rehabilitation Theory Research & Practice