



## **STUDY ON ACCOUNT OF REFORMATIVE THEORY IN INDIA**

---

**Dr. Harish Kumar Sharma**

Associate Professor

Deptt. of Law

D. S. College, Aligarh

---

### **ABSTRACT**

Criminal law is the branch of law that is most closely associated with or affects a person's daily life out of all the branches of law. Alternatively, crime could be defined as the commission of crimes that are prohibited by penal law, with criminals defined as those who commit such acts. The penalization system is a vital aspect of criminal justice as well as the maintenance of Social Security benefits and protection. The advancement of civilization has resulted in a shift in the idea, technique, and motivation behind penalization.

Punishment can be used to reduce the prevalence of criminal behavior in a number of ways, including deterring potential offenders, crippling them and preventing them from committing the same crime again, or rehabilitating them into law-abiding citizens. As a result, theories of punishment are comprised of policies pertaining to the treatment of crime and convicts. They can be divided into four categories. All of these aren't mutually exclusive, and each of them is extremely crucial in dealing with potential offenders at their various stages. Theory of punishment can be divided into four categories: retributive theories, deterrent theories, preventive theories, and reformative theories. This paper is concerned with reformative theory and critically examines the current situation in India, among other things.

**KEYWORDS:** *Crime, Reforms, Punishment, Imprisonment*

### **1. INTRODUCTION**

In order to maintain social cohesion, it is necessary to engage in the practice of penalization. The rule of law is one of the most important pillars of the state. It is necessary to use punishment in order to administer justice, and it is the responsibility of the state to provide its citizens with a peaceful environment. Because of the passage of time, the penalization systems have seen a slew of transformations and modifications of varying degrees of severity. According to reformative theory, the goal of penalization should be the reformation of the criminal, which should be accomplished

through the technique of individualization. Under certain situations, the bad guy may be able to commit a criminal offence that will never happen again. Because of this, efforts should be made to reform him during the duration of his sentence. The goal of penalization should be to bring about the ethical reformation of the person who has done wrong. During his imprisonment, he should be taught and instructed in some art or trade so that when he is released from prison, he would be able to restart his life all over again. When determining the appropriate sentence, the judge should take into consideration the character and age of the culprit, his education and upbringing, the circumstances in which he committed the crime, and other relevant criteria. The purpose of doing so is to familiarize the judge with the specific nature of the facts in order for him to impose a penalty that is appropriate in the circumstances.

The reformative or restorative theory of punishment places a strong emphasis on the reformation of criminals through the use of individuality as a technique of punishment. According to this view, when deciding on a sentence, the court must take into consideration a variety of social elements that are relevant to the offender. They include, among other things, the offender's age, his or her personality traits, the crime that was committed, and the conditions in which the crime was committed. In this approach, the ultimate goal is the reintegration of the criminal into society as a law-abiding member of society. As a result, punishment is not considered a goal in itself, but rather a means to an end. The reformative philosophy of punishment is most commonly employed in the instances of juvenile delinquents, first-time offenders, and female criminals.

### **1.1 REFORMATIVE THEORY**

“Punishment the aim of which is to alter the character of the wrongdoer.” (Bryan)

According to Roman jurisprudence, penalization should not be carried out solely for the sake of punishment, but rather for the purpose of reform. The introduction of a new theory known as reformative theory around the 18th century was prompted by the failure of the retributive, deterrent, and preventive theories to bring crime levels down in society. Reformative theory was concerned with the criminal rather than the crime itself, and it sought to bring about a shift in the wrongdoer's point of view in order to rehabilitate him or her as a law-abiding member of society as a result. In accordance with this view, crime is associated with the prevalent psychological or physical features of the perpetrators, as well as with the surrounding environment and social circumstances.

As a result, the offender is treated as if he were a patient. As a result, penalization is not employed as a means of reclaiming the wrongdoer or harassing or torturing him or her any longer. Punishment is only marginally justifiable if the punishment is directed at the future rather than the past. It should not be regarded as creating a new account, but rather as creating a completely new one. The goal of

imprisonment should not be to analyze and remove individuals from society, but rather to effect a change in their mental orientation through effective methods implemented during the course of their sentence.

It thinks that treating offenders with compassion, tact, and affection will result in a revolutionary shift in their personalities. According to this view, crimes are sometimes perpetrated as a result of a conflict between the criminal's character and his or her motivation. Theoretical Theories of Punishment (Theoretical Theories of Punishment, n.d.) The fact that one can commit a crime either because the temptation of the motive is stronger or because the restraint required by the character is weaker should be taken into consideration. Penalization, according to reformatory thought, should be used as a curative rather than a deterrent. As a result of the adoption of this notion, crime is seen as a disease that can only be treated via the use of lethal injections rather than through the use of treatment and the process of reformation.

## **2. STATUS OF REFORMATORY THEORY IN INDIA**

Crime may be considered a universal truth, and society would never be able to escape from it because crime is an unavoidable condition of life. It is intended to target the basic philosophy of rehabilitation of criminal offenders and also to rework the concept of punishment as a concept of change of the person as well as the behavioral elements, the inner well-being as well as the outward well-being in our country. According to Mahatma Gandhi once said (An eye for an eye leaves everyone blind can employing reformatory theory heal the current crime rate and polish the punishment system in India, n.d.) Hate the sin, but not the person who committed it. The most important focus of reformist thought is the rehabilitation of inmates in criminal institutions in order for them to be changed into law-abiding citizens after they have served their sentences. It spends a significant amount of attention on the human treatment of convicts within the prison; they must be educated adequately, educated and trained to regulate themselves to traditional life within the community after they are released from a correctional facility. This goal is also realized through the use of parole and probation programmes, which are widely recognized as cutting-edge strategies for rehabilitating criminal offenders all around the world. Modern social control techniques, such as probation, parole, indeterminate sentences, admonition, and forgiveness, are primarily designed for the treatment of offenders based on their psychological characteristics. These techniques include:

(i) Probation,

(ii) Parole,

(iii) Indeterminate sentence,

(iv) Admonition and

(v) Pardon.

In criminology, reformatory theory is a substantiated theory that states that anyone committing the wrong or going against the state is motivated by a variety of factors such as every physiological defect, factors of social pressure, poverty, psychological breakdowns, and a variety of alternative factors that usually remain unnoticed. (An eye for an eye leaves everyone blind can employing reformatory theory heal the current crime rate and polish the punishment system in India, n.d.) Reformatory Theory proposes that patterns such as community services, counseling, rehabilitation programmes, therapy sessions, and a variety of alternative tactics are all beneficial to the individual. Only in the cases of juvenile delinquency, first-time offenders, and female offenders have reformatory tactics proven to be effective. Sex psychopaths, on the other hand, appear to respond favorably to the reformatory approach to social control. Moreover, in recent years, reformatory theory has become increasingly popular as a method of treating mentally challenged offenders. Therapeutic jurisprudence is the phrase used to describe the current trend of treating the wrongdoer rather than punishing him.

### **3. OBJECTIVE OF THE STUDY**

The major objective of this study is to find out the reformatory theory and its status in India.

### **4. RESEARCH METHODOLOGY**

The methodology of this research is overall descriptive in nature. Why? Because the facts and the status of this punishment theory would have been only possible with descriptive data rather than analytical aspect. But overall the data I have included in this research clarifying all the pre-essential topics related to the Reformatory theory and its status in India. The data is collected and utilized in this study all related to the secondary source of gathering information from the websites, journals, papers and important PDFs related to the portion of this study and in the methodology of the research aspect. The methodology of the research clarifies the results and discussions on the basis of judgment cases in overall India. For the overall study I have included two major cases that will clarify the reformatory theory and its status in India.

### **5. RESULTS AND DISCUSSIONS**

This portion of the study is based on the basis of two major cases which are based on the reformatory theory in India. Both the cases are held in two different states of India which is in Punjab and Andhra Pradesh. The first case is Mithu and etc, v. State of Punjab held in 1983 in Punjab, India and the other

case was Padamarathi Subhramanyam v. State of Andhra Pradesh which was held in 2004 in Andhra Pradesh, India. The cases are elaborated as follows:

#### **A. MITHU AND ETC. VS. STATE OF PUNJAB (1983)**

In this case, it was stated that "the general rule in cases covered by Section 303 of the Indian Penal Code appears to have been that if even a life sentence was not sufficient to act as a deterrent and the convict was hardened enough to commit a murder while serving that sentence, the only punishment that he deserved was death." Early in history, the legislature was known for being stern when it came to the crime of murder committed by a life sentenced prisoner. Section 397 of the Code of Criminal Procedure, which grants the power to exercise jurisdiction over a high court or a session court judge, has been repealed and replaced by the Section 397 Amendment Act, 1955. A person already serving a life sentence could be sentenced to life imprisonment on a later conviction, but the second sentence had to be served concurrently with the preceding sentence under the provisions of this section. The purpose of mentioning this aspect is to emphasize that when Section 303 of the Penal Code was first enacted, the legislature did not believe that even successive sentences of transportation for life were an adequate punishment for the crime of murder committed by a person who was already serving a life sentence in prison at the time of the crime.

#### **B. PADAMARATHI SUBHRAMANYAM VS. STATE OF ANDHRA PRADESH (2004)**

When it came to this case, the accuse was found guilty under Section 376 of the Indian Penal Code based on the victim's testimony that they were in love and desired to be together. She proposed to him right after he was released on bail. "In matters of matrimonial problems, courts may always lean in favor of protecting matrimonial ties, not only in the interest of the couple, but also in the interest of society as a whole," the court stated. Even if it is assumed that a person has committed a sexual offence of this nature, if that person reconciles with social conditions and enters into a matrimonial tie with the victim, courts may be required to rise to the occasion and ensure that such a couple can lead a happy matrimonial life, which will be in accordance with justice, equity, and good conscience, as well as the concept of reformatory theory."

### **5.1 CRITICISM OF THE THEORY**

It is true that reformatory Theory will be fruitful only in the situation of nonhabitual offenders who are undergoing rehabilitation. However, in some instances, it does not operate as well as it could since a hard-core criminal is unable to be transformed. This approach is based on the premise that the goal is to eradicate crime, not the criminal, and that no one is born a criminal; rather, he is the outcome of the circumstances that surround him at the time of his birth. As a result, the attack should be focused on

the source rather than the symptoms, and the scenarios and circumstances should be dynamic. It is suggested by the reformatory view that punishment is simply permissible if it is directed at the future rather than the past. It should not be seen as reactivating an old account, but rather as creating a new one. Because the habitual wrongdoer does not respond positively to the present ideology, they will continue to commit the same type of infraction. Consequently, rather than attempting to change his criminal attitude, he should be punished for his actions. As a result, it was stated that reformatory theories are more effective when used in conjunction with traditional punishment rather than as a substitute for it.

## 6. CONCLUSION

It is a truth that the primary objectives of society are the prevention of crime and the protection of society, and no one system of punishment can adequately serve these essential objectives. It is sometimes referred to as rehabilitative sentencing when used to the reformatory theory of punishment. Offenders' attitudes and behaviors alter as a result of rehabilitation. As a general rule, rehabilitation works to lessen the likelihood of future criminal behavior through education and psychological treatment. According to the hypothesis, the majority of offenders commit crimes as a result of psychological reasons, personality faults, or social pressures that they face.

## REFERENCES

- Hugo, Adam Bedau (February 19, 2010). "[Punishment, Crime and the State](#)". *Stanford Encyclopedia of Philosophy*. Retrieved 2010-08-04.
- Padamarathi Subhramanyam v. State of Andhra Pradesh (September 30, 2004).
- An eye for an eye leaves everyone blind can employing reformatory theory heal the current crime rate and polish the punishment system in India. (n.d.). Retrieved from <https://legalservicesindia.com>
- Bryan, A. G. (n.d.). Black's law dictionary.
- Caldwell. (n.d.). Criminology
- Kasha, R. D. (n.d.). Faujdari Bidhisashtra.
- Mithu and etc. v. State of Punjab, 690 (SCR 1983).
- Paranjape, N. (n.d.). Criminology and Penology.
- Priya, T. (n.d.). Reformatory Theory of Punishment. Retrieved from <https://www.lawctopus.com>
- Theories of Punishment. (n.d.). Retrieved from [www.legalservice.com](http://www.legalservice.com)