

# THEORIES OF PUNISHMENT AND PUNISHMENT UNDER IPC

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# Aspects to be Covered

- Jurisprudential Outlook
- Theories of punishment
- Punishment under IPC
- Recommendations of Law Commission on capital punishment
- Practical experience in the field

# Terms

- Crime – Crime denotes an unlawful act punishable by state. An act should violate a law to be considered a crime.
- Punishment - The imposition of hardship in response to misconduct
- Conditions commonly considered necessary properly to describe an action as punishment are that
  - it is imposed by a recognized authority,
  - it involves some loss to the supposed offender,
  - it is in response to an offence and
  - the person to whom the loss is imposed should be deemed responsible for the offence.

# Some aspects of Punishment

- Need of Punishment
  - Negative reward
  - Maintain supremacy of the law
- Ends of Punishment
  - Greatest happiness of the greatest number of people – Consequentialist approach
  - Justice
  - Reformation of the criminal

# Theories of Punishment

For safe, orderly, peaceful and prosperous society to exist and flourish – the following tools of theory are found to be good guides:

1. Deterrent Theory
2. Preventive Theory
3. Retributive Theory
4. Reformatory Theory
5. Expiatory Theory
6. Multiple Approach Theory



# Deterrent Theory

- Not only to prevent the wrongdoer from doing a wrong, but **also to make him an example** for others, calculated to curb criminal tendency in others.
- This theory lives even today in some countries.



"MAYBE THIS WILL TEACH YOU THAT IT'S MORALLY WRONG TO KILL PEOPLE!"

# Preventive Theory

- Concentrates on the prisoner *to prevent him from repetitive endeavors*
- Found to be having undesirable effect on first offenders or juvenile offenders
- Offenders disabled by punishments like death, exile from office etc.



Stop drinking with a friend  
Cover the mug and head  
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# Retributive Theory

- “Tooth for Tooth, Eye for Eye, Limb for Limb and Nail for Nail” – principle of this theory
- Found to be inhuman and barbaric
- Modern human rights philosophy condemns this cruel concept.





# Reformative Theory

- “Condemn the Sin, not the Sinner” – Mahatma Gandhi.
- Reformation process is like a surgeon operating on a person to remove the pain.
- It is a craft or skill in bringing back the tainted and condemned culprits to national mainstream and civil society, as meaningful citizens.



# Expiatory Theory

- “To pay for the sin committed”
- Offender to serve the victims and their dependents to compensate the deprivation.
- Held impracticable & being too idealistic.
- Experimentation of this theory is too expensive in terms of public safety and security.



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# Multiple Approach Theory

- Application of any single theory may not render complete justice
- The aforesaid theories are not mutually exclusive
- Hence judicious combination of theories is the latest approach.



# Punishments - Indian Penal Code

Ss- 53 to 75 of I.P.C. (Ch.III) refer to graded system of punishments

1. Death
2. Imprisonment for Life
3. Imprisonment – Rigorous and Simple
4. Forfeiture of property
5. Fine

In addition to the above, Ss-73 & 74 refer to solitary confinement.

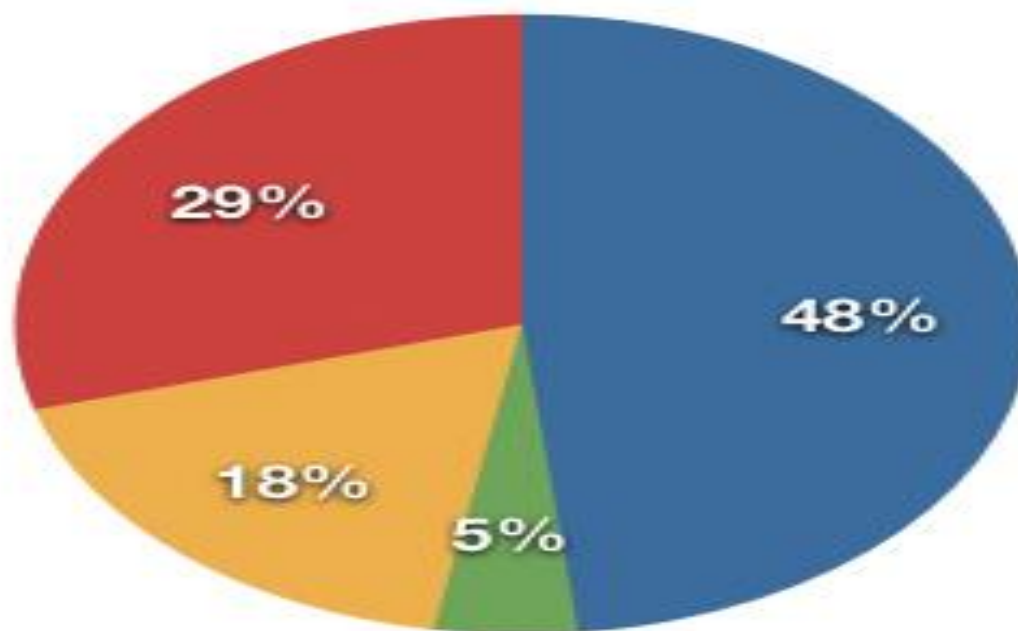
# Law Commission Recommendations

- Law Commission suggested in its 262nd report for abolition of death penalty.
- It has called for its abolition for all crimes except terrorism-related offences and “waging war” against India.
- The “rarest of rare” doctrine adopted by the Supreme Court in awarding the death penalty is constitutionally unsustainable.
- In stark contrast with its previous recommendations: In 1962, the commission, in its 35th report, said: “To allow such persons (convicts awarded capital punishment) to live would be like leaving wolves alive in a civilized country.”
- Not for immediate action, but meant to start a dialogue with the legislature to move towards abolition.

# Recommendations Contd...

- “Retribution has no constitutional value in a democratic country. In India, even an accused is protected under the Constitution and it is the court’s duty to shield and protect the same,” the report said.
- More recently, a 2014 ruling of the Supreme Court has clarified that “retribution has no constitutional value” in India.
- India has ratified the International Covenant on Civil and Political Rights, which requires parties to abolish the death penalty. “When the International Criminal Court (ICC), for offences like genocide, war crimes and crimes against humanity, cannot award the death penalty, we have to ask ourselves if we still want to continue with it,” Shah said.
- India is not a signatory to the Rome statute that governs the ICC.

## Abolitionist and Retentionist Countries



- Abolitionist for All Crimes : 95**
- Abolitionist for Ordinary Crimes : 9**
- Abolitionist in Practice : 35**
- Retentionist Countries : 58**

*Source: Amnesty International*

A landscape photograph showing a road that splits into two paths, leading through a field of golden crops towards a range of hills under a dramatic, cloudy sky. The sun is visible on the left side, creating a bright glow. At the top of the image, there is a decorative horizontal bar with an orange segment on the left and a blue segment on the right.

# Practical Experiences





**Thank You**