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Evolution of Punishment Theories: Assessing the Shift from Retribution to Reformation

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Evolution of Punishment Theories: Assessing the Shift from Retribution to Reformation

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Abstract

The evolution of punishment in criminal justice systems reflects a gradual but significant shift from retributive to reformative philosophies. Traditionally, punishment was rooted in the principle of retribution, emphasizing proportional retaliation for wrongdoing. However, modern legal frameworks increasingly prioritize reformation, focusing on the rehabilitation and reintegration of offenders into society. This paper examines the transformation in punishment patterns, analyzing the underlying theoretical justifications and their practical implications. It critically evaluates the effectiveness of reformative approaches in reducing recidivism, promoting social reintegration, and addressing the root causes of criminal behavior, while also considering the limitations and challenges they present. By comparing retributive and reformative models, the study seeks to determine whether the contemporary emphasis on reformation achieves a more just, humane, and sustainable criminal justice system.

Keywords: *Retributive Justice, Reformative Justice, Criminal Punishment, Rehabilitation, Recidivism.*

Evolution of Punishment Patterns

The idea of punishment has changed a lot as criminal justice systems have gotten better. People used to punish people to get even, keep them from doing bad things, and keep things in order. People used to think it was okay to hurt someone who did something wrong. The person who did the wrong thing had to pay for it.¹ The harsh punishment was meant to make the criminal pay for what they did so that justice could be served. Because of this, early legal systems often used clear and harsh punishments like the death penalty, public humiliation, and corporal punishment. The purpose of these actions was to punish the person who did something wrong, make the law stronger, and keep the peace in the community.

At first, punishment systems were very focused on both punishing people and keeping them from doing bad things. People who broke the law were given harsh punishments so that they would know what could happen. People were scared to break the law because they could see clear punishments like public executions.² The government also used punishment to show that it was tough and keep people in line. The law and punishment for crimes were often closely linked to the politics and religion of the time. The punishment was often very harsh because it was important to follow the rules and keep things in order.

As society, the law, and philosophy changed, so did people's ideas about punishment. The Enlightenment was the start of how we think about the law now. Because of this, people's ideas about what is fair, what is right, and what punishments should be used for crimes changed.

¹ Norval Morris, *The Future of Imprisonment* (University of Chicago Press, 1974).

² Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford University Press, 1968).

Scholars and reformers began to look closely at how effective and moral harsh punishments were.³ They said that punishment shouldn't just hurt; it should also make the criminal justice system more fair, equal, and reasonable. These new ideas made the law clearer and easier to follow. There were rules written down that said what punishments should be, instead of just using random power.

The goals of punishment have changed as criminology and penology have gotten better. They're not just for stopping crime and getting even anymore. There was more emphasis on reformative and rehabilitative approaches that address the underlying causes of criminal behaviour.⁴ The idea that crime can be caused by social, economic, and psychological factors led to the creation of correctional strategies to help criminals get better. Modern penology works to keep people out of jail by making it easier for them to get jobs, go to school, and get mental health care. While still making sure that everyone is safe and treated fairly, this is done. Over time, people have been punished in different ways. This shows how the law, politics, and society have all changed. People know more about their rights and how different governments work now that constitutional principles are more important.⁵ People's ideas about crime and how to deal with it have changed because of all of these things. In today's legal systems, fairness, proportionality, and respect for human dignity are becoming more important. The law says that punishment has to be within clear limits.

Due to a combination of historical and institutional factors, India's punishment systems have become more complicated over time. People wrote down laws against crimes and set up courts to deal with them during colonialism. This made it possible to legally punish people. The criminal justice system changed even more after independence when constitutional values that stressed basic rights and human dignity were put into place.⁶ Over time, changes in the law, how judges interpret the law, and how penal policies have changed have made the Indian penal system more open to using both reformative and rehabilitative methods. Changes to the criminal justice system today still show how punishments have changed over time. They demonstrate how individuals' perceptions of morality can influence legal frameworks.

What I Think About Punishment:

A long time ago, revenge and punishment were almost the same thing. Many people believed that crimes were wrong and that the community should punish or make amends to the people who did them to make things right. The idea behind this method was that people who did something wrong should be punished fairly and have to pay for what they did wrong. Many old-fashioned societies believed this. For example, "an eye for an eye" meant that the punishment should fit the crime.⁷ Punishment was a way to bring things back to normal by making the person who did wrong pay fines, go through hard times, or suffer. People used to punish others in public, and it was often very harsh. A lot of cultures used physical punishment, like cutting off body parts, whipping, and branding. People were often killed or punished in front of others in ways that made them gasp. A lot of people could see these things happen a lot. These actions weren't just meant to punish the person who broke the rules.⁸ They also wanted to make sure that everyone knew what would happen if they broke the rules. To keep the peace and stop other people from doing the same thing, the police punished people in public.

³ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books, 1977).

⁴ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

⁵ Cesare Beccaria, *On Crimes and Punishments* (1764).

⁶ K.D. Gaur, *Criminal Law: Cases and Materials* (LexisNexis, 2016).

⁷ N.V. Paranjape, *Criminology and Penology* (Central Law Publications, 2019).

⁸ Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 2015)

People thought that being clear and harsh with people who did bad things would make them stop. In the past, one of the main reasons people were punished was to keep them from doing bad things. People should have been afraid of what would happen if they didn't follow the rules. Punishment was a good way to keep people in line in places where the law wasn't very strong or didn't exist at all.⁹ People in communities used these kinds of punishments to get people to do what they wanted.

People were also punished a lot by the government and other groups. Leaders and governments used punishment to show that they were in charge and could do whatever they wanted. The government showed that they could control and regulate how people act in public by giving harsh punishments for breaking the law and order.¹⁰ Politics and religion used to have a lot of power over how the criminal justice system worked. The main goals of punishment were to get people to do what they were told, be loyal, and act right.

The government and other groups also punished people a lot. Leaders and governments used punishment to show that they were in charge and could do whatever they wanted. The government showed that they could control and regulate how people act in public by giving harsh punishments for breaking the law and order.¹¹ Politics and religion used to have a lot of power over how the criminal justice system worked. The main goals of punishment were to get people to do what they were told, be loyal, and behave.

This time, the harsh punishments also showed that the legal system hadn't changed much and that there weren't any clear rules for how to handle cases. People in the church, the government, or the community often decided who was guilty and what punishment to give without a trial or any legal protections.¹² This meant that punishments could be unfair and random, depending on who was in charge. Because there were no set legal systems, people and places had very different ideas about what was fair.

These first punishments were very harsh, but they were the first steps toward making criminal justice systems. As time went on, people learned more about what is fair, what is right, and why they should obey the law.¹³ This changed the way punishments were given over time. Over time, our laws and morals have changed. For example, punishment used to be meant to scare and hurt people, but now it is fairer and more organised.

Punishment in India During Colonisation:

Colonialism changed a lot about how India dealt with crime. Most of these changes had to do with the rules and how people were punished. Before colonisation, the government, local customs, and religious beliefs all had a say in how India punished people. These systems were different in different places and communities, but they often used the same kinds of punishments as the governments in those areas.¹⁴ As British colonial rule grew, the British government worked to make the legal system more centralised and consistent so that it could handle crime in all of its colonies. There were courts that were official, written laws, and rules that courts had to follow. This made the criminal justice system better. People used to punish people who broke the law in different ways.

One of the most important things that happened during this time was that a full set of criminal laws was written. The purpose of these laws was to make sure that everyone understood what

⁹ David Garland, *The Culture of Control* (Oxford University Press, 2001).

¹⁰ David Garland, *Punishment and Modern Society* (Oxford University Press, 1990).

¹¹ Tapio Lappi-Seppälä, "Penal Policy and Imprisonment Rates", *European Journal of Criminology*, Vol. 5, No. 3, 2008, pp. 313–336.

¹² Upendra Baxi, *The Future of Human Rights* (Oxford University Press, 2002).

¹³ M.P. Jain, *Indian Constitutional Law* (LexisNexis, 2016).

¹⁴ K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (Eastern Book Company, 2018).

crimes were and what would happen if they committed them. People thought that writing down the law would make it easier for everyone to follow.¹⁵ Colonial officials wanted to get rid of all the different ways people did things and replace them with one set of rules that would apply to all of British India. They did this by changing the rules and the way businesses worked. This process not only made criminal law official, but it also made it clear how to investigate, try, and punish people. People used to find it harder to punish each other, but the government made it easier.

During the colonial period, punishment was mostly used to keep the peace and stop people from breaking the law. This was especially true when it came to keeping the colonies in charge and making sure people didn't speak out against the government. The colonial government thought that the criminal justice system was a very important way to keep things in order and make sure that everyone followed the empire's rules.¹⁶ Punishments weren't just meant to punish people for breaking the law; they were also meant to keep people from fighting the government. Fear was a tool that the colonial government used to keep a lot of different people in line and things stable.

At this time, a lot more people were using prison as a way to punish people. This was a big change too. The colonial legal system made prison the most common punishment over time. People used to get in trouble by paying fines, getting hit, or both. In different parts of India, people who broke the law had to go to jail.¹⁷ This was a big shift. They built jails to keep an eye on criminals and make sure they followed the rules about how to act and work. People who broke the law were supposed to do more than just go to jail. The goal was also to keep them from doing more bad things and being around other people.

People used to think about and carry out criminal justice in very different ways before prisons were built as official places to punish people. People who broke the law didn't get corporal punishment right away anymore. Instead, they were kept in organised places for a set amount of time.¹⁸ The colonial penal system often used work, punishment, and watching prisoners to keep them in line. The goal of these places was to keep prisoners in line by making them stick to strict schedules and using a hierarchy to keep them in check.

The structure changed a little during the colonial period, but prisoners were still often treated badly and not given the care or rehabilitation they needed. Most of the time, prisons were too full and had strict rules that were more about punishing people than helping them get better. The people in charge wanted to show they were in charge and keep things in order, so they treated the prisoners differently.¹⁹ Because of this, the colonial prison system didn't care much about the mental, social, or rehabilitation needs of the people who were locked up.

At this time, the main reason for punishment was still to keep things in order and make sure everyone followed the rules. The colonial government used the law to keep people in line and make itself stronger.²⁰ The written laws, courts, and punishments that are the same for everyone are still the basis of India's modern criminal justice system. These changes made it possible for changes to happen after independence.

After independence, people slowly looked at and changed the colonial legal systems that had been passed down to make them fit better with the changing ideas about justice and human

¹⁵ Ratanlal & Dhirajlal, *The Indian Penal Code* (LexisNexis, 2020).

¹⁶ Nils Christie, "Conflicts as Property", *British Journal of Criminology*, Vol. 17, 1977, pp. 1–15.

¹⁷ John Pratt, "Scandinavian Exceptionalism", *British Journal of Criminology*, Vol. 48, 2008, pp. 119–137.

¹⁸ Julian V. Roberts, "Public Opinion and Sentencing Policy", *Oxford Journal of Legal Studies*, Vol. 23, 2003, pp. 89–112.

¹⁹ Nicola Padfield, "The Role of Sentencing in Criminal Justice", *Modern Law Review*, Vol. 74, No. 6, 2011, pp. 951–981.

²⁰ Michael Tonry, "Purposes and Functions of Sentencing", *Crime and Justice*, Vol. 34, 2006, pp. 1–52.

rights. Colonial punishment policies were meant to keep people from doing bad things and to make sure they did what they were told. But they made it possible for a criminal justice system that focused on change and progress to happen in the years that followed.

What happened to penology after the country got its freedom?

After India became free, the criminal justice system changed a lot, especially how people thought about and carried out punishments. The Constitution of India changed a lot about how criminals are punished because it put a lot of stress on protecting basic rights, human dignity, equality before the law, and the rule of law. As time went on, these ideas about the Constitution changed the way people thought about and carried out punishment in the criminal justice system. Their penal policies started to include humanitarian issues and the main goal of social justice when they became independent. Their main goals were different from when they were in charge of the colonies.²¹ They were supposed to keep the government in line and stop people from doing bad things back then. That's why the focus of punishment slowly changed from just getting back at people and scaring them into not doing it again to more fair methods that included ideas for reform and rehabilitation.

The Constitution says that everyone, even criminals, should be punished in a way that respects their rights and their dignity. Because the Constitution says that everyone has the right to life and freedom, lawmakers and judges had to think carefully about how they treat prisoners and why they put them in jail.²² This made the criminal justice system think more carefully about how to punish people in a way that is fair. They understood that the primary objective of punishment should be to not only penalise individuals who have transgressed but also to facilitate their reintegration as responsible members of society.

The way judges have understood the law has had a big effect on how penology has changed in India over the years. To protect people in the prison system and the criminal justice system, courts started to actively interpret the Constitution's protections. Many court cases have shown that even if you're in jail, you still have your basic rights.²³ This way of thinking changed a lot about how prisons are run and what rules they have to follow. It said that it is very important to treat everyone with respect, fairness, and dignity. Judicial activism in this area helped show that prisons should do more than just punish people; they should also help them change and get better.

One of these changes was to improve the prison system by changing how prisons are run. People worked to fix long-standing issues in prisons, like not getting enough medical care, being too crowded, and living in bad conditions. The changes were made so that prisoners could have better lives and more chances to get better.²⁴ Many prisons began to provide classes, vocational training, and various activities aimed at equipping inmates with new skills for reintegration into society post-release. These steps were meant to help criminals stay out of trouble and get back into society.

As penology became more focused on reform, people learned more about how crime affects people's mental health and social lives. Lawmakers and researchers are beginning to understand that poverty, unemployment, lack of education, and social exclusion can all contribute to criminal behaviour. Dealing with these basic problems is now a very important part of modern correctional strategies.²⁵ This is why rehabilitation programs started to include counselling, behavioural therapy, and community reintegration programs to help criminals deal with the issues that led them to commit crimes in the first place.

²¹ Shadd Maruna, *Making Good* (American Psychological Association, 2001).

²² John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

²³ Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002).

²⁴ Tony F. Marshall, *Restorative Justice: An Overview* (Home Office, 1999).

²⁵ Kathleen Daly, "Restorative Justice: The Real Story", *Punishment & Society*, Vol. 4, 2002, pp. 55–79.

India's criminal justice system began to look into other ways to punish people, especially for minor offences or people who had never been in trouble before. It also changed the way prisons work. More and more people are starting to think that putting people in jail isn't always the best way to stop them from doing bad things. The rise of non-custodial measures like probation, parole, and community-based supervision is proof of this. These choices let criminals stay in society as long as they don't break the law.²⁶ These steps help criminals stay in touch with their families and communities, which makes prison better for everyone.

These changes show that the Indian criminal justice system is changing a lot in how it punishes people. People are beginning to see punishment as more than just a way to deal with bad behaviour. They also see it as a way to help people get better, get back on their feet, and fit in with the rest of society again. This new way of looking at things shows how constitutional principles, how the courts have understood them, and modern criminology have all changed things.²⁷ These things all show how important it is to find a balance between helping someone and punishing them, as well as between justice and deterrence.

More ways to help people get better and change:

Modern criminal justice systems are beginning to recognise that punishment must extend beyond mere retribution and deterrence. People used to mostly think about how to punish someone in a way that fit the crime. The goal now is to find out why people do bad things and help them stop.²⁸ This is why modern penology is shifting towards punitive theories that emphasise rehabilitation and behavioural modification. Most of the time, these theories say that crime is caused by a complicated mix of mental, social, and economic factors. They say that the criminal justice system should not only punish people but also find out why they do bad things.

Reformative and rehabilitative strategies focus on changing criminals through structured programs that help them grow as people and change their behaviour. People think that criminals can learn how to deal with the things that made them commit crimes by going to school, getting counselling, getting therapy, and learning new skills. The goal of all of these methods is to help a criminal become a better person and get along with others. This makes it less likely that they will do the same thing again, which helps society stay stable over time. The main goal is not only to punish people for what they did wrong in the past, but also to help them become responsible, law-abiding members of society again.

Prisons often have a lot of programs to help inmates become better people and workers as part of their efforts to change. Prisoners can get formal academic degrees, improve their reading and writing skills, and learn things that could help them get better jobs in the future through educational programs.²⁹ People in prison can learn things that will help them find work when they get out. These skills include crafts, technical trades, and other types of work. The point of these programs is to teach people who have been in jail how to live useful lives when they get out.

Modern prisons are adding more and more ways for people to get help with their behaviour and feelings to help them with their mental and emotional problems. These systems work with programs that help people learn new things and get jobs.³⁰ Some of the ways that prisoners can get help with their anger, drug abuse, or other behavioural problems that may have caused them to commit crimes are through counselling, mental health support, and rehabilitation programs. Prisons and jails try to help people who have broken the law change their ways and feel better

²⁶ Law Commission of India, 42nd Report on Indian Penal Code (1971).

²⁷ United Nations, *Basic Principles for the Treatment of Prisoners* (1990).

²⁸ United Nations, *Nelson Mandela Rules* (2015).

²⁹ United Nations, *International Covenant on Civil and Political Rights* (1966).

³⁰ United Nations, *Universal Declaration of Human Rights* (1948).

about themselves. The goal of these programs is to help people who have been in jail get ready to live in the real world again. Reintegration is a big part of rehabilitative penology because it helps people stay out of trouble after they get out of jail.³¹ People who get out of jail with more education, useful skills, and help for their mental health are less likely to break the law again when they are having money problems or other problems in their lives. Rehabilitation programs can help people who do bad things get better, but they can also help other people. They help keep the world safe and crime rates low.

The idea that people can change while they are in prison is one of the most important ones that has changed how prisons work today. People who break the law shouldn't be called criminals or shunned for life, and modern legal systems are starting to understand this. Instead, they tell correctional systems to help people change and get back into society.³² People and the future will be better off with this new way of thinking about the justice system. It sees punishment as a way to change behaviour instead of just hurting someone.

Modern criminological theories that analyse the social determinants of crime also revolutionise rehabilitation strategies. Scholars and researchers are progressively examining the influence of factors such as poverty, insufficient education, unemployment, unstable familial relationships, and social inequality on criminal behaviour.³³ These structural and environmental factors often make it more likely that people will break the law. When you make programs to help people get better, you should think about these bigger social issues so you can find the best ways to do it.

Because of what has come to light, criminal justice systems are slowly moving away from just punishing people and toward helping them rejoin society. This means that people who break the law need to learn how to behave both in and out of jail.³⁴ More and more, good rehabilitation policies include programs that help people get back into society, learn how to be a better member of the community, and find a job.

People's ideas about justice are changing in today's world, as shown by the growing focus on reformatory and rehabilitative strategies. Today's prisons want to find a balance between punishing people and making communities safer and more friendly. They do this by putting education, correction, and social reintegration at the top of their list.

Other Ways to Punish:

There are more and more people who are starting to understand that there are other ways to punish people besides putting them in jail. This is a big change in the way we punish people today. In the past, people thought that putting criminals in jail was the best way to deal with them. Researchers and policymakers are starting to realise that keeping people in jail for a long time can be bad for society and institutions³⁵. It can be hard for people who have been in prison to get back into society because there aren't many chances for rehabilitation, prisons are too full, and being in prison is seen as bad. This is why modern criminal justice systems are looking for new ways to punish people that will also help them change and fit back into society.

People who do bad things don't always have to go to jail for a long time. There are other ways to punish them. The goal of these steps is to deal with crime in a way that works and fits the crime that was done. People who break the law can still live in the community as long as they

³¹ Anup Surendranath, "Death Penalty in India", *NUJS Law Review*, Vol. 6, 2013, pp. 543–572.

³² Upendra Baxi, "The Crisis of the Indian Legal System", *Journal of the Indian Law Institute*, Vol. 24, 1982, pp. 343–368.

³³ Justice V.R. Krishna Iyer, "Humanising the Criminal Justice System", *Journal of the Indian Law Institute*, Vol. 20, 1978, pp. 1–15.

³⁴ Justice V.R. Krishna Iyer, "Humanising the Criminal Justice System", *Journal of the Indian Law Institute*, Vol. 20, 1978, pp. 1–15.

³⁵ Law Commission of India, 262nd Report on Death Penalty (2015).

follow some rules. This doesn't make jail any better, but it does make people responsible for what they do. This change is part of a bigger change in how people think about punishment. It should not only punish bad behaviour, but it should also give people a chance to change and become good citizens.

To achieve these objectives, contemporary legal systems employ various forms of non-custodial punishment. Many people decide to go on probation. People who have broken the law can stay in the community as long as they follow some rules and are watched by other people.³⁶ Some of these conditions could include having to check in with a supervising officer a lot, not being able to move around freely, going to counselling, or doing things in the community. People who have broken the law can stay out of jail by going on probation. They also don't want anything bad to happen while they're in jail.

Another common punishment is doing community service without pay. As part of their punishment, criminals have to do work for free that helps the community. This could mean working on projects that are good for the environment, the community, or the public. The main goals of community service are to get people who have done something wrong to admit it and then do something good for the community to make up for it.³⁷ This way of doing things makes people in their communities more responsible and makes criminals feel bad about what they do to them.

Fines and other money penalties are common punishments that don't involve going to jail. Another common punishment is probation or community service. If you break the law, you could have to pay a fine. They work best for small crimes where jail time would be too harsh. If they are set up right, fines can stop people from doing things.³⁸ Putting them in jail is bad for the community and the economy. There are other ways to punish people besides jail time, like suspended sentences, conditional discharge, or rehabilitation programs that focus on counselling, education, or changing behaviour.

People often think that these other options are better for people who have only done small things wrong or are doing them for the first time. People who have never broken the law before might be better off doing community service and being watched than going to jail, where they might be around more dangerous criminals.³⁹ If they don't have to go to jail, they can still be with their family, friends, and coworkers. You can punish them in other ways. It's very important to do all of these things to keep people from breaking the law again.

The concepts of restorative justice are also changing how modern criminal justice systems work by making more people willing to accept different kinds of punishment. Restorative justice punishes the person who did the crime and tries to make things better after the crime has been done. When it comes to solving crimes, this method takes into account the needs of the victims, the offenders, and the whole community. Restitution, victim-offender mediation, and community reconciliation are all great ways to get people to talk to each other, take responsibility, and learn more about each other.

The goal of restorative justice is to help criminals see how their actions hurt more than just the people they hurt; they hurt society as a whole. These steps also give victims a chance to talk about their problems and find a way to deal with them that works for them.⁴⁰ Restorative justice systems try to fix broken trust and relationships in the community that crime may have hurt by getting people to talk to each other and understand each other.

³⁶ Law Commission of India, 156th Report on the Indian Penal Code (1997).

³⁷ K.S. Subramanian, "Political Violence and the Police in India", Sage Publications, 2007.

³⁸ Raghunath Kelkar, "Theory of Punishment and Sentencing in India", Indian Bar Review, 2010.

³⁹ S. Muralidhar, "Reformatory Justice in India", Journal of the Indian Law Institute, 2005.

⁴⁰ Aparna Chandra, "Due Process and Criminal Justice Reform", NLSIU Review, 2016.

The rise of restorative justice and alternative sentencing programs shows that systems that punish people are always changing to fit new social norms, legal ideas, and criminological research⁴¹. Criminal justice systems know more than ever that punishment needs to strike a balance between the goals of social cohesion, deterrence, accountability, and rehabilitation. So, using punishments that don't involve jail time and methods that fix the harm done is a big step toward making the criminal justice system more fair, useful, and responsive to society.

⁴¹ V.N. Shukla, *Constitution of India* (Eastern Book Company, 2019).

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