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### **Preventive or Deterrence Theory: A doctrine concerning punishment**

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#### **Abstract:**

*It is important to note in ethics that moral good deeds will be rewarded at all times and in all cases and moral bad deeds will be punished always and everywhere. Although sin is not peaceful by society or the state, crime is punishable. When a person's intentional action follows the justice of society or the state, that action is considered a good deed and the person is rewarded as a good citizen. Conversely, when the voluntary action of a person violates the rules of society or the state, the state punishes the offender as a crime.*

*In the interest of guiding society or the state in the right direction and establishing peace and order, the governing body enacts a number of restrictions, laws, which must be followed by every person in the state. But there are some anti-social chaotic people in the society who deliberately violate those rules and engage in criminal activities. Each state has its own set of penalties for such offenders. Some people in the state will respect the rules of society, some people will violate - such a system is against the principles of justice. Justice is the foundation of any state. A state that is not founded on this principle can never be lasting. In order to establish this policy, the punishment of the perpetrators of every society is absolutely necessary. Just as morality is considered a lie if the sinner is not rebuked in the case of morality, so justice becomes an empty word in the case of state affairs if the criminal is not punished. Punishment of criminals is necessary to protect the value and dignity of justice. Punishment is the property acquired by the offender. Because, the offender acquires punishment through criminal action. It is justice to give back what a person has earned.*

*So the issues of society, individual, crime, criminals, peace and order, justice and punishment are connected with each other. Through this amalgamation, a main intention is determined, which is a healthy, normal and happy public life. Therefore, in this case, the punishment is justifiable and acceptable. Which actually lights the auspicious lamp. Here is the relevance of punishment. In this article, only punishment is concerned. Important information on the subject of the Preventive theory will be presented as much as possible.*

**Keywords:** *Punishment, Preventive, Judgment, Offender, society and Criminal.*

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**Data and Methodology of the Study:** I have selected rich books and journals for primary and secondary information on the full acceptable form of this article, and with the help of various libraries and the Internet. I have also given importance to the views of eminent professors of philosophy in this regard.

**Objective of the Study:** Analysis of the relationship of punishment with guilt, the practical application of punishment, and justice is not a new explanation. This analysis has been done by different thinkers at different times. There are various theories about punishment, such as Preventive, Reformative and Retributive. The subject of this article is the explanation and analysis of the theory of prevention. This theory believes in the mildest to the most severe punishment for the prevention of crime.

The methodology of this theory differs from other theories in blocking the path of criminal tendencies, although it has its own distinctive features that affect the judiciary, administration and the penal system.

**Introduction:** Human civilization has always been controlled and protected by the rule of a supreme power. The role and form of this energy is changing. Through evolution, this absolute energy has changed the course of our civilization. One of the reasons for the change in this changed civilization is punishment. Over time, punishment systems are changing. Its nature is largely dependent on religious discipline and state administration. Punishment can be legal or even divine. If a person intentionally violates moral law, that is, does evil, he should be punished. 'Punishment' is a special weapon used by the ruler against the people to maintain a fear in the minds of the people. The main purpose of punishment is not only to inflict physical pain on the wrongdoer. To arouse remorse for the criminal he has committed and the criminal acts he has committed. And to establish a peaceful society. The importance of punishment is immense for maintaining this social cohesion. Law is one of the most important steps in the country. The basis of society or state is the principle of justice. The long-term support of society or state depends on this principle of justice. There is a need for punishment to control justice. The concept of punishment. In order to protect this principle of justice, the provision of punishment for the offender is inevitable. is usually associated with criminal law. The existence of criminal acts in the heart of society is universal and inseparable. In the absence of punishment, it is impossible to maintain the civic order of the society and the security of the citizens. The offender is punished through criminal acts. It is justice to let the criminal suffer. The perpetrator must be punished. So the main purpose of punishment is to prevent potential criminals, to prevent the criminal from committing the crime and to transform the law and order of the society by correcting the crime, to maintain peace and order in the society. Simply put, lexical punishment means pain or confiscation of property. The main purpose of a punishment is to prevent the offender from committing such a crime and to make him realize the crime he has committed. This can be done by repenting of the offender and depriving him of his freedom.

**To understand the concept of punishment, there are several things to note:**

1. The punishment imposed on the offender may be harsh or lenient. However, the pain of this punishment makes him realize that he has done harm to others, which is not desirable and unforgivable.
2. If anyone violates the legal rules of the state, action will be taken against that person according to the law. That is, he will be punished.
3. The person who has been punished is actually the real culprit. The perpetrator is being punished for committing the crime. This is the thing he has acquired.
4. The offender is punished according to the law, for his misdeeds. The offender cannot be punished by himself. There is a third person between the offender and the punishment.
5. The legal authority determines the punishment by legal action against the wrongdoer. Punishment is a kind of misery which is imposed on the criminal. He has to pay the price for his harmful deeds by getting this punishment.

With this information about punishment, it is easy to understand the depth of the doctrines related to punishment. The issues expressed in these doctrines are generally occupied by the legal system. The principles introduced in theology are implemented through legislation.

There are three main doctrines about punishment and the nature of punishment. E.g. -1) **Preventive theory** 2) **Reformatory theory** and 3) **Retributive theory**.

**Preventive or Deterrence theory:** The main goal of preventive theory is to create fear and put an end to crime. That is, by disabling the criminal, to prevent crime. This theory motivates the potential offender out of fear of punishment and prevents the offender from committing any crime. It changes the offender through rehabilitation or transformation process so that he does not commit the crime again. Preventive theory disables offenders through the application of punishment, ending potential crime. Preventive theory seeks to permanently or temporarily put an end to the offender's crime. This theory supports the death penalty or life imprisonment of criminals. Philosophers such as Bentham, Mill and Austin have supported the theory of resistance in the interests of human nature. Preventive theory claims that this theory is employed as an effective preventive. Crime can be prevented if the perpetrator's misdeeds are stopped. Ending this crime is possible only by disabling the offender. Disability can be of different types. Detention in prison is a limited form of disability, it is temporary. When it is an unlimited form of disability, it is permanent. Imprisonment is one of the best ways to prevent crime. Because, it tries to eradicate crime from the society. And disables the offender to prevent the offense from repeating. The death penalty is also based on this idea. Three important aspects of preventive punishment exist.

They are as follows: -

1. **Punishment creates fear.**
2. **Prevents the offender from committing any other crime permanently or temporarily.**
3. **To make the criminal a good citizen of the society through reforms.**

J. Bentham, as the founder of this theory, states- "General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence, which has been, committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all. That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety." Bentham's theory was based on a hegemonic notion of man, and a person can be prevented from committing a crime if the provision of punishment is applied very quickly and strictly. Punishment is not at all desirable, so he thinks that punishment becomes ineffective when the evil of punishment transcends the evil of crime. The first step in prevention is to deter criminals and others from committing similar crimes. But Bentham's theory is that punishment will give the offender a chance to reform.

According to the preventive theory, the punishment given to the offender is not to avenge the crime, but to prevent the offense. The main purpose of this theory is to protect the society from the offender. For this reason, the offender is imprisoned so that the crime does not happen again. Through various applications of this theory, that is, the death penalty, deportation, etc. by the state, the offender is disabled so that the crime does not recur. Therefore, an offender can be imprisoned and prevented from committing a crime. Preventive theory separates criminals from society and prevents them from committing any more crimes in the future by imposing certain restrictions on them. According to this theory, the offender needs to be kept in jail for a long time so that he cannot commit the crime during that period. This lengthy imprisonment of the offender is mainly in the interest of protecting the public. Preventing crime by creating fear through punishment. The personal revenge of the offender is prevented, as the state punishes the wrongdoer for the crime. In this theory, prevention is regarded as the main and universal purpose of punishment. The effectiveness of the prevention theory depends on the immediate cause. Therefore, appropriate punishment is not possible if the investigation is delayed.

The method of prevention is divided into three ways-

- 1. Awakens the fear of punishment in the mind.**
- 2. Permanently or temporarily prevents the offender from committing any crime.**
- 3. Change the offender through reform or re-education.**

This theory is closely related to the theory of integration and the theory of rehabilitation of punishment. We can combine specific practical resistance with preventive theory. Defendants prevent those who have committed crimes from committing potential crimes. The deterrent theory is in the interest of preventing future crimes by permanently or temporarily disabling the offender. And the theory seeks to transform the perpetrator

through reform and education. This concept of punishment is equivalent to the theory of resistance. This theory creates fear through punishment and sets an example to society through this fear. When the offender is disabled, the level of crime goes down. In other words, the main purpose of this theory is to disable the offender which can be temporary through imprisonment or permanent through death penalty. The physical form of punishment is very strict. It can cause the death of the offender. This form of punishment can be included in preventive theory. This theory is also known as the 'disability theory'. The origin of this theory is based on the idea of "not to avenge the crime, but to prevent it". The purpose of this theory is to disable the perpetrator. Therefore, it does not allow the offender to repeat the crime by disabling the offender by imposing a death penalty or imprisonment. The offender is kept in jail and prevented from committing the crime. This theory considers imprisonment to be the best method of punishment because it acts as an effective deterrent. Bentham supported this theory because of its humanitarian impact. Because of the imprisonment, criminals remain in society, so there is no possibility of committing a crime. By the methods by which the crime was being committed, the offender is stopped and the level of crime is reduced. 'Disabling the perpetrator is the ultimate remedy' - this is the principle of this theory. The method of preventing punishment works in three ways.

**Such as-**

- 1. Inspires all potential wrongdoers for fear of punishment**
- 2. Disables the wrongdoer from committing any crime immediately.**
- 3. Replaces the offender with the process of reform and reuse, so that he does not commit the crime again.**

The goal of this theory is to prevent the recurrence of crimes by disabling the offender through methods such as crime, imprisonment, death penalty and suspension of license. Punishing the offender for the purpose of preventing others from committing the crime. In this theory, the issue of punishment is preventive. Because, punishment is an example to others. And prevents criminal tendencies. For example, "You are not punished for stealing sheep, but so that sheep are not stolen." This theory also applies to the death penalty because there is no question of the improvement of the hardened offender. People set an example by not committing such crimes.

This theory believes that by reducing the possibility of future harm and the possibility of breaking the law through punishment, social harmony will be maintained. In this case, a specific intent for the future is protected by punishment. This is a utilitarian approach. Proponents of this theory support much more punishment for even a minor misdemeanor. They even support the death penalty. Here, the criminal is used as a tool, for the benefit of others. Which is the ultimate decay of humanity. No person should be used against his will for any purpose. Therefore, judges do not use people as a way to punish for lesser crimes. However, the death penalty is a different matter. Lily believes that this punishment improves the offender's own moral character. Because, usually a person refrains from committing the same crime as punishment once for it. However, smaller punishments do not

act as effective deterrents, so proponents of this theory always support larger punishments. According to this theory, punishment is an ancient practice. It drives the evil mind of a person away from evil and illegitimate ways. Our old belief is that if the culprit is severely punished, he will no longer commit criminal acts.

The main goal of this theory is to prevent the perpetrator from committing any crime and to prevent future recurrence of the crime. The real purpose is to prevent crime. Therefore, the purpose of preventing crime through fear is to set an example to the society by punishing the culprit. Simply put, according to this theory, if a person commits a crime, he will be severely punished. As a result, other people in the society become aware of this severe punishment and fear arises in their minds, so they will refrain from committing crimes. In other words, the theory tries to control the level of crime in the society. For example, the punishment for a person who has always done evil is to stop committing crimes. It is better to punish him to ensure this purpose. This theory could be linked to the sociological school of law. This school deserves to establish a relationship between society and law. The school forms the law as a social phenomenon, making direct or indirect connections with society. This theory consists mainly of three elements.

**They are: -**

**1. Intensity:** This element indicates the level of punishment. In order to prevent crime, criminal law emphasizes the importance of fines for obeying the law. Strict punishment is a deterrent to injustice. That is, if the punishment is severe, it is more effective in preventing crime. And with the exception of this, it is impossible to prevent crime.

**2. Certainty:** This means that the presence of punishment must be confirmed where the crime has taken place. If people know that their misdeeds are actually a crime that is punishable, they will refrain from doing so in the future.

**3. Concealment:** The provision of punishment for crime prevention should be fast. The speedy application of punishment for crime prevention disrupts the severity of crime.

Thus, according to this theory, if the punishment is severe, specific and quick, a conscious person will think about the future consequences before committing a crime and will refrain from breaking the law, keeping himself free from crime. Let us mention the necessity of this theory with the help of a small example. The example is as follows: -When people ride bikes on the road, they wear helmets in compliance with the rules of riding. Some people wear helmets in order to save their lives from accidents, some people are exempted from fines and some people wear helmets for fear of revoking their driving licenses. That is, the main purpose is to remedy the crime which is possible through punishment. The purpose and application of the preventive theory-developed in this example. Although the use of this theory has been evident before, its greatest application can be seen in the early nineteenth century.

**Criticism:** In this doctrine the offender is considered only as a means, not as an intention. Here, the purpose of punishment is the welfare of others, not the welfare of the offender. In other words, the perpetrator is employed as a means of welfare of others. This is immoral from a moral point of view. Because no human should be used as a means to an end. Using

human beings as a means is an extreme insult to human humanity, which is a matter beyond ethics. By the way: kant's statement is relevant here. He said-- "Always use every judge as a goal or purpose, never use it as a means to an end".

The real weakness of this theory lies in accepting punishment as an example. Accepting punishment as an example supports the punishment of minor offenses, which is against morality. Again, the penalty for minor offenses is against the principle of justice. In other words, this theory does not do justice to ethics and justice. For example, an incompetent teacher punishes an inattentive student for restraining students, which is supported by maintaining school discipline but not justifiably.

If punishment is accepted only as evil, then it is also supported to punish any innocent person instead of the real culprit, which is not justified in any way. It is thought that this is the root weakness of this theory. Here, there is no difference between a criminal and an innocent person.

Manuya cannot be prevented from committing crimes by showing fear of punishment. Because Manuya's heart does not change for fear of punishment. Sometimes people control themselves but the tendency to commit crimes does not stop. For this, good intellect needs to be awakened, for this proper punishment is required.

#### **References:**

1. Andenaes, J. "Does Punishment Deter Crime?" in *Philosophical Perspectives on Punishment*, edited by Gertrude Ezorsky. Albany: State University of New York Press, 1972.
2. Arnold loeway, *Criminal law*, New York: St, Paul Minn, West Publishing Co, 1975.
3. Bhattacharya. Samendra, *Nitividya*( beng.), Book Syndicate Pvt. 2004  
Bhadry. Mrinal Kanti, *Nitividya* ( beng.), Burdwan University, Rajbati, Burdwan, 2002
4. Broad, C.D, 'Five Types of Ethical Theories', New Jersey : Littlefield, Adams and co, 1965.
5. Chakraborty, Somnath, *Tattvakatha* , progresshi pulisher, kol, 2002
6. Chakraborty, Somnath, *kathay karme ethics*( beng.) , progresshi pulisher, kol, 2004
7. Duff, A. and D. Garland. "Introduction: Thinking About Punishment." in *A Reader on Punishment*, edited by Antony Duff and David Garland. Oxford, England: Oxford University Press., 1994.
8. Ehrlich, I. "Capital Punishment and Deterrence : Some Further Thoughts and Additional Evidence", 'The Journal of Political Economy', August, 1977.
9. Feinberg, J. "The Expressive Function of Punishment." in *A Reader on Punishment*, edited by Antony Duff and David Garland. Oxford, England: Oxford University Press., 1994.

10. Foucault., M. 'Discipline and Punish : The Birth of the Prison', Tr Sheridan., A, London : Penguin. 1997.
11. Garland, D. Punishment and Modern Society. Oxford, England: Oxford University Press, 1990.
12. Gupta. Dikshit, Nitividya o falita Nitividya ( beng.), Soma book Agency, kol, 2002
13. Hegel, G.W.F., 'Elements of the Philosophy of Right', ed Wood, A.W, Cambridge : Cambridge University Press, 1991.
14. Hugo Adam Dedau, "Bentham's Utilitarian Critique of Death Penalty", 'The Journal of Criminal Law and Criminology', Autumn, Eaglewood Cliffs Prentice Hall 1974.
15. J. Seth, 'A Study of Ethical Principles', New York : Blackwood and Sons. 1894.
16. Jeffrie G. Murphy, "Does Kant have a Theory of Punishment ?", 'Columbia Law Review' 1987.
17. Jerome Michael and Mortimer Adler, Crime, Law and Social Science, New York: Harcourt Brace, 1933.
18. Kant., I, "Metaphysics of Morals", tr Gregor., M, Cambridge : Cambridge University Press, 1991.
19. Lillie., W, "An Introduction to Ethics", New Delhi : New Delhi Allied Publishers, 1986.
20. Mackenzie., J.S, "Manual of Ethics", Oxford : Oxford University Press, 1997.
21. Martineau, 'Types of Ethical Theory', Macmillan and Co, University of Michigan. 1986.
22. Morris, H. "A Paternalistic Theory of Punishment." A Reader on Punishment, edited by Antony Duff and David Garland. Oxford, England: Oxford University Press, 1994.
23. Ten, C. L. Crime, Guilt, and Punishment: A Philosophical Introduction. Oxford, England: Clarendon Press, 1987.
24. Zimring, F. "Making the Punishment Fit the Crime: A Consumer's Guide to Sentencing Reform." A Reader on Punishment, edited by Antony Duff and David Garland. Oxford: Oxford University Press, 1994.