

PENOLOGY & VICTIMOLOGY

UNIT – I

Notion of Punishment · Prevention & Control
Theories of Punishment

20 explanatory slides · Landmark cases & statutory links

ROADMAP

What this unit covers

1. Notion of punishment

2. Punishment vs penalty

3. Objects of punishment

4. Prevention vs control

5. Deterrence theory

6. Retributive theory

7. Preventive theory

8. Reformative theory

9. Expiatory theory

10. Utilitarian synthesis

11. Indian statutory basis

12. Sentencing discretion

13. Proportionality

14. Landmark cases I

15. Landmark cases II

16. IPC/BNS provisions

17. Criticism of theories

18. Exam structure

19. Takeaways

20. Close

Notion of punishment in law

Punishment is the legal infliction of pain or deprivation by the State upon a person found guilty of an offence. It is authorised coercion, not private revenge.

Legal character

Must be imposed by a competent court after a finding of guilt. Extra-legal violence is not 'punishment' in law.

Public purpose

It is justified as a public response to crime, not as satisfaction of private anger.

Elements

Authorised by law, imposed by the State, follows conviction, involves deprivation of liberty, property, status or life.

Penology

The systematic study of punishment, its aims, methods, effects and reform.

Punishment, penalty and related ideas

Punishment

Post-conviction sanction after a criminal trial. Stigma and moral condemnation are typical.

Penalty

Often used for regulatory or fiscal defaults; may lack the full moral stigma of a criminal sentence.

Measure of safety

Preventive detention or security measures aimed at risk, not desert.

Compensation

Civil or statutory payment to the victim; not punishment of the offender as such.

Discipline

Internal sanctions in prisons, armies or schools; different legal regime.

Sentence

The specific order of the court that operationalises punishment.

What punishment is meant to do

Deterrence

Discourage the offender and others from committing crime.

Retribution

Give the offender a deserved response proportionate to the wrong.

Prevention

Incapacitate so that further crime is physically impossible for a time.

Reformation

Change the offender so that he can return as a law-abiding person.

Expiation

Allow moral atonement and social peace after the breach.

Denunciation

Publicly mark the conduct as wrong and reaffirm the norm.

Crime prevention and crime control

Examiners often ask this contrast. Prevention looks forward and tries to stop crime before it occurs. Control responds after crime and manages offenders and systems.

Prevention

Social, economic and situational measures: education, lighting, policing presence, welfare, opportunity reduction.

Control

Criminal process after the event: investigation, trial, sentence, prison, probation, parole.

Overlap

Deterrent sentences are control tools that also aim at prevention. The distinction is of emphasis, not watertight boxes.

Policy lesson

A system that only punishes after the fact, without prevention, will remain overloaded.

Deterrent theory

Associated with Bentham and the classical school. People are assumed to calculate pleasure and pain. If the expected pain of punishment outweighs the gain of crime, crime will fall.

General deterrence

The example of punishment deters potential offenders in society at large.

Specific deterrence

The punished offender himself is discouraged from repeating the crime.

Conditions

Certainty, celerity (speed) and publicity matter more than mere severity.

Limits

Crimes of passion, addiction and poverty are poorly explained by cool calculation.

Retributive theory

Punishment is justified because it is deserved. The offender has disturbed the moral balance and must suffer a proportionate response. Kant and Hegel are the classic voices.

Just deserts

Severity should match culpability and harm – not public anger or crime statistics.

Moral communication

The sentence tells the offender and society that the act was wrong.

Limit on the State

Retribution also restrains excessive punishment: one may not punish more than is deserved.

Indian courts

Often speak of 'just deserts' together with deterrence and reform, not in isolation.

Preventive / incapacitative theory

The aim is to disable the offender from repeating crime for a period – by imprisonment, death, or restrictions on movement.

Incapacitation

A person in prison cannot burgle a house outside. This is a crude but real effect.

Selective incapacitation

Longer custody for high-risk or habitual offenders.

Risk

Predicting future danger is imperfect and can produce unjust, over-long sentences.

Link to India

Habitual offender laws and long terms for repeat violent crime rest partly on this idea.

Reformative / rehabilitative theory

Crime is treated as a product of social and psychological conditions. The sentence should improve the offender, not merely hurt him. Associated with positive school thinkers and modern correctionalism.

Tools

Education, work, counselling, open prisons, probation, parole.

Strength

Looks at the person behind the offence and aims at social reintegration.

Criticism

Not all offenders wish to reform; serious violent crime may demand more than treatment.

Indian emphasis

Mohammad Giasuddin and later cases treat reform as a legitimate sentencing aim.

Expiatory, denunciatory and mixed theories

Expiatory

The offender atones; society's moral wound is healed. Close to older religious ideas of penance.

Denunciatory

The sentence is a public condemnation that reinforces the legal norm (Lord Denning's idea).

Utilitarian mix

Bentham: choose the measure that produces the greatest social good with least suffering.

Restorative

Modern cousin: repair harm to victim and community, not only punish the offender.

Limiting principle

No theory justifies cruel, unusual or grossly disproportionate punishment.

Exam stance

Indian law is mixed. Do not defend only one theory as 'the' Indian theory.

Statutory anchors (IPC / BNS & CrPC / BNSS)

IPC Ch. III / BNS Ch. II

Kinds of punishments the court may award.

IPC 53 / BNS 4

List: death, imprisonment for life, rigorous/simple imprisonment, forfeiture, fine (BNS also community service).

IPC 73–74

Solitary confinement – tightly limited; shows statutory caution.

CrPC 235(2) / BNSS 258

Hearing the accused on sentence after conviction – separate sentencing stage.

CrPC 354 / BNSS 393

Judgment must give reasons; special reasons for death.

Art. 20–22 Constitution

Protection in respect of conviction, double jeopardy, self-incrimination, personal liberty.

The problem of sentencing discretion

The course objective expressly flags 'the problem of exercise of discretion in sentencing'. Statutes often give a range; the judge chooses within it.

Need

No two crimes or offenders are identical. A fixed tariff would be blunt.

Danger

Inconsistency, class bias, and sentences driven by headlines rather than principle.

Control

Appellate review, guideline judgments, reasons in writing, victim impact where relevant.

Bachan Singh line

Death only in the 'rarest of rare' – a judicial attempt to structure discretion.

Proportionality as the working principle

Whatever theory one prefers, modern constitutional courts insist that the sentence must not be grossly disproportionate to the offence and the offender.

Constitutional basis

Arts. 14 and 21 – arbitrary or cruel sentences fail equality and dignity.

Factors

Gravity of harm, mens rea, role in the crime, age, antecedents, chance of reform.

Mitigation

Provocation, youth, mental condition, delay, family circumstances.

Aggravation

Cruelty, vulnerability of victim, breach of trust, organised crime.

Landmark cases on aims of punishment

Bachan Singh v. State of Punjab (1980)

Death only in rarest of rare; life is the rule. Reformatory possibility must be weighed.

Machhi Singh v. State of Punjab (1983)

Illustrated when collective conscience is shocked; still a rarest-of-rare filter.

Santa Singh v. State of Punjab (1976)

Accused must be heard on sentence – separate stage after conviction.

Mohammad Giasuddin v. State of A.P. (1977)

Sentence should look to reform; prison is not mere warehouse.

Jagmohan Singh v. State of U.P. (1973)

Death penalty held not unconstitutional as such under the unamended scheme.

Vikram Singh v. Union of India (2015)

Mandatory death for some offences scrutinised; proportionality remains central.

Further authorities students must know

Maru Ram v. Union of India (1980)

Remission and life sentence; executive clemency and legislative policy.

Swamy Shraddananda (2) (2008)

Court may specify life without remission in lieu of death – a middle path.

Union of India v. V. Sriharan (2016)

Constitution Bench on special-category life sentences and remission.

Manoj v. State of M.P. (2022)

Mitigation information and psychiatric/social reports before death sentence.

Ediga Anamma v. State of A.P. (1974)

Early Krishna Iyer approach – social justice in sentencing.

Rajendra Prasad v. State of U.P. (1979)

Death should be exceptional; special reasons required.

Limits of each theory

Deterrence

Hard to measure. Harsh law without detection does not deter.

Retribution

Can slide into vengeance if 'desert' is set by public mood.

Prevention

Locks people for what they might do
– tension with desert.

Reform

Fails if prisons are overcrowded and under-staffed.

Mixed approach

Indian courts combine aims; students should do the same in answers.

Victim angle

Classical theories were offender-centred. Victimology later corrects this gap.

How to write a unit-I answer

Define first

One clean definition of punishment + public character.

Theories in turn

Deterrence, retribution, prevention, reform, mixed – with one thinker each.

Indian law

BNS 4 / old IPC 53 + sentencing hearing provision.

Cases

Bachan Singh + Giasuddin at minimum.

Discretion

Show you understand the course objective on sentencing discretion.

Close

State that Indian law is a mixed, constitutionally limited system.

Key takeaways

- 01** Punishment is State-authorised deprivation after conviction – not private revenge.
- 02** Prevention is before crime; control is after crime. Policy needs both.
- 03** Four working theories: deterrent, retributive, preventive, reformatory – plus mixed.
- 04** Statutory list: BNS 4 / IPC 53. Hearing on sentence is mandatory.
- 05** Discretion must be structured by reasons, proportionality and appellate review.
- 06** Bachan Singh, Machhi Singh, Giasuddin and Santa Singh are the core citations.

End of UNIT – I

Next: UNIT-II • Kinds of punishment, sentencing, capital punishment

20 slides • Light academic edition