

UNIT – IV

# Punishment and the State's hard edge

Theories of punishment · Capital · Gandhi · Indian law

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## Explanatory Lecture Slides

Political Science — State and Political Obligations · Minor-I-3 · Semester III

POLITICAL SCIENCE — STATE AND POLITICAL OBLIGATIONS

# Topics covered in this unit

01

Name the theories of punishment

02

State the reformatory turn

03

Place capital punishment in India

04

Gandhi and punishment

05

Prison as a social fact

06

Statutory map (BNS, CrPC/BNSS, PoA)

# How this unit is organised

01

Retribution

02

Deterrence

03

Reformation

04

Capital punishment

05

Gandhi

06

Indian map

# Theories of punishment

Retributive (desert), deterrent (example), preventive (incapacitation), reformative (resocialise), compensatory (victim).

- A 16-mark table with one criticism each.
- Modern Indian criminal law mixes all five — look at sentencing s.53 old IPC / BNS, victim compensation, probation, death in rarest of rare.

# Theories of punishment

## OLD FOUR

- Retribution.
- Deterrence.
- Prevention.
- Reform.

## NEWER

- Victim compensation.
- Restorative bits.

# Deterrence and its limits

People do not carry the BNS in their pocket. Certainty beats severity (Beccaria).

- Mandatory death and mandatory minimums are political, often not criminological.
- White-collar deterrence is a different animal (Sutherland — sociology paper).

# Deterrence and its limits

## WORKS BETTER

- Certainty.
- Speed.

## WORKS WORSE

- Secret crime.
- Passionate crime.
- When the law is hated.

# Reformative theory

The offender is more than the offence. Probation of Offenders Act 1958; JJA 2015; open prisons; Art. 21 in Sunil Batra, Charles Sobhraj.

- Limit: some offenders, some crimes (gross violence) strain the theory.
- Do not write that reformation is 'western softness' — it is in our statutes.

# Reformative theory

## TOOLS

- Probation.
- JJA.
- Remission.
- Therapy.

## LIMIT

- Repeat grave violence.
- Public confidence.

# Capital punishment in India

Bachan Singh: rarest of rare. Mithu: mandatory death void. Subsequent narrowing and confusion — be modest.

- A political-obligation question: may the State take life? Gandhi: no. Constitution: not yet no, with a high bar.
- Do not give a newspaper list of 20 names.

# Capital punishment in India

## LAW

- Bachan Singh.
- Art. 21.
- No mandatory death (Mithu).

## OBLIGATION DEBATE

- Can a trustee kill the beneficiary?

# Gandhi on punishment and the jail

The jail as ashram if the cause is true; the State's violence still needs a moral reply.

- He did not design a penal code. Do not fake one.
- Use him for civil disobedience, not for a complete penology.

## Gandhi on punishment and the jail

### KEEP

- Accept the penalty.
- Hate the sin.

### DO NOT

- Attribute a full sentencing theory to him.

# Indian statutory map

BNS (offences), BNSS (process), BSA (proof), Probation Act, JJA, PoA, victim compensation schemes, prisons as State subject with Art. 21 overlay.

- A political-science answer that names two statutes beats a sermon.

# Indian statutory map

## PROCESS

- BNSS.
- Art. 20, 21, 22.

## AFTER CONVICTION

- Probation.
- Prison.
- Remission.
- Appeal.

# Capital punishment in India

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## Cases a KSLU answer should name

### CASE

#### **Bachan Singh v State of Punjab**

*(1980) 2 SCC 684*

Rarest of rare — the State's gravest obligation.

### CASE

#### **Mithu v State of Punjab**

*(1983) 2 SCC 277*

Mandatory death is void.

### CASE

#### **Sunil Batra v Delhi Administration**

*(1978) 4 SCC 494*

Prisoners keep Art. 21.

## Provisions & materials to quote

Art. 20–22

Criminal-process rights — the State's obligation while it punishes.

Art. 21

Life, and a life in prison that is still human.

Probation of Offenders

Reform as statute.

JJA 2015

A different obligation to the child in conflict with law.

BNS sentencing framewo

The current code's name — do not write only 'IPC' in 2026.

## 10 / 16-mark frames from this unit

Q1

Explain the various theories of punishment.

Q2

Is capital punishment consistent with a theory of political obligation? Discuss with Bachan Singh.

Q3

Explain the reformatory theory with Indian statutory illustrations.

Q4

Write a note on Gandhi's view of State violence and the jail.

# Unit recap

- 1 Four plus one: retribution, deterrence, prevention, reform, victim.
- 2 Certainty > severity.
- 3 Bachan Singh is the death-penalty case of this paper.
- 4 Prisoners are not civiliter mortuus — Sunil Batra.
- 5 Name BNS/BNSS, not only 'IPC/CrPC', in a 2026 book.