

THEORIES OF PUNISHMENT: COMPARING INDIA WITH US AND UK

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Abstract:

This paper is composed of various theories of punishment and the kind of theory that is prevailing in various economies of the world, their crime index and which of the theories is the most effective theories of punishment to curb the crime in those economies. The paper also contains the comparative analysis of the theories of punishment as well as the crime rate in the discussed economies of the world tells us about the most successful theory which according to the results of this paper is. This gives the readers a precise understanding of the theories of punishment and those prevailing in various economies while helping them determine which according to them might be the best way to inflict punishment in an offender. According to the results from the graphical analysis which was derived from an online survey, 200 being the sample size, it is observed that the people strongly believe that Reform in the deterrence sense implies that though being punished, the offender recognises his guilt and wishes to change and that there must be equal distribution of both, the deterrence theory as well as the reformatory theory but the deterrent punishment should not be to the extent that it affects the criminal mentally and physically which is why there must also be reformatory methods in addition as well. Further, the paper analyzes the crime rate among the different economies and which theory of punishment is prevailing in those economies and whether it is an effective option for them. At the end, the ultimate focus is to curb crime all over the world by implementing the appropriate theory of punishment.

Keywords:

Theory of Punishment, economics, deterrence, reformatory, crime.

Introduction

Punishment or sanction may be a force employed by the state so as to endow a peaceful society and to enforce law and order in the society. Providing a harmonious society and proper living conditions for the citizens are the fundamental duties of any state. Previously, the theories of punishment were to punish wrongdoers or criminals in any particular state resorting on the sort of theory that the state followed. As of now, with gratitude to changes in time and development, the character of punishment has changed. Now the human rights and human dignity is taken greatly into consideration. The main focus now lies in giving fair justice and compensation to the victim. Thus, a punishment must be such that it keeps the victim and consequently the offender in equilibrium or on an equivalent platform.

Society is one in which people live and it has its own way of public monitoring or control acknowledging to which it formulates certain legislations that are backed by sanctions. These sanctions are nothing but the punishment itself. Many philosophers have formally given many definitions for punishment. Certain elements which are necessary to explain punishment :

- It is a force imposed by a governmental superior authority. It inflicts certain loss or damage or pain to the criminal or the wrongdoer either monetarily or physical which can even include confinement.
- It is a sequel to an offence.
- The person to whom the damage or loss is inflicted must be deemed responsible for that offence.

One of the main influential factors of punishment is that the type of punishment imposed is suffering from the type of society one resides in. With the adaptation in time and evolution of the human mind and consciousness, the theories of punishment have been known to be more tolerant of criminals. A significant example is that of execution which now in present times, witnessed as inhuman, though it had been known to be a significant way of penalizing the criminals in historical times whereas in present times the law states that it doesn't penalize the criminal but only the responsible or guilty state of mind for that crime. The aim of this paper is to understand the kind of theory of punishment prevailing in various economies and which among them is the best performing one.

Comparison between the Theories of punishment prevailing in various economies:

Prisons in the US are overcrowded with violent criminals inside. the method of rehabilitation which reformation is never found within the prisons. As a matter of fact, one in 100 US adults are behind the bars. The pace of putting people in jail is more within the US than in the other country. Yet, quite three-fourths of the prisoners are released early that always leads them to cause a wrongful act or a criminal offense again, thus, leading to putting them behind the bars again.

Thus, as per the research, the type of theory of punishment prevalent may be a deterrent and retributive theory.

The crime index within the US as per 2020 reports is 47.70 with a population of roughly 331 million. The rate within the US from 1995 till 2016 has reduced from 8.11 to 5.35 per 100 thousand population.

The criminal system within the UK concentrates on providing punishment consistent with the crime committed. The punishment imposed must be appropriate to the crime committed under UK law.

The legal code within the UK imposes the punishment which is directly proportional to the graveness of the crime.

Therefore, as per the research , deterrence is the most favoured theory of punishment within the UK where the punishment is in accordance with the crime committed.

The crime index within the UK as per 2020 reports is 44.54 with a population of roughly 67 million. The rate within the UK has reduced between the years 1995 to 2016 from 1.47 to 1.20 per 100 thousand population showing the successful nature of such a theory of punishment

In India, the legal code system is predicated on the Indian legal code . Punishing the criminal is that the main objective under the legal code and it should be directly proportional to the crime committed. the character of punishment should match with the graveness of the crime.

Courts in India work on a twofold objective of punishing the criminals i.e. deterrence and reformation.

Dr. Jacob George v state of Kerala: In this case, the Supreme Court held that the aim of punishment should be deterrent, reformative, preventive, retributive & compensatory. One theory preferred over the other is not a sound policy of punishment. Each theory of punishment should be used independently or incorporated on the basis of merit of the case. It is also stated that “every saint has a past & every sinner has a fortune”. Criminals are very much a part of the

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society so it is a responsibility of the society also to reform & correct them and make them sober citizens of the society. As the prevention of crime is the major goal of the society and law, both of which cannot be ignored.

Surjit Singh v State of Punjab: In this case, one of the accused, a policeman entered the house of the deceased with the intention to commit rape but failed to do so as the as sons of the deceased shouted for help. Another accused suggested the policeman to kill the deceased. The accused was held liable under section 450 of the Indian Penal Code. While on the contrary, the death penalty or capital punishment is more of a temporary form of disablement.

Therefore, as per the research, the type of theory of punishment prevalent may be a deterrent and reformatory theory in India.

The crime index in India as per 2020 reports is 44.42 with a population of roughly 1.38 billion. The rate has also declined from 1995 till 2016 from 4.37 to 3.22 per 100 thousand population.

Objectives:

1. To know the Theory of punishment prevailing in various countries/economies.
2. To know the position of Crime rate and crime index in those countries /economies.
3. To analyse from the result of this research paper showing which theory is the best performing.

Methodology

The research method followed here is empirical. A total of 200 samples have been taken out as a convenient sampling method. The sample frame taken by the researcher is certain metropolitan areas of Chennai and through online channels .Independent variable is gender , age, education qualification and dependent variable is analysing the similarities between theories of Punishments in various economies, public's preference for deterrence theory, and the best theory to be implemented. The statistical tool is graphical representation.

Review Of Literature

1. **Theories of punishment: Robert Cantor, 2020:**(Cantor 2020) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=canton+2020+theories+of+punishment+&btnG= The writer begins by understanding the main purpose of theories of punishment and the immorality of the punishment. What is found is problematic about it and, since the implementation of such punishment in any society constitutes a complex social institution.
2. **Punishment and Modern Society: A study on Social theory , Garland, 1990, University of Chicago press:** (Minor 1993) <https://journals.sagepub.com/doi/abs/10.1177/104398629300900311> Garland asserts that punishment should not be narrowly defined as a technical task which is carried out by such specialised agencies as prisons and probation officers. Punishment involves a series of interrelated activities which ranges from law creation to law corrections.
3. **Modern thinking on theories of punishment, S Leon , 1972:** (Leon and Martin 1972) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=modern+thinking+on+theories+of+punishment%2C+S+Leon+1972&btnG=#d=gs_qabs&u=%23p%3DvHNj90zf5pwJ He concludes in his paper that in the light of modern research, and thought of retribution, deterrence and preventive all are considered the most appropriate punishment but greatly outweighed by rehabilitations.
4. **A brief analysis of theories of Punishment in India, Dr. Ahmed, 2020:** (Shaikh, n.d.) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=a+brief+analysis+of+theories+of+punishment+in+India%2C+Dr.+Ahmed%2C+2020&btnG=#d=gs_qabs&u=%23p%3D1gldE4YTW4YJ Punishment always goes along with crime and originates private vengeance. The objectives of Punishment in all legal systems is the avoidance of crime in order to provide a cleaner society. The main reason for crime in itself is private vengeance among people in the society and only by punishing such persons shall a peaceful society prevail.

5. **Kenya's penal system vis a vis the theories of punishment: Analysis J G Wesonga:**
http://erepository.uonbi.ac.ke/bitstream/handle/11295/84857/Wesonga_Kenya's%20Penal%20System%20Vis-a-vis%20The%20Theories%20Of%20Punishment.pdf?sequence=1
Criminal law is not simply a series of moral commandments backed up with the threat of punishments. Therefore an understanding of the prevention of crime under criminal law involves understanding the concept of punishment. It must have been realised by societies that meting out punishments to an individual offender helps that society achieve a given goal.
6. **Prisoners dilemma: Is India a real follower of reformatory theory ?, Anubhav Mishra, 2020 :** (Anubhav Mishra, n.d.)
https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Prisoners+dilemma%3A+Is+India+a+real+follower+of+reformatory+theory+%3F%2C+Anubhav+Mishra%2C+2020+&btnG=#d=gs_qabs&u=%23p%3Di3OzeCIC48J Every citizen of India has fundamental rights granted under the Indian constitution and hence the nation is obligated to furnish the quality of life to its citizens. But on the other hand it is ill-fated to say that a country like India had no proper implementation of prisoners rights and still is a debatable or arguable issue.
7. **An eye for an eye will turn the whole world blind in special context to reformatory theory of punishment, Rustin Singh Thakur, 2010:** (Thakur, n.d.)
https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=An+eye+for+an+eye+will+turn+the+whole+world+blind+in+special+context+to+reformatory+theory+of+punishment%2C+Rustin+Singh+Thakur%2C2010&btnG=#d=gs_qabs&u=%23p%3DGm0StoR78YJ Most recent and most humane of all theories are based on the principle of reforming the offender through individual treatment. Reform in the deterrence sense implies that though being punished, the offender recognises his guilt and wishes to change. Though this theory works incredibly great for the correction of juvenile offenders and first time criminals, but in the case of hardened criminals this theory may not work with the effectiveness. In the case of hardened criminals, reform in the deterrence sense must not be applied whereas deterrence in itself must be applied in order to reform them.
8. **Punishment: Forms, theory and practice, Abhishek Kumar Mishra:** <http://thelawbrigade.com/wp-content/uploads/2019/05/Abhishek-Kumar.pdf> Oppenheimer defines punishment in an evil inflicted upon a wrongdoer. The motive behind the implementation of punishment has been to inflict 'hurt'. Punishment is also seen as a means of social control and to prevent crimes. It starts from retribution and deterrence of criminals and now it's working on rehabilitation. It has been very apparent by now that, though the concept of punishment is as old as mankind, there has been an enormous change in the overall form of punishment and its ratification in the penal system of different countries.
9. **Reformatory and rehabilitative prepayments of offenders : A general overview, Dip Jyoti Bez :** (Moyo and Muchibo 2015) <https://www.mssv.co.in/Journal/vol2no1/MSSVJ1002012018.pdf> The constructive facet of government responsibility includes treating the offenders as potential Human Resource's and not like human waste so that they can be reformed and reintegrated into the society again. This approach assures that crime can mostly work recorded from one society.
10. **Theories of Punishment: Top ten economies, Nitish Shrestha:** ("Figure 6.6.1 Top Ten Exporting Economies in Gross and Value Added Terms, 2009," n.d.) <http://www.legalserviceindia.com/legal/article-3626-theories-of-punishment-top-ten-economies.html> According to the researcher, though the punishment could be harsh and barbaric in nature it should not be to that extent which causes harm to the criminal in the physical or mental aspect. Nonetheless, it should be such that it keeps the victim and the criminal on the same platforms.
11. **Theories of punishment with special focus on reformatory theory, Neetji Rai, 2010:** (Rai, n.d.)
https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Theories+of+punishment+with+special+focus+on+reformatory+theory%2C+Neetji+Rai%2C+2010+&btnG=#d=gs_qabs&u=%23p%3DOxTkJenrrBYJ The concept of crime and ways of preventing it or if not, punishing the wrongdoer has been existing. The system of Punishment is an integral part of criminal justice and for maintaining social security. The progress of utilisation has resulted in the change in the theory method and motive of punishment.

Punishment exists for maintaining a peaceful society and to provide some kind of social security to the members of the society.

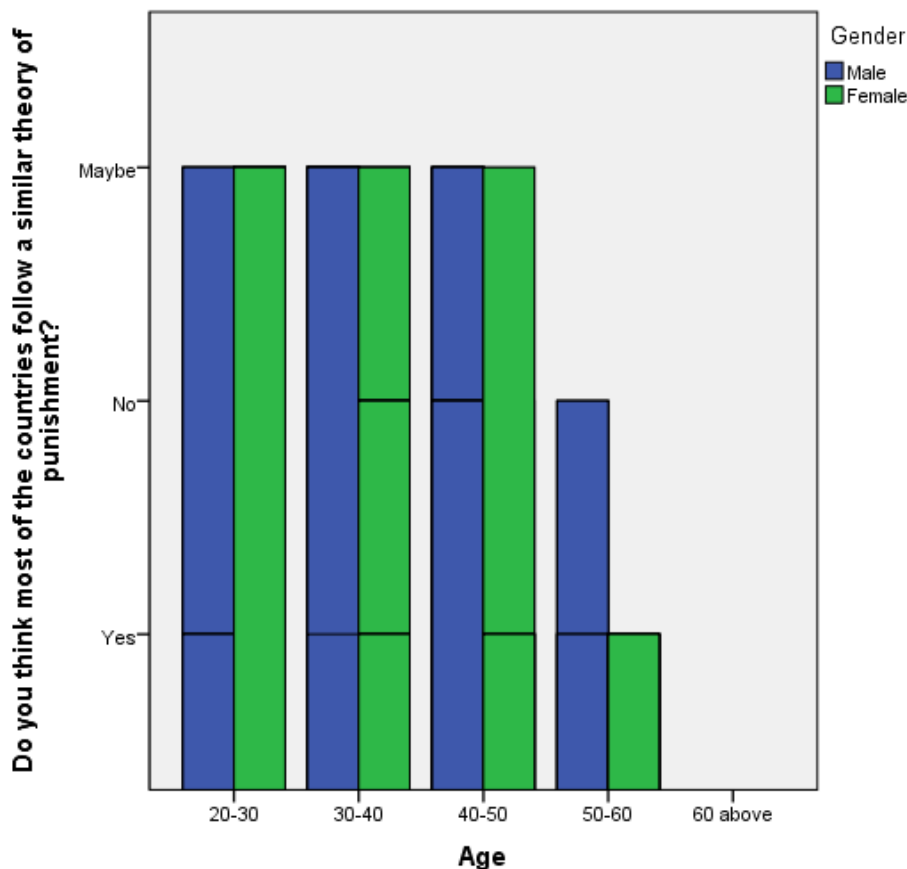
12. **Theories of punishment, Anjali Mali :** <https://ogur.org/id-theories-of-punishment.pdf> One who does wrong lowers himself in the scale of moral perfection. The majesty and authority of the moral law demand that he ought to be punished. This is the ethical justification of punishment. The most ethical justification of punishment has been prevailing since ancient times. As ethics and morals of a person are the perfect standards of living it requires some kind of corrective measures in times of wrong doings by a wrongdoer.
13. **Retributivist theory of punishment: some comments, Adebayo Aina, 2018:** (Aina and Bulgarian Academy of Sciences 2018) [https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Retributivist+theory+of+punishment%3A+ome+comments%2C+Adebayo+Aina%2C+2018&btnG=#d=gs_qabs&u=%23p%3DBTc9c_q7PLUJ](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Retributivist+theory+of+punishment%3A+some+comments%2C+Adebayo+Aina%2C+2018&btnG=#d=gs_qabs&u=%23p%3DBTc9c_q7PLUJ) The retributivist approach to punishment attempts to address the challenges posed by utilitarian conception that punitive creation should strictly be associated with a cost effective means to certain independently identifiable at the expense of justice.
14. **A deterrence theory of punishment, Anthony Ellis, 2019:** (Ellis 2019) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=A+deterrence+theory+of+punishment%2C+Anthony+Ellis%2C+2019&btnG=#d=gs_qabs&u=%23p%3D58ozU3AZc98J He presumes that the use of force against another is justified only in self defence or in defence of other against aggression. If it is like that, the main work of justifying punishment must rely on its different effects, since most punishments have no other significant self defensive effects. It has often objected to the deterrent justification of punishment that it commits is to using offenders unacceptably and that it is unable to deliver acceptance limits on punishment. He describes a sort of deterrent theory which can avoid both of these objections.
15. **The theory of punishment, James Seth, 1892:** (Seth 1892) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=The+theory+of+punishment%2C+James+Seth%2C+1892%3A&btnG=#d=gs_qabs&u=%23p%3DCmgLZyy6Tp8J The new “science of criminology though we not the international criminological association, is founded upon the theory that crime is a “pathological phenomenon `` a"disease `` a form of insanity an inherited or acquired degeneracy “. So the proper treatment of that criminal is , accordingly, that which seeks his cure rather than his punishment. Prison must be superseded by hospitals, asylums and reformatories.
16. **A theory of punishment, W A Miller, 1970:**(Miller 1970) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=A+theory+of+punishment%2C+W+A+Miller%2C+1970%3A&btnG=#d=gs_qabs&u=%23p%3D58ozU3AZc98J The punishment of offenders is thought to be for their own good as well as for the well-being or good order of society. It is a judicial method by which society controls the behaviour of its moral unruly members. Punishment, therefore is justifiable or not justifiable in terms of effectiveness or lack of effectiveness is the exercise of such control.
17. **Theories of punishment all over the world, Sandipa Padhee, 2014 :** <http://www.indianjournals.com/ijor.aspx?target=ijor:rjhss&volume=5&issue=2&article=004&type=pdf> Deterrence means to establish from doing an act. The main object is to deter(prevent) crimes. This theory is a workable one even though it has a few defects. Retributive means to give in return. The objective of the theory is to make the other offender realise the suffering or the pain. In Mohammedan criminal law this type of punishment is called Qisas. Majority jurists, criminologists, penologists and sociologists do not support this theory as they feel it is brutal and barbaric.
18. **Theories of punishment on the ethics of philosophy, Anupam Mallik, 2014:** https://www.academia.edu/download/36446916/5_Mr.Anupam_Mallik.pdf Satisfactory Justification and practical application of theories of punishment. Changing and improving the understanding of moral values systems in general and the nature of the human mind and society in context of crime. Reform according to the punishment. Proper justification should be given keeping in mind and consideration the human nature for the punishment.
19. **Duff's communicative theory of punishment, Kristina Enblom:**<https://www.diva-portal.org/smash/get/diva2:1366152/FULLTEXT01.pdf> Punishment is often off as something “extra” , added on top of any material restoration owed to the victim. So if this is the case, what makes the punishment

justified is the question. Normally we think or consider the afflictions of suffering to be wrong and it is not obvious how the fact of the offenders previous wrong makes the punishment right. This is what the theories of punishment try to answer.

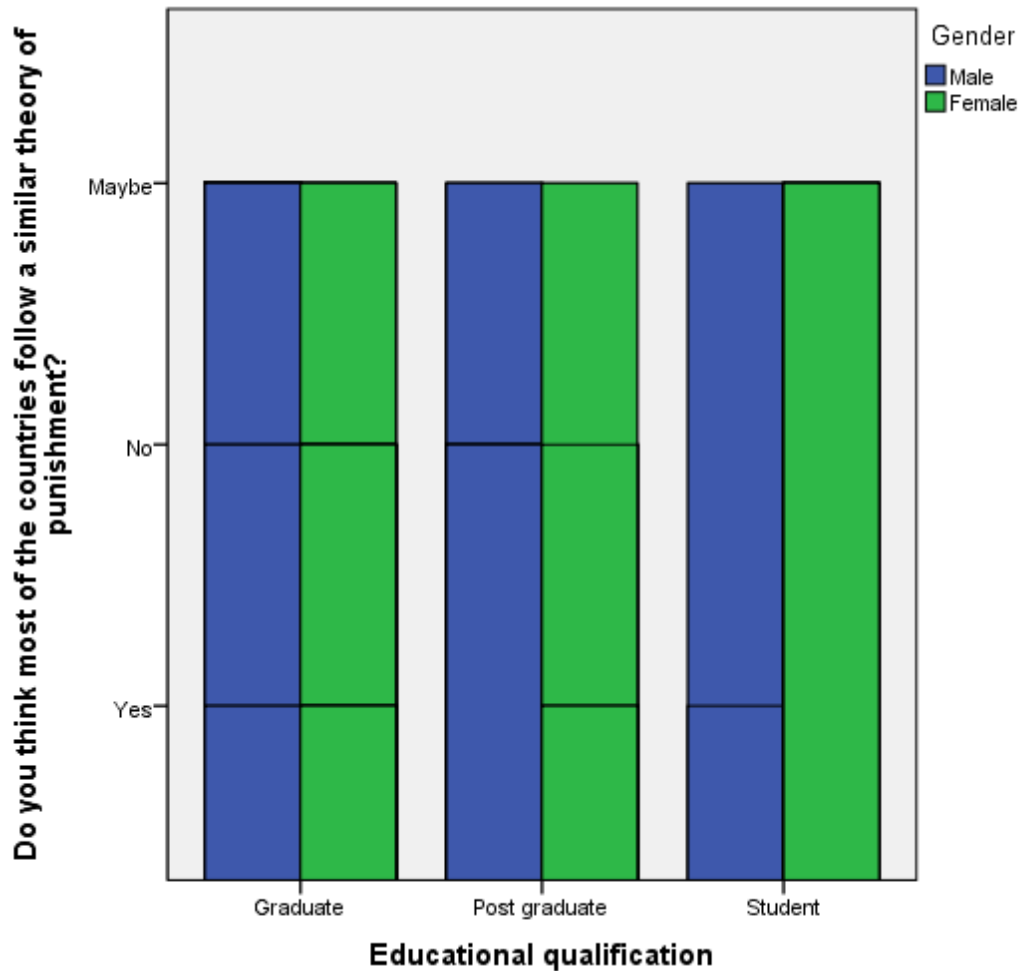
20. **Correctional and rehabilitative techniques of punishment: A need for legislative reform in India, Shalini Gupta, 2019** : (Goyal et al. 2019) https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Correctional+and+rehabilitative+techniques+of+punishment%3A+A+need+for+legislative+reform+in+India%2C+Shalini+Gupta%2C+2019&btnG=#d=gs_qabs&u=%23p%3DY_7DAkWI4UsJ A person is not a criminal by birth but he becomes one by his circumstances. So it is not always necessary for these types of people the offenders to be treated punitively. Some reformative measures should be adopted for the re establishing these offenders in the society and for this it is not always to be punitive.

Analysis

Fig. 1



Legend : Fig 1 depicts the age with gender distribution of various respondents on their knowledge about the similarity of theories of punishment in various countries.



Legend : Figure 1 depicts the educational qualifications with gender distribution of various respondents on their knowledge about the similarity of theories of punishment in various countries.

Result

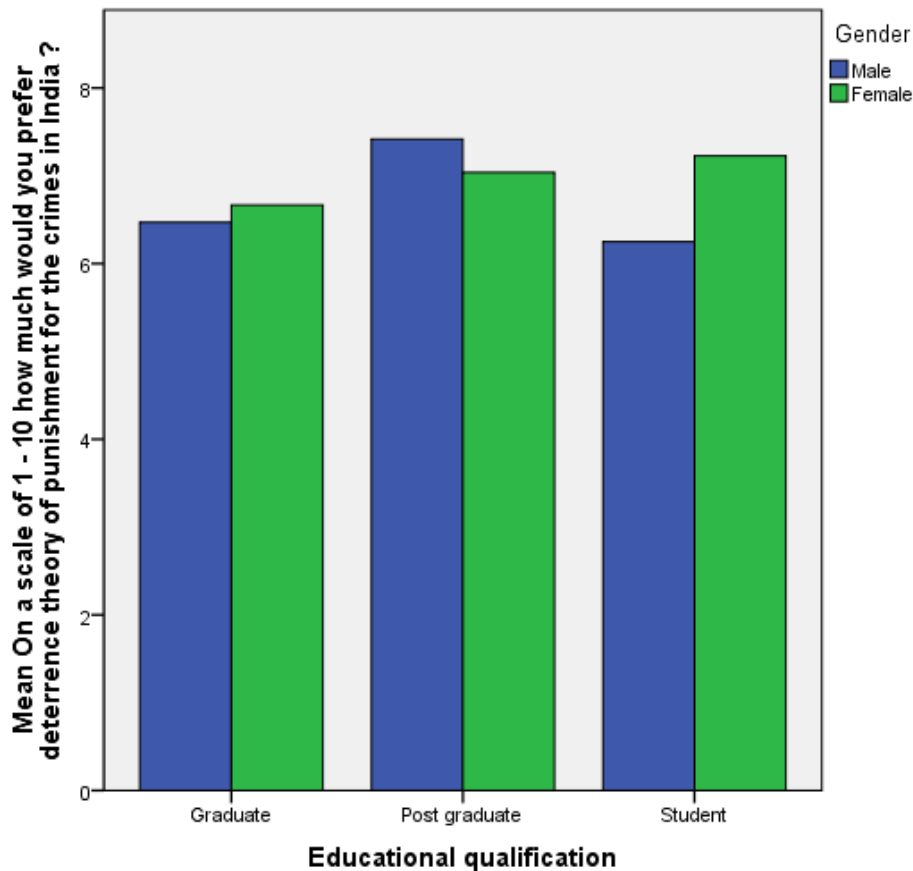
From the above survey, Fig 1 shows the percentage of independent variables of age of various respondents from ages 20 to above 60 years. It is observed that responses have been received from all age groups in different ratios except from the age group of 60 and above. It is observed that the respondents from ages 50-60 opted most for the option NO for the there being a similarity of theories of punishment between various countries followed by subsequent age groups. While looking at the least answers, were given by the female respondents from the age group of 50-60 years. Most of the responses from the given age group and gender are inclined towards the option Maybe, most of the countries follow a similar theory of punishment.

Discussion

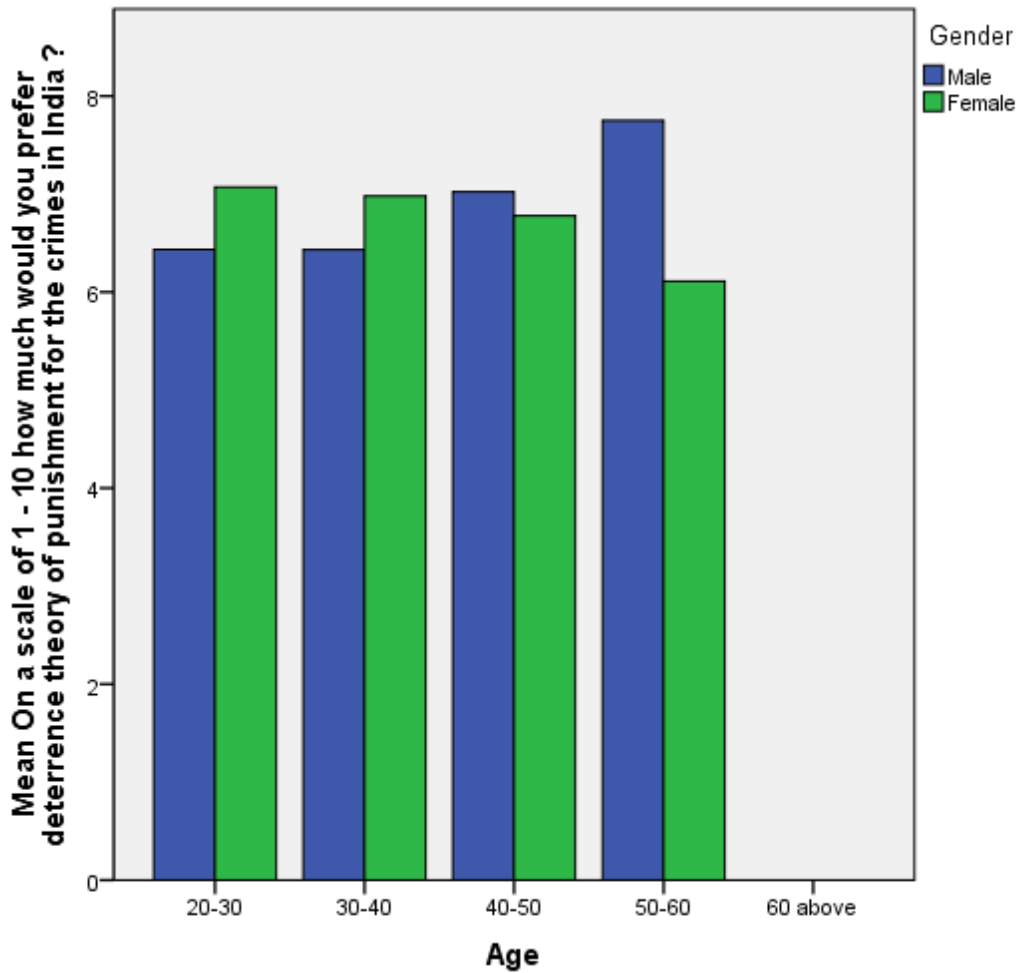
The crimes committed by persons are mostly of similar nature in various countries but the theories of punishment in various countries differ from each other. At the end the main focus for all countries lies in giving fair justice and compensation to the victim. Thus, a punishment must be such that it keeps the victim and consequently the offender in equilibrium or on an equivalent platform. Ultimately the punishments given to criminals are solely to control their offensive behaviour of criminal nature while keeping in consideration that the main aim is to protect the society from

these criminals in order to maintain peace and harmony. The theory of punishment depends on each state and their criminal laws governed by that state may or may not be similar to the theory of punishment prevailing in various countries. Most of the respondents from most of the age groups are not aware that the theories of punishment differs in various countries. This might be due to their lack of knowledge and misconception between the nature of a crime and punishment.

Fig. 2



Legend : Fig 2 depicts the gender with educational qualification distribution of various respondents on rating their preference for deterrence theory of punishment to be implemented in India.



Legend : This figure depicts the gender with age distribution of various respondents on rating their preference for deterrence theory of punishment to be implemented in India.

Result

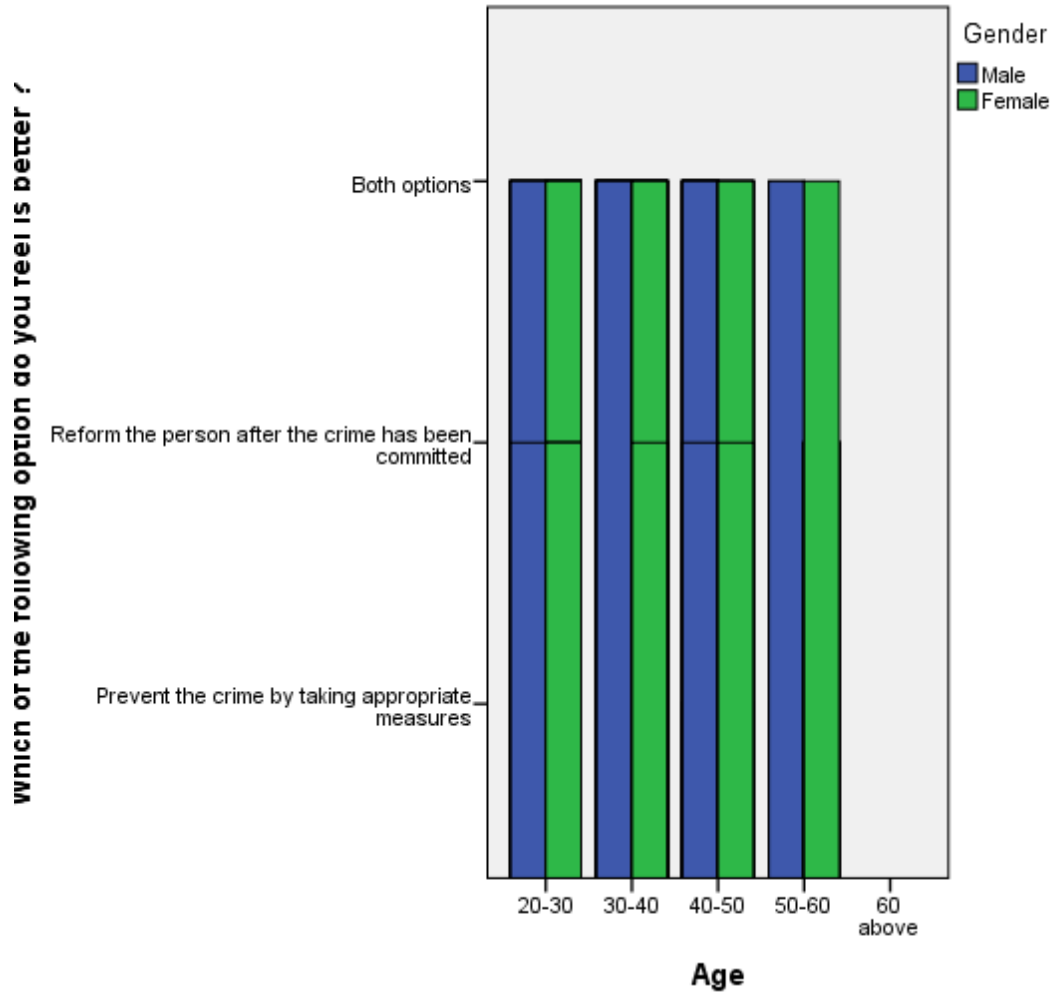
From the above survey, Fig 2 shows the percentages of the independent variables of educational qualification of various respondents from student level to post graduate level. It was observed that the responses were received from all educational qualifications in different ratios. It was observed that most of the responses were received from the male gender from the postgraduate level. It is further derived that most of the respondents from all the educational qualifications have highly rated for the preference of deterrence theory in India.

Discussion

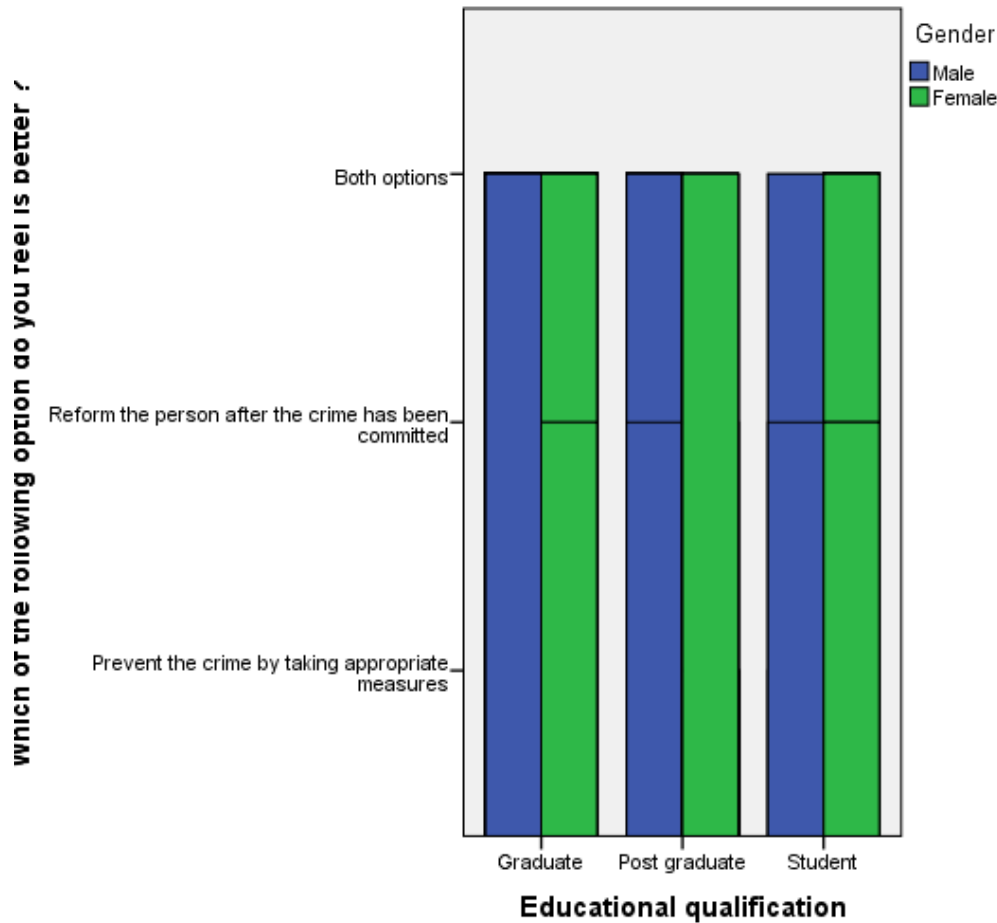
Deterrence theory of punishment has been prevailing in various countries in order to deter and reflect harsh pain on the offenders. The deterrence theory of punishment the reality of harsh pain to be reflected on offenders so that it deters them. Considering that unpunished crimes leave a path of crime open for the delinquent and even for others who have the same motives, it is necessary that punishment be inflicted on individuals so as to provide a source of security for all. The main focus of the deterrence theory is to provide a definitive punishment by descent penalties. Punishment executes the element of pain to rectify the pleasure caused in mind of the criminal. Most of the post

graduates have highly rated their preferences for deterrence theory of punishment to be implemented in India for the increasing rate of crimes. Hence, such a response is derived.

Fig. 3



Legend : Fig 3 depicts the gender with age distribution of various respondents on their opinion about preventing the crime by taking appropriate measures and reforming the person after the crime has been committed.



Legend : This figure depicts the gender with educational qualification distribution of various respondents on their opinion about preventing the crime by taking appropriate measures and reforming the person after the crime has been committed.

Result

From the above survey, Fig 3 represents the percentage of the independent variable of gender of various respondents from different age groups. It is observed that the responses were received from all genders and age groups, except from that of the 60 above category, in different ratios. It is further derived that both the genders have given even ratios for the prevention of crime by taking appropriate measures, from the age group of 20-30 to 40-50. Most of the responses from both the genders from age groups 50-60 have opted for the option of Both ie they agree that there must be prevention of crime by taking appropriate measures and on the other hand there must be reformation for the persons after committing the crime.

Discussion

Most of the countries implement the deterrence or retributivist theory of punishment and also on the other hand many countries implement the reformative theory of punishment. There are also countries which implement both the deterrence theory as well as the reformative theory punishment such as India. Reform in the deterrence sense implies that though being punished, the offender recognises his guilt and wishes to change. So here both the theories go hand in hand and it helps a country in preventing the crime before hand and even reform the offender if such a crime

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couldn't be prevented. The combination of both these theories has a great impact on the reduction of crime rate. The respondents of all age groups that responded, and both the genders, have mostly shown their preference towards both options, preventing the crime by taking appropriate measures as well as reforming the person after the crime has been committed. The reason for such a response is due to the same mentality of people which is to ultimately reduce crime by applying any of the two options or even both which are in fact the deterrence theory and the reformative theory of punishment. Hence, such a response was derived.

Suggestions

1. India ranks the lowest in the crime index among the three discussed countries in this paper. As India follows the Deterrence and Reformative theory of punishment, the crime rate is comparatively lesser. This shows that the other two discussed countries must try and implement the same kind of theories.
2. As far as the US and UK is concerned, the US follows a combination of deterrence and retributive theory which also might be the reason for such a high crime rate and the UK follows a deterrence theory of punishment. This shows that even though the theories of punishment are stringent in these countries, the rate of crime is high only and appropriate measures must be taken in order to reduce it.
3. While focusing on India, as per the results of the graphical representation, it is observed that the respondents also believe that there must be a balance of both the reformative and deterrence theory. This paper further suggests that the implementation of the deterrence as well as reformative theory must be appropriately done. If reform in deterrence sense is applied with a speedy judiciary then the crime rate in India can be brought down considerably.

Conclusion

Crimes cannot be eliminated, which is why punishments which are sanctioned to the criminals or the offenders are solely to control any offensive behaviour which is of a criminal nature. The sole and ultimate aim is to protect the society from the criminals and the offenders so as to retain peace and harmony. The Lack of efficacy of an appropriate theory of punishment in any state would create a society without law and order. This research paper focuses on the theory which has been proved the most successful and could be the best to be implemented in any state in order to curb crime.

Punishment must be in such a way that it keeps the offender or wrongdoer and the victim on the same level or platform which can be done by providing punishment according to the crime committed. As far as law is concerned, the more serious the crime, the more serious is the punishment and the process would not alone cause the offender to come to the same level as that of the victim but would also create a deterrent effect on the criminal in order to prevent the crime again. The punishment given to the criminal also sets an example for others in the society and to create an idea of the consequence that would occur if they commit or have the intention to commit any similar crime. This would mark to be an effective way to reduce the crime rate and ultimately preserve the morals, peace and harmony of the people in the society.

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