

Kinds of Punishments in Indian Judicial System

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The practice of awarding punishments is a very important part of the criminal justice system as it a form of society's manifestation of the admonition of the crime by a collective conscience as specified by Durkheim. The object of the punishment in Manu's words is- "punishment governs all mankind; punishment alone preserves them; punishment awakes while their guards are asleep; the wise consider the punishment (danda) as the perfection of justice. Punishment is the suffering in person or property, inflicted on the offender under the sanction of law. Punishment of the wrongdoer for the offence one has committed is that which makes criminal law awe-inspiring and deterrent. This article emphasizes on Section 53 and section 73 of the Indian Penal Code and the subsequent punishments inflicted to the wrongdoers. It also highlights the philosophies of punishment, how punishment ought to change the criminals, the severity of punishments. This article also elaborately covers the aims of punishment and ends with a need to reform the IPC and the subsequent sections so there is no space for ambiguity and bias of the Judge which creates a barrier while sentencing.

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Introduction

In a world where crime rates are increasing at an alarming rate, the necessity to govern the criminal justice system in every country is critical. Crime and punishment have become such an important and delicate part of society that it can no longer be directed by precedents and conventions. A set regime must be implemented, and the subjective element must be minimised as much as feasible. However, it is an unavoidable truth that no set punishments can be imposed on

the accused since they are excessively harsh and unaware of the accused's rights. Certain essential human rights are available to the accused, which the fixed punishment regime breaches.

I. Philosophies of Punishment; *How punishments should bring a change in the criminals*

A. Deterrence

According to this theory, the object of punishment is not only to prevent the wrongdoer from doing a wrong second time but also to make him an example to other persons who have criminal tendencies. Salmond considers the deterrent aspect of punishment to be the most important. Locke stated that the commitment of every offence should be made a bad bargain for the offender. The deterrent theory emphasizes the necessity of protecting society by so treating the prisoners that others will be deterred from breaking the law. According to Salmond, "The chief end of the law is to make the evildoer an example and a warning to all that are likeminded with him." Punishment is a measure to prevent people from committing an offence deterring previous offenders from re-offending and preventing those who may be contemplating an offence they have not committed from actually committing it. This punishment is intended to be sufficient that people would choose not to commit the crime rather than experience the punishment. The aim is to deter everyone in the community from committing offences. The deterrent theory was the basis of punishment in England in medieval times and continued to be so till the beginning of 19th century. The result was that severe and inhuman punishments were inflicted even for minor offences in England.

B. Preventive

The objective of this theory is to disable or prevent the criminal from commission of the crime. The offenders are disabled from repeating the offences by such punishments as imprisonment, death, exile, forfeiture of office etc. By putting the criminal in jail, he is prevented from committing another crime. By dismissing a person from his office, he is deprived of an opportunity to commit a crime again. An example of preventive punishments is the cancellation of the

driving licence of a person. As he has no licence, he is prevented from driving. This theory does not act so much on the motive of the wrongdoer but disables his physical power to commit the offence.

C. Reformative

According to this theory, the object of the punishment should be the reform of the criminal. Offender must be educated and taught some skills so that he may be able to start his life again after his release from jail. The advocates of this theory contend that by a sympathetic, tactful and loving treatment of the offenders, a revolutionary change may be brought about in their characters. Even the cruel hardened prisoners can be reformed and converted into helpful friends by good words and mild suggestions. Reformation theory is being growingly adopted in the case of juvenile offenders. The oldest legislation on the subject in India is the Reformatory Schools Act, 1890 which aimed at preventing the depraved and delinquent children from becoming confirmed criminals in the coming years. The Government of India passed in 1960 the Children Act which applies to the Union Territories. This Act was amended in 1978. The Probation of offenders Act, 1958 has been passed with a similar object in view. About this Act, the Supreme Court observed in *Rattan Lal v. State of Punjab* that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. The Act distinguishes offenders between 21 years of age and those above that age and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence.

D. Retributive

The retributive aspect was recognized in ancient penology. Early criminal law was based on the principle that all evil should be required. Plato was a supporter of the retributive theory. Punishment is a form of expiation to suffer punishment due to the law that has been violated. Guilt plus punishment is equal to innocence. The penalty of wrongdoing is a debt which the offender owes to his victim. When punishment has been endured, the debt is paid and the

legal bond forged by crime is dissolved. The object of true punishment is to compel the wrongdoer to provide remedies to the injured person which is the wrongdoer's own mistake by restoration and repentance. Critics point out that punishment in itself is not a remedy for the mischief committed by the offender. It merely aggravates the mischief causer.

E. Unified theory

A unified theory of punishment brings together multiple penal purposes such as retribution, deterrence and rehabilitation in a single, coherent framework. Unified theorists argue that they work together as part of some wider goal such as the protection of rights.

II. Capital Punishment *What kinds of wrongdoers are inflicted with Capital Punishment in the U.K* It is the punishment wherein the accused is executed to death after he has been found to be guilty of a criminal offence in accordance to the appropriate legal process. The imposition of the death penalty is a debatable topic and is agitated in a lot of nations currently. However, U.K has retained it in its legal system to redress the following cases:

- High treason
- Murder during or of – shooting or causing explosion, a public servant on duty, theft, while resisting lawful arrest, party to murder.
- Setting ablaze her majesty's stores, ships, etc
- Committing piracy with violence

Capital punishment has been regulated in international Human Rights treaties as an aspect of the right to life, emphasis can be seen from the International Covenant on Civil and Political Rights (ICCPR). The ICCPR does not expressly abolish the use of the death penalty, albeit Article 6(1) palpably declares "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The article also provides for important safeguards to be followed by signatories who retain the death penalty and obliges the imposition of death penalty only for the most serious crimes; whereas, Article 6(4) requires States to ensure that "anyone sentenced to death

shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon, commutation of the sentence of death may be granted in all cases". UN Human Rights Committee which monitors the ICCPR (and whose interpretations of the ICCPR are considered authoritative) discussed Article 6 of the ICCPR in detail in its General Comment in 1982 and clarified that the abolition of death penalty is desirable and any move towards abolition would be considered as "progress in the enjoyment of right to life"

III. Important Judgements that analyses these punishments

As far as imprisonment is considered, for majority of the offences the Code prescribes the maximum penalty and leaves the infliction of the appropriate term within that set limit to judicial discretion¹. For some offences minimum sentence is fixed by the Code and infliction of sentence beyond that is left to the discretion of the Judges. For some other offences the Code prescribes alternatives and the Court is free to choose either of them. Thus, the IPC gives much sentencing discretion to the judicial officer. As this approach helps the Court to take an informed decision it is in accordance with the constitutional principles also. Since Section 303 IPC did not fall in line with this policy it was struck down by the Supreme Court in *Mithu v. State*. There are, however, some more provisions like Sections 311, 363A(2) which fall foul of the constitutional scheme. In the light of *Mithu* their validity remains doubtful. Apex court in the case, *Macchi Singh v. State of Punjab* (AIR 1983 SC 957), expanded the finding laid down in *Bacchan Singh*. Hereunder are certain observations made by the court:

- Death sentence can only be awarded in case of gravest of culpability
- Circumstances of the offender must be taken into consideration before pronouncing a death sentence
- Death sentence can only be imposed when awarding life imprisonment seems to be adequate for the crime committed by the offender.
- Before ruling in favour of the death penalty, both, mitigating and aggravating factors must be considered

and doing so according to full weightage to the mitigating factors.

IV. Section 53 of the Indian Penal Code

"53. The punishments to which offenders are liable under the provisions of this Code are

1. *Death;*
2. *Imprisonment for life (Repealed by Act 17 of 1949)*
3. *Imprisonment, which is of two descriptions, namely:-*
 - a. *Rigorous, that is with hard labour;*
 - b. *Simple;*
4. *Forfeiture of property;*
5. *Fine."*

V. Section 73 of the Indian Penal Code

Section 73 provides for another type of punishment, that is solitary confinement.

"73. Solitary confinement.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year."

VI. Types of punishments as per the IPC

Indian Penal Code seems to measure the gravity of the violation by the seriousness of the crime and its general effect upon public tranquillity. There is correlation between measure of guilt and measure of punishment. Section 53 of the IPC in Chapter III deals with the kinds of punishments which can be inflicted on the offenders. They are as follows - Death penalty, imprisonment for life, imprisonment, forfeiture of property and fine.

A. Death Punishment

Punishment of death is also known as capital punishment. Under this punishment, a person is hanged till he dies. This punishment is sanctioned by the government and ordered by the court. It is provided only in the rarest of rare cases. This punishment is provided only for serious offences. A death sentence is the highest punishment awarded under IPC, and it has always been a controversial subject. Arguments are made both in favour and against the retention of the capital sentence as a form of punishment. It was argued in *Jagmohan Singh vs State of Uttar Pradesh (MANU/SC/0139/1972)*, that the death penalty is unconstitutional and hence invalid as a punishment. The Supreme Court held the death penalty as valid. It held that deprivation of life is constitutionally lawful if that is done according to the procedure set by law.

Death punishment or capital punishment can be provided for the offences under sections 121, 132, 194, 302, 303, 305, 307, 364A, 376E, 396 and so on of the Indian Penal Code. In these sections, it is not obligatory for the court to provide capital punishment. Earlier for the offence provided under section 303, i.e., murder by life-convict, capital punishment was compulsory. In *Mithu vs State of Punjab (AIR 1983 SC 473)*, the death penalty was held unconstitutional for being violative of Articles 14 and 21 of the Constitution. The Supreme Court in *Bachan Singh vs the State of Punjab (MANU/SC/0055/1982)* upheld the validity of the death penalty, but the court restricted the provision of the death penalty in rarest of rare cases only. If the case falls under this theory, then capital punishment may be given.

The court did not elaborate as to what falls under the category. Still, the court has declared it from time to time that the cases like honour killings, assassination, genocide, brutal murder, etc. fall under the definition of 'rarest of the rare case'. As per section 54 of the Indian Penal Code, the appropriate government can commute the sentence of Death for any other punishment provided by this Code. There is no evidence to show that death penalty has deterrent effect upon the crimes; and States without the death penalty continue to

have significantly lower murder rates than those that retain capital punishment. So given the fact that capital punishment does not act as a deterrent and it cannot reform an offender (as nobody can reform a dead person), the only argument in its favour is retributive justice. Retributive justice, which prioritises justice for the public over crime control goals, requires offender who breaks the law to suffer in return and also requires the response to the crime to be proportional to the offence. However, keeping this principle in view, the offender in cases involving murder of large number of people requires to be definitely awarded with a death penalty.

B. Imprisonment For Life

The words "imprisonment for life" was substituted for "transportation for life" by Act XXVI of 1955. In this type of punishment, an accused convicted of a crime have to remain in prison until he is alive or until pardoned or otherwise commuted to a fixed period. In its natural meaning imprisonment for life means imprisonment for the whole of the remaining term of the convicted person's natural life. As per section 57 of the Code, the period for life imprisonment is 20 years only for calculating purposes. Imprisonment for life can never be simple imprisonment; it is always rigorous imprisonment. As per section 433(b) of the CrPC and section 55 of the IPC, the appropriate government has the power to reduce or suspend the sentence of imprisonment for life to imprisonment for a term of not more than 14 years. As the prisoner is under the supervision of the State Government, the State Government has trust in it and in such case, the State Government can appeal for the reduction of the punishment. But life imprisonment cannot be less than 14 years.

C. Imprisonment

Imprisonment means taking away a person's freedom and putting him in prison. According to section 53 of the IPC, there are two kinds of imprisonment: Simple Imprisonment: It is the type of imprisonment where an accused convicted of a crime is kept in prison without any hard labour. They are required to do only light duties. The punishment of simple

imprisonment is awarded only for lighter offences such as defamation. Rigorous Imprisonment: It is the type of imprisonment under which a prisoner or an accused convicted for a crime is kept in prison, and they have to do hard labour such as agriculture, carpentry, drawing water, etc. Rigorous imprisonment is obligatory for the offences given under the following two sections (no alternative for simple imprisonment is available). a. Section 194, IPC: Giving or fabricating false evidence with intent to procure conviction of capital offence. b. Section 449, IPC: House-trespass in order to commit offence punishable with death. This is a punishment wherein the accused is confined in a penitentiary. Hawk said that “It seems clear that any place, whatsoever, wherein a person under a lawful arrest for a supposed crime is restrained of his liberty, whether stocks at the street, or in the common goal, or in the house of a constable or private person or the prison of the ordinary is properly a prison within the statute; for imprisonment is nothing else but a restraint of liberty.” Imprisonment was barely known during the primitive age and became a major part of the legal system only in the 19th century and 20th century. The framers of the India Penal Code even envisaged two kinds of imprisonment i.e.-

- Rigorous
- Simple

D. Forfeiture of Property

Forfeiture implies the loss of property of the accused. Under this punishment, the State seizes the property of a criminal. It is the result of the wrong or default caused by the person. The property forfeited may be movable or immovable. Forfeiture of property as punishment is provided for the offences given under section 126 (committing depredation on territories of Power at peace with the Government of India) and section 127 (Receiving property taken by war or depredation mentioned in sections 125 and 126) Or feiture of property has been provided by the Indian Penal Code and it was even prevalent in ancient India. However, the Indian Penal Code (Amendment) Act, 1921 repealed Section 61 and

62 which imposed the punishment awarding for forfeiture of property. Yet, there exist certain provisions in the current IPC which provide for forfeiture of property as a punishment: Section 126 – Committing depredation on territories of power at peace with the Govt of India

Section 127 – Receiving property taken by war or depredation mentioned in Sec.125 and 126 of I.P.C.

Section 169 – Public servant unlawfully buying or bidding for a property

E. Fine under IPC

The court may impose the punishment of fine as sole imprisonment or as an alternative for imprisonment or in addition to the imprisonment. It depends upon the court to decide whether either imprisonment or fine or both are to be awarded in a particular case. According to section 64 of IPC, if a person fails to give fine, the court may order for the imprisonment.

F. Solitary Confinement

It is defined under section 73 of the IPC. Solitary Confinement means keeping the prisoner isolated and away from any kind of intercourse with the outside world. It is believed that a feeling of loneliness may exert wholesome influence and reform the criminal. Solitary confinement shall in no case exceed three months in total. The scale, as given in section 73, is as follows: If the term of imprisonment is less than or up to six months then the period of solitary confinement shall not exceed one month. If the term of imprisonment is more than six months but less than one year then the period of solitary confinement shall not exceed two months. If the term of imprisonment is of more than one year, then the period of solitary confinement may be up to three months but not beyond that. It can be awarded only if the following two conditions exist: A person must be convicted for an offence under this Code. The offence must be the one for which the court has the power to sentence the accused to rigorous imprisonment. According to section 74 of IPC, the punishment of solitary confinement cannot be awarded for the whole term of imprisonment, and it must be imposed at intervals. A sentence of solitary confinement for the whole

term of imprisonment is illegal if awarded for more than 14 days at a time. When the imprisonment awarded is of more than three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded.

VII. Aims of Punishment

People are punished for a purpose. Often the aims of a punishment overlap, eg the death penalty acts to deter people from committing similar crimes and it aims to protect the public from the individual who is guilty of the crime. Here are the six recognised aims of punishment:

- deterrence - punishment should put people off committing crime
- protection - punishment should protect society from the criminal and the criminal from themselves
- reformation - punishment should reform the criminal
- retribution - punishment should make the criminal pay for what they have done wrong
- reparation - punishment should compensate the victim(s) of a crime
- vindication - the punishment makes sure that the law is respected

VIII. Conclusion

Time and again various committees like Malimath Committee, Madhav Menon Committee and several case laws have recommended the inclusion of a comprehensive and uniform guideline for the pronouncement of punishment i.e. a sentencing policy. This is to ensure that the judiciary will not exercise unbridled discretion of authority while awarding punishment. In the absence of such a structured set of guidelines, the ramifications of punishments become highly arbitrary and harsh. This may lead to undue uncertainty and the indiscriminate imposition of fine and imprisonment. Further, an amendment must be tendered to any provision where fine is awarded as an alternative to imprisonment to avoid gross injustice to the victim where the imposition of imprisonment is appropriate.

The Indian Penal Code was enacted in 1860 and has undergone very few changes since its enactment. There is a huge increase in the types of offences since the enactment of the code. Classifying offences into different classes or separating those into different codes will make the Code more understandable and lucid. The punishments need to be deterrent at the same time it shall not be severe. Therefore, it is time for Indian Judiciary to have a sentencing policy, so there is no space for ambiguity and bias of the Judge which creates a barrier while sentencing. It will also reduce the appeals for enhancing or reducing punishment which will be a great relief for the judiciary. Further, a proper victim compensation fund can be created under the Code wherein the confiscated assets from organized crime can also be included.

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