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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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PUNISHMENT AS AN INTEGRAL PART OF CRIMINAL JURISPRUDENCE: A COMPARATIVE STUDY BETWEEN INDIA AND UNITED KINGDOM

AUTHORED BY - SHIKHAR SINGH

B.A., LL.B.(H)

2019-24

Amity Law School

Amity University, Noida

Abstract

The jurisprudence of criminal law legislation derives from a society to which one belongs because the law is based on human behavior, which varies from society to society. Criminal law is the device by which organized societies protect individuals' interests and ensure survival. Where sovereignty of society is likely to be affected directly or indirectly through the act or omission of a person, criminal jurisprudence emerges. Prevention of wrongs against society for its protection via laws comes under the domain of criminal jurisprudence. Since a crime is considered a wrong against society, it is in the interest of society that the culprit shall be recognized and prevented from doing further acts or omissions that the state or sovereign describes as punitive measures and is known as Punishment.

With this paper, the author will attain a transparent image of the jurisprudential theory behind Punishment and sentencing, an overview of various types of punishments and sentencing in multiple countries worldwide, and a critical comparison between specific punishments of India and the United Kingdom. The paper aims to distinguish and build the rationale behind some major archetypes of punishments, such as the death penalty, imprisonment, fines, compensation, etc., in India and the United Kingdom.

The main focus is to critically compare the ideology of the lawmakers behind defining any such punishment in any of the countries which can create a deterrent or preventive effect on the wrongdoer and also suggest possible reforms that might be needed in the future, keeping in view the dynamic aura of both the societies.

Keywords: Sentence, Punishment, Imprisonment, Jurisprudence, Fine, Society, Laws.

1) Introduction.

Punishments are the backbone of any legal system. It acts as a binding agent for discipline, sanctity, safe and sound society. Punishments, however cruel or harmful in nature, are implicated to have a positive impact on the wrongdoer and also set an example in front of those who even think of doing wrong to another. Many jurists talk about the birth of these punishments from various day-to-day chores. The concept of a legal or moral wrong comes hand in hand with sanctions, as legislators think that the people in the society won't abide by the laws if not backed by sanctions or punishments. Prison punishment presupposes crime as that for which punishment is imposed, and criminal law defines the wrong as crimes; a system of criminal law presupposes a state, which has the political authority to make and put in force the regulation and to impose punishments. Punishment includes material impositions or compensation which might be in themselves usually unwelcomed. They deprive humans of factors that they value (liberty, money, time), and they require humans to do matters that they could not commonly need to do or do voluntarily to spend time on unpaid network labor, to record to a probation officer often, to undertake traumatic programs of numerous kinds. It's far broadly every day that what distinguishes punishment from mere 'penalties' is their reprobative or condemnatory character. Penalties might be imposed to deter the penalized behavior without being supposed to express societal condemnation. However, even considering the number one cause of punishment is deterrence, its imposition of the conviction and proper sentence that the wrongdoer receives in court, the administration of the punishment itself also expresses the censure or condemnation that the perpetrator's crime is taken to warrant.

It has been well observed that when the rights of human nature are not respected, those of the citizens are gradually disregarded. Those eras are found fatal to liberty in history, in which cruel punishments predominate. Lenity should be the guardian of moderate governments; severe penalties, the instruments of despotism, may give a sudden check to temporary evils, but they have a tendency to extend themselves to every class of crimes, and their frequency hardens the sentiments of the people. The excess of the penalty flatters the imagination with the hope of impunity and thus becomes an advocate with the offender for perpetrating the offense.

2) Jurisprudential theory of Punishment.

Punishment theories have been around for a long time. Jeremy Betham, a well-known jurist, is believed to have created the term "punishment." He considered punishment to be the most effective means of preventing anarchy. He established the concept of sanctions, which serve as the foundation for all of the authorities' norms and laws governing the correct functioning of society and its members. Regulations and standards would have no impact on the public if punishments did not back them. That is why it becomes essential to understand the sovereign's norms and laws to prevent such sanctions on an individual. When compared as an isolated fact with a crime, the nature of a negative or evil penalty will make no difference, and it will be equivalent to doing evil in exchange for sin. There has been too much debate on whether or not deliberating punishment on those who act as a result of deviance or those who need to be disciplined is justified. Many jurists mentioned the phrase 'corporal punishment,' which refers to physical punishment on a deviant, such as lashing or battering, to impose some form of discipline.

For many years, corporal punishment has been used in various forms worldwide. Corporal Punishment can be divided into three categories:

1. Corporal Punishment at Home (Parental or Domestic)
2. School Corporal Punishment: Punishments are given by the school's teachers.
3. Judicial Corporal Punishments: the punishments imposed by the courts following the law.

To justify punishing the offenders, many theories of punishment are proposed:

- **DETERRENT THEORY-** The primary goal of punishment is to make the commission of a crime a sick bargain for the offender while discouraging others from doing so. As Salmond correctly points out, punishment is a deterrent mainly in nature. The primary objective of criminal law is to make the criminal an example and a caution to all who share his views. From this perspective, punishment is a means of achieving social safety since it safeguards society by deterring potential offenders. Offenses are committed as a result of the offender's and society's conflict over pleasures. Punishment prevents such crimes by destroying the conflict of pastimes by doing acts that are injurious to others and injurious to the doer himself.¹

¹ Punishments: Origin & Jurisprudence, *available at:*

<http://www.legalservicesindia.com/article/512/Punishments:-Origin-&-Jurisprudence.html> (last visited on April 12th, 2024).

- **RETRIBUTIVE THEORY:** The notion is founded on the maxim an "*eye for an eye*" and a "*tooth for a tooth*,"² a natural justice guideline. As a result, the principle emphasizes that the pain imposed on the offender through punishment must surpass the pleasure obtained by him from his criminal act. As a result, according to the retributive idea, punishment represents society's disapproval of the offender's unlawful act. Those who support the retributive theory argue that punishing criminals is the proper moral response since criminals deserve punishment. On this point, it shares a viewpoint with deterrence theory, which also defends punishment as morally and believes that the severity of the punishment should be proportional to the gravity of the crime for which the offender has been found guilty. As a result, retributivists emphasize the imposition of bodily pain and suffering, as well as incarceration, deportation, and even the death penalty, rendering the ideology illogical, revengeful, and unjustifiably barbarous.
- **PREVENTIVE THEORY-** The preventive theory is based on the idea of disabling the offender through measures such as imprisonment, forfeiture, death penalty, license suspension, etc. This view does not focus on the wrongdoer's intention, instead of focusing on depriving him of his physical ability to commit the crime. It assumes that the need for criminal punishment originates only from social necessity. The community protects itself from anti-social acts that endanger social order by punishing a criminal. "*The end of all penal laws is that they are not to be applied*,"³ Fichte commented for the preventative theory of punishment. When a landowner puts a sign that says "trespassers will be prosecuted," he doesn't want an actual trespasser to have to go to the trouble and expense of bringing the law down on him. He thinks the threat will deter any such conduct; he aims to prevent trespassing, not punish him. However, if trespassing continues, he will prosecute the trespasser. As a result, the true purpose of the penal code is to make the threat widely known rather than to carry it out regularly.
Kant and others have criticized the preventive theory, arguing that just imposing a sentence of imprisonment and sending the offender to prison will not reduce crime unless some reformative measures are made to integrate him into society through the rehabilitation process.

² The Retributive Theory of Punishment: A Brief, available at: <https://lawtimesjournal.in/the-retributive-theory-of-punishment-a-brief/#:~:text=The%20retributive%20theory%20suggests%20that,for%20his%20or%20her%20crime.&text=The%20theory%20aims%20at%20punishing,preventing%20them%20from%20committing%20crimes> (last visited on April 12th, 2024).

³ Theories of Punishment in the Indian Legal Jurisprudence, available at: <https://strictlylegal.in/theories-of-punishment-in-the-indian-legal-jurisprudence/> (last visited on April 12th, 2024).

- **EXPIATORY THEORY-** The morality-based expiatory theory of punishment has little to do with law or legal jurisprudential notions.⁴ As a result, many jurists refuse to accept it as a legal punishment theory. This notion is more tied to ancient religious perceptions of crime and punishment when criminals were placed in cells to confess or make restitution for their crime or guilt from the depths of their hearts and decide to avoid offense.

Anyone who honestly repents for his mistakes or crimes, it was believed, deserved to be forgiven and let off.

- **REFORMATIVE THEORY-** The reformatory theory of punishment emphasizes the individualization of criminals to reform them. It is founded on the humanistic principle that an offender does not cease to be a human being simply because he commits a crime. As a result, a concerted attempt should be made to reform him throughout his imprisonment. The offender's age and character, his antecedents, and the circumstances in which he did the illegal act must all be taken into account by the Court while deciding on the sentence. In contrast to deterrence theory, reformatory theory tries to socialize the criminal to eliminate the factors that drove him to commit the crime. He can resume a regular life in society.⁵

However, it must be noted that no single theory would serve the purpose of the administration of criminal justice. Without a doubt, it must give the reformatory theory a fair consideration but must not overlook the deterrent and preventive aspects of punishment. In the case of juveniles or first-time offenders, an ideal penal policy would focus on reform, whereas repeated offenders and hardened criminals should face deterrence. As a result, modern criminologists place a greater emphasis on institutional techniques of treating criminals rather than outdated and obsolete punishment methods. Punishment should minimize offender suffering while also developing societal morals and discipline in citizens.

⁴ The Expiatory Theory of Punishment, available at: <https://indianlegalsolution.com/the-expiatory-theory-of-punishment/> (last visited on April 30th, 2024).

⁵ Kyron Huigens, "The Jurisprudence of Punishment" 48 William & Mary Law Review 1793 (2007)

3) Types of Punishment and Sentencing all over the world.

Criminal law reflects the underlying social ideals that govern how individuals live and interact in society. To reinforce those principles and ensure conformity, it employs the "stick" as a kind of punishment. In this approach, criminal law aims to safeguard individuals and the very structure and idea of democracy from unwanted, evil, and notorious activities and behavior of persons and groups who strive to disrupt and disturb public peace, calm, and harmony.⁶

Punishment is the sanction imposed on an accused to infringe on society's established rules and norms. Punishment aims to guard society against mischievous and undesirable elements by deterring potential criminals, preventing the actual offenders from committing further offenses, and reforming and turning them into law-abiding citizens. It is likewise asserted that law recognition grows primarily out of the opposition to those who violate the law. The public dislikes a criminal, which is expressed in the form of Punishment.⁷

As discussed above, there are many theories throughout history that society has developed in different ways to simultaneously punish criminal offenders while also ensuring the public's safety. These theories further classify what sought of punishment is to be given; for example, the death penalty is offered to create a deterrent effect against murder on the wrongdoer. It further establishes the deterrent theory. Likewise, imprisonment is given to prevent the wrongdoer from committing a further crime and confirms the preventive theory.

Various Major types of Punishment all over the world:

- i. **Flogging:** Flogging, also known as whipping or caning, is a beating administered with a whip or rod, with blows typically directed to the person's back.

Flogging became one of the most common methods of punishing criminals. In India, this form of Punishment was recognized under the Whipping Act, 1864, which was subsequently abolished in 1955. English Penal law repealed it even earlier than India. Maryland (U.S.A) whipping is known as late as 1953 and is only limited to wife-beating. This mode of Punishment is being utilized in most Middle East nations even today.⁸

Many countries have banned it because of its brutal and vicious nature. It doesn't

⁶ CMV Clarkson, Understanding Criminal Law 166-168 (Sweet & Maxwell Ltd, 4th edn., 2005)

⁷ KD Gaur, Textbook on Indian Penal Code 150 (Universal LexisNexis, 7th edn., 2020)

⁸ Shashwat Pratyush, "Punishment: An Overview" 10 Pen Acclaims (2020)

appear to be very effective. Hardened criminals who were whipped committed the same crimes again. It's fair to presume that it's helpful in minor situations.

- ii. **Mutilation:** Mutilation was a prevalent form of Punishment in ancient times. During the Hindu period, this type of Punishment was used. This form dealt with removing a criminal's body parts, such as one or both hands if the individual committed theft, and his private parts if he committed a sexual crime. The method was widely used in England, Denmark, and many other European countries. The system's rationale was that it is an effective deterrent and retributive measure. Due to its brutal nature, this system has been largely abandoned in current times. Such penalties are seen to have an unavoidable tendency to develop cruelty in people.⁹
- iii. **Branding:** Another kind of Punishment that was often utilized in eastern and classical communities was branding. According to Roman penal law, criminals were branded with appropriate marks on the forehead to be identified anywhere and subjected to public humiliation. This served as a powerful tool in the fight against criminality as a result of societal dread. Until 1829, England also branded its criminals. The technique was also widely used in American prisons. The burglars' hands were branded with the letter "T," and those who did it again were branded with an "R" on the forehead. Blasphemy in Maryland was penalized by a forehead tattoo of the letter "B." During the Mughal era in India, branding was used. With the emergence of humanitarianism in the criminal system, this type of Punishment was entirely abandoned worldwide.¹⁰
- iv. **Stoning:** During the Middle Ages, stoning was also a common practice. This sentencing method is still used in some Islamic nations, such as Pakistan and Saudi Arabia. Offenders found guilty of sex offenses are often sentenced to death by stoning. The guilty person was forced to stand in a tiny trench excavated in the ground, surrounded by people who began pelting him with stones until he died. Even though it is a barbaric punishment, these countries have great control over sex crimes and other crimes against women due to its deterrent effect.¹¹

⁹ *Ibid*

¹⁰ *Supra* note 8 at 9

¹¹ *Supra* note 8 at 9

- v. **Pillory:** Pillory was a severe and barbarous punishment used until the 19th century. The culprit was forced to stand in front of a crowd with his hand and head locked in an iron frame, preventing him from moving his body. While in the pillory, the offender could be whipped, branded, or both. He could be stoned if the crime was heinous enough, and his ear was occasionally nailed to the pillory. The most painful effect on a criminal was restraining his physical activity, and it was thought that the deterrent involved in this method would surely bring the culprit to justice.¹²
- vi. **Banishment:** This is one of the oldest forms of Punishment. The purpose was to expel criminals from society by transporting them to isolated areas; however, this practice was also used to send rebels, revolutionaries, and reformers. Transportation in India refers to sending convicts to the Andaman and Nicobar Islands, often known as "Kala Pani." It reinforces a great fear of the sea in Indians, especially those who live far away from it, and punishment reinforces even more fear. It took on a new meaning for Indians because crossing the seas meant the abandonment of one's caste. During the Japanese colonization of the island in the early 1940s, this practice ended. It was finally repealed in 1955 by an amendment act. In 1854, this type of punishment was banned in England as well.¹³
- vii. **Death Sentence/ Capital Punishment:** Death penalty is also called capital punishment. Under this Punishment, a person is hanged till he dies. The infliction of death sentence or taking away the offender's life by authority as a punishment for an offense is capital punishment or the death penalty. In India, Section 53 of the Indian Penal Code prescribes it as one of the punishments, and after the case of Bachan Singh v. State of Punjab¹⁴, it is awarded in the rarest of rare cases.¹⁵ In England, the death penalty was abolished by The Murder (Abolition of Death Penalty) Act, of 1965.¹⁶
- viii. **Imprisonment:** Imprisonment is the restraint of a person's liberty, for any cause whatsoever, whether by authority of the government, the Punishment of

¹² *Supra* note 8 at 9

¹³ *Supra* note 8 at 9

¹⁴ AIR 1980 SC 898

¹⁵ Punishments Under IPC, available at: <https://www.legalserviceindia.com/legal/article-6879-punishments-under-ipc.html> (last visited on April 15th, 2024).

¹⁶ Abolition of the Death Penalty, available at: <https://www.bih.org.uk/abolition-of-the-death-penalty#:~:text=The%20Human%20Rights%20Act%20formally,peacetime%20and%20times%20of%20conflict> (last visited on April 15th, 2022).

Imprisonment is prevalent in most countries all over the world, and it ranges from simple to whole life imprisonment. In India, Sec 53 of the Indian Penal Code prescribes three types of imprisonment, i.e., life, simple, and rigorous.¹⁷ In England and Wales, Sentencing Code 2020 specifies different kinds of imprisonment ranging from determinant to whole life imprisonment.

- ix. **Fine**: Fines are awarded for non-serious offenses, such as those involving violations of traffic rules and tax laws, as fines are the most common form of Punishment. Almost every penal system adopted this type of Punishment. The financial penalty was in the form of a fine, compensation, or cost, and in some circumstances, fines are imposed as an alternative to a community sentence. Fines are only used as an alternative to imprisonment when the sentence is for a limited period of time, such as two or three years.¹⁸
- x. **Community Sentence**: Community sentences are imposed for offenses too severe for a discharge or a fine but not powerful enough to justify a prison sentence. Community sentencing imposes obligations on offenders that must be met. The court will determine which of these conditions, when combined, will most effectively punish the offender for their offense while also minimizing the likelihood of them committing it again. The community sentence can be ordered to take the following requirements, namely to undertake between 40 and 300 hours of unpaid work, to comply with an electronically monitored curfew during hours imposed by the court for a specified period, to have regular supervision meetings with a probation officer, to complete an accredited program for issues such as domestic abuse or sexual offending, etc¹⁹
- xi. **Discharge**: When a court finds someone guilty of an offense but decides not to charge them with a crime at this time, they are awarded a 'discharge.' Discharges are typically granted for minor infractions. There are two different kinds of discharges: absolute discharge and conditional discharge.²⁰
- xii. **Forfeiture of Property**: Section 53 of the I.P.C. allows for forfeiture of property as a method of Punishment. Sections 126 and 169 of the IPC define two

¹⁷ *Id* 15

¹⁸ *Supra* note 8 at 9

¹⁹ Types of Sentence, available at: <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/> (last visited on April 15th, 2024).

²⁰ *Ibid*

offenses that result in property forfeiture in addition to a sentence of imprisonment with or without a fine.²¹

4) Critical Comparison between various punishments in India and United Kingdom.

In an uncivilized society, no one was believed to be safe from other person's attacks on his people or property. The individual who attacked either gave up or over-powered the opponent. The rule of law was a tooth for a tooth, an eye for an eye, and a life for a life. With the passage of time, the injured party decided to take compensation rather than kill his opponent. The parties were in charge of settling the terms for a long time, but the state progressively took over this job.²²

As previously said, the law provides for Punishment to deter the wrongdoer from repeating the crime. Punishment is a consequence or outcome of a person's wrongdoing, and there are several punishments around the world. However, when it comes to India and the U.K. (England and Wales), the wrongdoer is punished according to their own societies.

In India, Criminal jurisprudence dates back to Manu's time. Assault, theft, robbery, false evidence, slander, criminal breach of trust, cheating, adultery, and rape have all been acknowledged by Manu. The monarch protected his subjects, who owed him loyalty and paid him revenue in return. If the monarch could not do so due to unforeseen circumstances, the case was committed to a judge. If a criminal was penalized, the fine went to the king's treasury and was not handed to the injured party as compensation.²³

Various laws were enacted during the reigns of different rulers. When the British invaded India, they imposed a distinct set of rules based on British models, but they were not universal.²⁴

Later, in the year 1860 British Government, with the presidentship of Macaulay, came up with the Indian Penal Code, 1860, wherein Section 53 of the Indian Penal Code prescribes five types of Punishment, namely²⁵:

²¹ *Supra* note 8 at 9

²² The Indian Penal Code, 1860 (45 of 1860)

²³ *Supra* note 22 at 12

²⁴ *Supra* note 22 at 12

²⁵ The Indian Penal Code, 1860 (45 of 1860), s. 53

- 1) Death
- 2) Imprisonment for life
- 3) Imprisonment, which is of two descriptions, namely:
 - i. Rigorous, that is, with hard labour,
 - ii. Simple
- 4) Forfeiture of property
- 5) Fine

Interestingly, the United Kingdom doesn't have its Penal Code yet (even though ironically they formed India's Penal Code), and most of their Punishment is in the form of Statute. Particularly in England and Wales, the primary Statute on sentencing is the Criminal Justice Act 2003 and Sentencing Code, 2020.

In the U.K., there are majorly four main types of Punishment:

- 1) Discharges
- 2) Fines
- 3) Community Sentences
- 4) Custodial (or prison) Sentences

The court will consider several factors in determining the sentence, including the type of offense and its severity, the timing of any guilty plea, the defendant's character and antecedents, including their criminal record, and the defendant's personal circumstances, such as their financial circumstances if a fine is imposed.²⁶

In terms of basic principles of Punishment, both nations indeed have some common punishment, and once we analyze them properly, the differences become evident. The following section critically examines the same:

- i. **Death Penalty**: Capital Punishment is when a competent court sentences someone to death for committing a crime against the state that the government has sanctioned. Murder, rape, mass murder, and sexual abuse are examples of such crimes. It's a widely debated topic worldwide, and everyone has an opinion about it. Some people believe that killing a person is the most inhumane practice, while others say that it is justified since it puts an end to the life of a person who is unfit and detrimental to society, and hence he should be killed.

²⁶ *Supra* note 19 at 12

Capital Punishment has been practiced for a long time, and in earlier times, such Punishment was meted out for trivial offenses such as fighting over food, sex, and so on. For these petty reasons, they fought for the eye for an eye, tooth for a tooth, and blood for blood.

With new practices, the world and society gradually changed, and it became apparent that capital Punishment should be reserved for the most heinous crimes. Many countries have abolished the death penalty, with 142 countries out of 195 doing so.

In India Death Penalty is not abolished, but it is based on the doctrine of rarest of rare cases, as elucidated in the case of *Bachan Singh* but, in the United Kingdom in the year 1965, the Murder Act (the Abolition of the Death Penalty) suspended the use of capital punishment in the UK for five years (this did not extend to Northern Ireland for all crimes except high treason, "piracy with violence," arson in royal dockyards, and espionage) before making it permanent in 1969, and replacing it with a mandatory sentence of life imprisonment. In 1971, the death penalty for arson in Royal dockyards was abolished, and in Northern Ireland, the death penalty was abolished in 1973. In 1998, Capital Punishment in the UK for acts of treason and piracy with violence was also abolished, finally making the UK free of the death penalty.²⁷

Only significant offenses are subject to this punishment. The death penalty is the severest punishment available under the Indian Penal Code, and it is not a mandatory punishment for a specific crime. The Indian Penal Code prescribes the death penalty as an alternative punishment for heinous crimes, and this means that the judiciary has other options of a prison sentence for carrying out the punishment.

In *Jagmohan Singh vs. State of Uttar Pradesh*²⁸, it was contended that the death sentence is unconstitutional and so unfit for punishment. The Supreme Court upheld the death penalty, and it was decided that deprivation of life is constitutionally permissible if done in accordance with the law's procedures.²⁹

Section 121, 132, 194, 302, 303, 305, 307, 364A, 376E, 396, and other sections of the Indian Penal Code allow for death sentence or capital punishment, and the court is not obligated to award capital punishment in these sections.

Previously, capital punishment was mandatory for 6th crime of murder by a life

²⁷ When was the death penalty abolished in the UK?, available at: <https://www.fairplanet.org/story/when-was-the-death-penalty-abolished-in-the-uk/> (last visited on April 17th, 2022).

²⁸ AIR 1973 SC 947

²⁹ 6 Kinds of Punishment Under the Indian Penal Code, available at: <https://www.writinglaw.com/punishments-under-ipc/> (last visited on April 17th, 2022).

convict under section 303. The death sentence for section 303 was declared unconstitutional in *Mithu vs State of Punjab* because it violated Articles 14 and 21 of the Constitution.

In *Bachan Singh vs. State of Punjab*³⁰, the Supreme Court maintained the death penalty's constitutionality, but only in the rarest of rare cases. If this theory fits the case, capital punishment may be imposed.³¹

But there are various contentions about the death penalty worldwide that every nation should ban. It was also argued in India as well that the punishment of death penalty should be banned and the reason why the Supreme Court held it as a valid form of punishment and is still not banning it because we have seen various instances like the Delhi Rape Case and Mumbai Attack 26/11 where our nation finds it suitable for our society that the criminals of these kinds of crime should be hanged to death. After all, their act was brutal and barbarous, which is not acceptable to society.

The question is whether India should ban Capital Punishment; likewise, that of the U.K. It will depend upon the circumstances of the society in the future as the society is dynamic and changes according to time; there can also be a possibility that the punishment of Capital Punishment will not be required in India.

- ii. **Custodial Sentence/Imprisonment**: Both India and the U.K.(England and Wales) awards prison sentences for particular types of crimes in their countries. Prison Sentence in India is of three kinds, namely Imprisonment for life, Rigorous Imprisonment, and Simple Imprisonment as described under section 53 of the Indian Penal Code 1960³², whereas in U.K. Sentencing Code 2020 prescribes four types of punishment that the court can impose, namely Suspended Sentence, Determinate Sentence, Extended Sentence, and Life Sentence.³³

In India, prison sentences are prescribed under every crime under the Indian Penal Code. The Judge or Magistrate doesn't have this much flexibility, or one can say discretion over deciding what sought of imprisonment should be given to the offender depending upon the factors that determine the sentence, including the type of offense and its severity, the defendant's character, and antecedents, including their criminal record, and the defendant's personal circumstances, such as their financial circumstances.

³⁰ AIR 1980 SC 898

³¹ *Supra* 29

³² The Indian Penal Code, 1860 (45 of 1860), s. 53

³³ *Supra* note 19 at 12

But in the U.K., Custodial sentences (i.e., imprisonment or detention in a Young Offender Institution) should be used as a last resort. Before a custodial sentence can be imposed, not only must the defendant have been convicted of an imprisonable offense, but the Judge or Magistrates must be satisfied that the custody threshold has been passed. The custody threshold is contained in s.152(2) Criminal Justice Act 2003, which provides that the court must not give a custodial sentence unless it believes that the offense, or the combination of the crime and one or more crimes associated with it, was so severe that neither a fine alone nor a community sentence can be justified for the offense. As such, the Judge or Magistrates must look to other sentencing options if they can. At the bottom end of the sentencing, scales are fines and absolute and conditional discharges. Further up the scale are Community Orders. And further up still are Custodial Sentences. Even where the court considers that only a custodial sentence is justified, it can still, in certain circumstances, suspend the sentence or defer the sentence.³⁴

In India, therefore, it is needed to make such reforms in the penal code to give the Judge the discretion over deciding what sought of punishment should be provided depending upon the circumstances and other factors associated with it.

But we can't ignore the crime rate of all the countries where the United Kingdom stands at 64th position and India is at 71st position³⁵. For this reason, the parliament of the United Kingdom must lessen the flexibility provided to the judges and magistrates.

- iii. **Fines**: In both countries, the most common type of sentence given by the courts is a fine, and this is because they are imposed for lower-level offenses such as petty traffic violations or minor theft.

In India, the court has the authority to impose a fine as a substitute for or in addition to imprisonment. In each case, the court must decide whether the punishment of imprisonment, a fine, or both should be given, and the crime for which fine is an alternative punishment is defined under the Indian Penal Code.

But in the United Kingdom, as the case for imprisonment, the court has the discretion to set the amount of a fine after considering how serious the offense is and how much money the offender can pay based on their income. Fines can be given to organizations

³⁴ Prison Sentences, available at: <https://www.defence-barrister.co.uk/prison-sentences> (last visited on Feb 09, 2022).

³⁵ Criminal Rate by Country 2022, available at: <https://worldpopulationreview.com/country-rankings/crime-rate-by-country> (last visited on april 17th, 2022).

or companies as well as people.³⁶

The discretion to decide the amount of fine is also given to Indian Courts under Section 63 of the Indian Penal Code, where the amount of fine is not mentioned³⁷. But this discretion is not unlimited because most of the crime in the Indian Penal Code prescribes the maximum amount of punishment that the court can impose and that in certain way barricades the intellect of a Judge and Magistrate to decide the amount of fine as per the economic condition of a particular individual.

iv. Community Sentence: Community Sentence is a punishment given by the courts in the United Kingdom and is imposed for offenses that are too serious for getting a discharge or a fine but not severe enough to justify a custodial sentence.³⁸

However, in India, this type of punishment does not exist. In 1978, the Indian Penal Code (Amendment) Bill suggested a community sentence (also known as community service) and four other new forms of punishment. However, due to the prolonged emergency period, the bill got lapsed.³⁹

In the United Kingdom, community sentence combines some punishment with community service. For example, it may imply that an offender must:

- Perform up to 300 hours of unpaid work, such as graffiti removal.
- Receive alcohol or drug therapy to address the underlying causes of their criminal behavior.
- Obey a curfew, which is intended to keep them out of trouble; or
- Reside at a specific place or refrain from traveling overseas.

There are a total of 13 requirements that offenders may be expected to meet, and they may be given only one or a combination of them.⁴⁰

India must amend the Indian Penal Code to add the punishment of community sentencing because it creates a specific space between the crimes that are too serious for a fine but not so severe enough to justify imprisonment. This punishment is beneficial to the criminals, the victims, the community, and, as a result, society. Criminals not only see personal growth, but they will also realize the importance of

³⁶ *Supra* note 19 at 12

³⁷ The Indian Penal Code, 1860 (45 of 1860), s. 63

³⁸ *Supra* note 19 at 12

³⁹ KD Gaur, Textbook on Indian Penal Code 157 (Universal LexisNexis, 7th edn., 2020)

⁴⁰ *Supra* note 19 at 12

their work and try to build a new life free of crime once they are released, which will not only help to curb the rising crime rate but will also help to set a true example of the reformatory justice system in India.⁴¹

Some Indian states, such as Gujarat and Andhra Pradesh (Prison in the state subject), have adopted the concept of Community Sentencing as a punishment method by amending the Penal Code and introducing the concept of Community Sentencing as a punishment method. The legislation, however, is currently awaiting consideration by the Union Government.⁴²

Conclusion

The basic idea behind the insertion of punishments in the legal system and into society is to make sure that the people in the society are vigilant enough to watch over their actions and always act in accordance with the laws of the society. As discussed in the paper, we can see that many jurists have explained various ideologies behind various punishments. Different corners of the world recognize multiple punishments. Some of them are still prevalent, and others are abolished due to either the nature of the sanction or its cruel effects on the well-being of an individual. The view of the ancient law jurisprudence is quite different from modern law jurisprudence. In contemporary jurisprudence, moral laws are taken into consideration, and thus many forms of punishments are now modified and only given in rarest of rare cases. Adopting various punishments by countries like India and the United Kingdom and their gradual changes in deciding the punishments for various crimes depicts their societal upgradation. It is important for a country to consider the old ideologies in deciding for these punishments and constantly bring in changes viable with the advanced times and mindset of the individual. The rationale behind categorizing these punishments comes from the kind of intent or motive one develops, which can change from person to person and time to time. It is often important only to acknowledge a mistake and not necessarily punish an individual. In contrast, sometimes, the act is so gruesome that even capital punishment seems less to equalize the pain and agony of the victim.

⁴¹ Community Sentencing in India available at: <https://indianlawportal.co.in/community-sentencing-in-india/> (last visited on Feb 09, 2022)

⁴² Supra note 41 at 18