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KINDS OF PUNISHMENT UNDER INDIAN PENAL CODE : A NEED OF SENTENCING IN GUIDELINES

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ABSTRACT

The Indian Penal Code was passed into law in 1860, and very little has changed since then. Different organizations believe that the kind and level of punishment specified in the Indian Penal Code, 1860 are no longer acceptable given the current situation. The goal of the penalty will be useful in determining the severity and amount of the punishment for various offenses under the Indian Penal Code. This paper aims to explore the various punishments outlined in the Indian Penal Code of 1860 and determine whether they are appropriate in the current scenario.

KEYWORDS

Deterrence, Reformative, Retributive, Preventive, Imprisonment, Capital Punishment

INTRODUCTION

“People are kept in check by punishment since few men are naturally virtuous, and this world cannot support sources of delight due to the fear of punishment.” Punishment is the application of an unfavorable or unpleasant result to a group or person by a representative of authority.

Penology is the study and application of criminal justice. The punishment may be administered formally under a system of law or informally in other types of social settings, such as inside a family. The authority may be either a group or a single person. Punishment may be used for retribution, deterrent, rehabilitation, or incapacitating effects.

There are two types of punishment: positive punishment and negative punishment. Positive punishment is the administration of an unpleasant stimulus to reduce behavior, whereas negative punishment is the removal of a pleasing stimulus. Positive punishments include extra work or spankings, but negative punishments include denying a child access to downtime or recess. Because punishment protects, controls, and keeps the populace awake when it is asleep, the wise have viewed punishment as a source of righteousness. The harshness of punishments varies, and they may include reprimands, loss of rights or freedom, fines, incarceration, social exclusion, inflicting of pain, amputation, and the death penalty. In terms of their degree of reciprocity and fairness to the offence, punishments can be deemed fair or unfair. Depending on the severity, punishments can range from reprimands to deprivations of rights or freedoms, fines,

incarcerations, social exclusion, the infliction of pain, amputation, and the death penalty. The degree of reciprocity and proportionality of the punishment to the crime might determine whether it is fair or unjust.

There are several philosophical definitions of punishment. Commonly regarded as necessary for describing a course of conduct as punishment are the following:

- 1.1. An authority has ordered it,
2. It results in a loss for the alleged criminal,
3. It addresses an offence, and
4. The person (or other animal) that suffers the loss must be held at least somewhat accountable for the offense.

Most often, punishments are used to promote and uphold acceptable behaviour as determined by society. Criminals are subject to judicial sanctions such as fines, physical punishment, or incarceration. A theocracy with a religious police or the Inquisition may impose punishment or apply it morally, as in the case of penance. Critics counter that punishment is only retaliation. The majority of prisons are operated poorly, and in some, the living conditions are worse than in the worst slums. The structure is infested with vermin and insects, and the air vents are blocked by years' worth of dust and grime. Even in sanitary jails, inmates still have to deal with the crushing boredom and emptiness of prison life.

“We ought not to impose such harm on anyone unless we have a very good reason for doing so.” Professor Robert Blecker. This implies that the severity of the punishment must be commensurate with the offence. Immanuel Kant, an eighteenth-century philosopher, argued for a more extreme stance, contending that every murderer deserves to perish because the loss of life is incomparable to any punishment that allows them to live, including a prison sentence. The purpose of punishment under the law is to exact vengeance on the offender for whatever harm they have caused to another person or their property. Punishment is the means through which a criminal might be made to desist from committing crimes against people, property, and the state.

REVIEW OF LITERATURE

1. **Douglas Husak (2017)** analyzes that the Modern states punish those who are found guilty by executing, imprisoning, fining, placing them on probation, conditionally releasing them, warning them, and doing much more. What overarching criteria determine whether retributivists should opt for one of the aforementioned sanctions—or something completely different—in response to culpable wrongdoing? It is simple to understand why retributivists have a tendency to overlook this difficulty if my subsequent logic is correct. They haven't given it much attention because they can't do anything to help. It will defend this conclusion and go over a few of the relatively contentious tenets upon which it is founded in the passages that follow. By advocating what one may refer to as the respectful approach regarding the types of punishment, I want to advance this discussion in some way (or deferential view for short).
2. **Singh, S. K., & Verma** This paper analyse that India is a nation that is rapidly flourishing, but at the same time, crime rates are rising dramatically. Although there is a lot of regulation in India to prevent and manage crime, crime rates are rising as a result of insufficient consequences. To lower the crime rate, the penalty should be harsh. Every punishment is predicated on the same goal: to punish the perpetrator. In India, there are various forms of punishment available, including the death penalty, life in jail, and others. The most severe type of punishment is considered to be the death penalty. This essay discusses the global state of the death penalty and provides a definition of the term "capital offence." It also describes the many methods of the death penalty. In this article, the reformative theory and the preventative theory—two of the main theories surrounding the death penalty—are explained. The researcher also discussed the rarest of rare cases in this study. In addition to capital punishment in ancient India, this article discussed countries that had abolished it and those that had retained it. This page provides a thorough overview of India's execution procedures as well as its use of the death penalty.
3. **Mishra, A. K.** The paper highlights in Oppenheimer's words Punishment is an evil inflicted upon a wrongdoer on behalf of and at the sole discretion of the society, in whose corporate capacity he is a permanent or temporary member. Punishment always follows crime and has its roots in personal retribution. Only the victim executes the sentence in

order to get their vengeance. No governmental authority had the power to pardon a criminal; only those who had been wronged could do so. Punishment has always been meant to cause "pain." Punishment is additionally seen as a tool for social control and crime prevention. In line with the shift in social perception, the purpose of punishment has changed to induce change. It begins with retaliation and criminal deterrence before moving on to rehabilitation. The Indian Penal Code's punishment guidelines are not static; rather, they have changed as a result of legislation, honourable court rulings, and societal demands. New development gives rise to new forms and modes of crime, including cybercrime, financial crime, and other types that call for changes in the severity of punishment and how it is carried out. Although the idea of punishment is as old as humanity, it is now abundantly clear that both its general form and the acceptance of it by many nations' penal systems have undergone a significant change.

4. **Sharraf, U. (2020)** this paper looked at the politics involved in creating criminal legislation. Both the reductive and retributive effects of punishment are examined. It is demonstrated how the politics of legislating can at times trump current social realities and the state's capacity to enforce the relevant laws. The morality and effectiveness of corporal punishment are contrasted with the use of the death sentence in order to highlight the anomaly. The article contends that before a proper reform of the penal system can take place, a suitable political discourse must be developed along with the development of a social discourse and the capacity of the State.

5.

RESEARCH OBJECTIVE

1. To highlight the theories of Punishment.
2. To analyse what kind of punishment under the Indian Penal Code and its relevance.
3. To highlight the compensation to the victim of crime.
4. To highlight the sentencing policy.

RESEARCH QUESTION

1. What are the theories of Punishment?
2. What kind of punishment is under Indian Penal Code(IPC) and what's its relevance.
3. What the compensation to the victim of crime will get?
4. What is the sentencing policy?

RESEARCH FINDING

1. Theories of Punishment :-

A crime is an action that the law considers to be damaging to society as a whole. Criminal justice exists to hold the perpetrator accountable. The issue is, though, what does Punishment serve to accomplish? Many theories have been put out in this area from the dawn of time. There are two main groups that these theories fall under. According to the first category, the goal of criminal justice should be to safeguard and advance the welfare of the state and society. Examples of this category include reformative, preventive, and deterrence theories. The second category, however, holds the opinion that punishment should only aim to seek retribution. The proponents of this idea believe in the "Eye for an eye" principle. Below are the various theories of punishment.

1.1 Deterrence

This view contends that the goal of punishment is to make the perpetrator a deterrent to future wrongdoing while also serving as an example for those with criminal tendencies. Salmond¹ believes that the most significant feature of punishment is its deterrent effect. According to Locke, every crime should be made to be a bad bargain for the perpetrator. The deterrent idea emphasises the need to safeguard society by treating inmates in a way that discourages other people from breaking the law. According to Salmond², "The chief end of the law is to make the evildoer an example and a warning to all that are like minded with him."

Punishment is a tool to dissuade future offenders from committing the same offence and to stop those who may be considering committing an offence they haven't yet committed from actually

doing so. The goal of this punishment is to be severe enough to deter people from committing crimes in the first place. Everyone in the community is meant to be discouraged from committing crimes.

In England during the Middle Ages and into the early 19th century, punishment was based on the deterrence notion. As a result, even minor offences in England were met with harsh and inhumane punishments. The primary basis for the punishment meted out to criminals in ancient and medieval India was the deterrence idea. Even minor and insignificant offences carried the death sentence or mutilation of limbs.

1.2 Reformative

This view contends that the goal of punishment should be the criminal's reformation. For the offender to be able to rebuild his life after being released from prison, he needs to get education and training in a variety of skills. The proponents of this philosophy claim that by treating the offenders with compassion, tact, and love, a radical transformation in their personalities can occur. By using kind words and kind ideas, even the most nasty and toughest of inmates can be changed and made into valuable allies. Reformation theory is increasingly being applied to young offenders. The Reformatory Schools Act, 1890, which sought to prevent the depraved and delinquent children from being convicted felons in the future, is the country's earliest piece of legislation on the subject. The Children Act, which is applicable to the Union Territories, was passed by the Indian government in 1960. The 1978 amendment to this Act.

With a similar goal, the Probation of Offenders Act, 1958, was passed. The Supreme Court observed about this Act in *Rattan Lal v. State of Punjab*³ that the Act represents a turning point in the development of the contemporary liberal trend of change in the sphere of criminology. The Act makes a distinction between criminals under the age of 21 and those over that age, as well as between offenders who have committed an offense that is punishable by death or life in prison and those who have committed a lesser offense.

¹ Salmond, J.W: Jurisprudence, 12th Edition, Sweet and Maxwell Ltd., 1979

² *ibid*

1.3 Preventive

This theory's goal is to hinder or stop the perpetrator from committing the crime. Punishments like imprisonment, execution, exile, forfeiture of office, etc. prevent criminals from committing the same crimes again. The offender is deterred from committing another crime by being locked up. A person who is fired from his job loses the chance to commit a crime once more. The termination of a person's driver's license is an illustration of a preventive punishment. He cannot drive since he lacks a license. This idea stops the wrongdoer's physical ability to do the crime rather than focusing mostly on his motivation.

2.4 Retributive

Ancient penology acknowledged the retributive component. Early criminal laws were built on the idea that punishment should be given for all forms of evil. Supporters of the retributive notion include Plato. To get punishment is to pay restitution for breaking the law; punishment is a form of atonement. The sum of guilt and punishment is innocent. A debt that the wrongdoer owes to his victim is the punishment for their wrongdoing. Once the punishment has been served, the debt is settled and the legal connection created by the crime is broken. The goal of real punishment must be to make up for injustice with justice. The victim's spirit of revenge must be appeased in order to convince the perpetrator to return to the victim what is rightfully his through such restoration and repentance. Critics point out that punishment alone does not make up for the wrongdoing the criminal committed.. It merely aggravates the mischief.⁴

2.5 Unified Theory

A single, cogent framework unifies several criminal objectives, such as retribution, deterrence, and rehabilitation, under the umbrella of a unified theory of punishment. Theorists of the unified system contend that they collaborate to achieve a larger objective, such as the defence of rights.

³ (AIR 1965 SC 444)

2. Kinds of Punishment under the IPC and its relevance

The Indian Penal Code, 1860 Section 53, specifically addresses the various forms of penalties that the Criminal Courts may impose if the accused is found to be in violation of the Code.

According to Section 53 of the Code, there are five different types of penalties:-

- (a) Death
- (b) Imprisonment for life
- (c) Imprisonment, which is of two descriptions, namely –
 - (1) Rigorous, that is with hard labour
 - (2) Simple
- (d) Forfeiture of property
- (e) Fine.

a) DEATH

The killing of a human being as a form of punishment for a crime is known as the capital punishment or death penalty. The act of carrying out a death sentence is known as an execution. A death sentence is a judgement ordering someone to receive the death penalty. In India, the hanging method is used to administer the death punishment. The additional methods used to carry out death penalties in real-world situations include stoning, sawing, blows from a weapon, lethal injection, electric shock, etc. 48 nations still use the death penalty, 108 have totally abolished it for all crimes, and 7 have only done so for minor offences. Over 60% of the world's population lives in countries that still practise the death sentence, despite the fact that the majority of countries have abolished the policy. Supporters of the death penalty stated that it is ethically acceptable to execute murderers, particularly when there are aggravating circumstances such the killing of a police officer, a child, or a large number of people through acts of terrorism, slaughter, or genocide. Retaliation is simply revenge, according to some abolitionists, and cannot be justified. Others contend that life without parole is a suitable alternative even though they embrace punishment as a component of criminal justice. Additionally, it is asserted that punishing a murder with another death is an unusual way to deal with a violent crime because,

⁴ Falls, Margare: Retribution, Reciprocity, and Respect for Persons. Law and Philosophy. (1987). 6 (1): 25–51

in general, violent crimes are not punished by subjecting the perpetrator to a similar crime. The right to life is the most essential human right, and the death penalty inflicts psychological torment on the convicted while also violating this right without justification, according to abolitionists. The death sentence is opposed by human rights groups who label it a brutal, inhumane, and degrading form of punishment. It is viewed by Amnesty International as the ultimate, irreversible violation of human rights.

b) IMPRISONMENT

Another form of punishment is imprisonment. "Imprisonment means, at minimum, the loss of liberty and autonomy, as well as many material comforts, personal security, and access to heterosexual relations."⁵

Prison is a place where people are kept who have been sentenced to be deprived of their freedom for committing a crime or who have been remanded in custody by a court. A felony or misdemeanor conviction may result in a prison sentence being imposed on the offender. Prisons were largely used up until the late 18th century to house creditors, criminal suspects awaiting trial, and criminals awaiting the imposition of their penalties, which were typically death or exile from the country. Only minor offenses were typically given a jail sentence.

There are several accepted justifications for using jail. One strategy tries to dissuade people from committing crimes (generic deterrence) and reduce the likelihood that people who serve prison sentences would commit crimes after they are released (individual deterrence). A second strategy concentrates on punishing or getting revenge from individuals who have committed significant crimes. A third strategy encourages persons who are sentenced to prison to undergo personal transformation. Last but not least, there are times when it's vital to defend the populace from criminals, especially those who do it repeatedly. All or more of these justifications might be relevant in a particular situation. Some prison systems are now referred to as correctional institutes due to the growing significance of the idea of reform. If done right, jail can accomplish all the goals of punishment. However, determining the sentence's length is a challenge. Both brief and lengthy sentences of imprisonment have benefits and drawbacks. The Court will typically consider a number of factors when determining whether a sentence is appropriate, including the nature of the offense, the circumstances surrounding its commission, the offender's age and character, any harm done to individuals or the community, the impact of the punishment on the offender, and the offender's efforts to make amends and reform.

⁵ Supra

i. Imprisonment for life

When someone is sentenced to life in prison, it means that they will be held captive until the end of their natural life, or until they pass away. According to Section 55 of the Indian Penal Code, 1860, the appropriate government may commute a life sentence to a maximum of 14 years of imprisonment.

ii. Rigorous Imprisonment

Rough treatment in prison may include labor-intensive tasks like cutting wood or digging in the ground. According to Section 60 of the IPC, the Court that sentences the wrongdoer has the authority to specify within the sentence whether the detainment should be entirely rigorous, entirely simple, or whether any portion of the detainment should be rigorous and the rest simple in cases where the wrongdoer is responsible for detainment that may be of either description.

In India, incarceration is an acceptable form of punishment for:

Giving or creating false evidence with the goal to get a conviction for a death offence is prohibited by Section 194

Section 449, "Trying to enter a living space with intent to commit an offence punishable by death"

iii. Simple imprisonment

For minor offences like wrongful restraint, defamation, etc., simple incarceration is mandated. If the sentence is simple imprisonment, the prisoner won't be forced to perform any strenuous manual labour. Several offences are punishable by simple imprisonment, including the following:

Section 178– Refusing to take oath

Section 500– Defamation

Wrongful restraint

Section 510– Misconduct by a drunken person, etc

c) FORFEITURE OF PROPERTY

When property is forfeited, the State essentially takes the offender's or criminal's possessions. It was once a serious offence during the colonial era. However, property forfeiture is currently voidable only in the instances of the following offences:

- ❖ Destructive areas held by Power that are at peace with the Indian government.

❖ Receiving property seized during a war or other event listed in sections 125 and 126.

d) FINE

A fine is an amount of money that is required to be paid as punishment for a crime or other offence by a court of law or other authority. A fine's amount can vary depending on the circumstances, but it is frequently disclosed in advance. The sum of money paid for breaking traffic laws is a typical illustration of a fine. Common law imposes relatively modest penalties on minor infractions. When the court or magistrate determines that a significant amount of retribution is required, higher fines may also be imposed separately or in conjunction with shorter prison terms. For instance, as fraudsters are often barred from the position or profession they misused to execute their crimes, fraud is sometimes penalised by extremely high fines.

A similar idea is the fixed penalty notice, a monetary fine for some small offences that can be either accepted (instead of being prosecuted, saving time and paperwork) or brought to court for the offense's regular proceedings.

A fine may be imposed by the court as an alternative to imprisonment or in addition to jail. In some circumstances, the fine and the prison sentence are combined. Various IPC fines are covered in Sections 63 through 69. However, under Section 64 of the Code, the court may impose a prison sentence when a fine is not fully paid.

3. COMPENSATION TO THE VICTIMS OF CRIME

A variety of articles of the IPC stipulate that a fine may be imposed as a form of punishment. The fine prescribed under the IPC is minimal and has to be changed in accordance with the current requirements as the fine occasionally is not enough to recognise the victim's genuine loss. The State was required to develop a plan for the compensation of victims by direction of the Central Government in 2009. The scheme's main goal was to help victims' dependents who had lost something or been hurt as a result of the offence. This concept allows for the possibility of rehabilitation. Another type of fine is Compensation to Victims of Crime from Prisoners' Wages. A set amount of the prisoners' wages is withheld under this, and the money saved is put into a fund for the victims' welfare. But most recently, a PIL asking for the repeal of such rules was filed in the High Court of Delhi, arguing that the reduction of the prisoners' wages was arbitrary in nature.

4. SENTENCING POLICY

The following criteria are used to determine sentences under the Indian Penal Code:

- The gravity of the offense;
- The severity of the offense; and
- How it generally affects public peace.

The severity of the penalty and the degree of culpability are related. As a result, the sentencing guidelines for a certain crime are standardized.

The Ministry of Home Affairs in India constituted the Malimath Committee (the Committee on Reforms of Criminal Justice System) in March 2003. The committee's purpose was to make suggestions for the Indian judiciary's sentence guidelines. In its report, the aforementioned group recommended that sentencing guidelines be implemented in order to reduce the uncertainty around sentence determination. The committee noted that there is a lack of uniformity because "for many offences, only the maximum punishment is specified and for some offences, the minimum punishment may be prescribed." Because of this, judges have broad discretionary authority to determine the length of sentences, which creates confusion in the sentencing guidelines.

March 2003 saw Sentence judgments based on the sentencing guidelines, which were formed by judicial rulings and legislative actions. The following are the guidelines that the court often abides by: the Ministry of Home Affairs created a body:-

- Excessiveness/Parsimony- Unless necessary, the punishment provided will not be excessive
- Proportionality: The punishment must be appropriate for the overall seriousness of the offense.
- Parity: For similar offenses committed by offenders under comparable circumstances, the punishment should be similar.
- Totality - When an offender receives more than one term as punishment, the whole sentence must be fair and proportionate to the offense.
- Purpose: The punishment's goal must be accomplished through the sentence. Punishment may be used as a deterrent, as part of rehabilitation, for public safety, etc.

- Simplicity and predictability - The judge's bias or personality should not be a factor in sentence. A precise and well-defined sentencing plan must exist.
- Sincerity – The sentence must accurately reflect the time the offender will spend in jail or prison, hence there must.

In the case of *Sangeet & Anr. v. State of Haryana*⁶ the court observed that future court decisions did not entirely follow the strategy established in the Bachan Singh case. When determining the appropriate sentence for the accused, both the mitigating and aggravating circumstances must be taken into account.

CONCLUSION AND PROPOSALS

FOR REFORM

The Indian Penal Code was passed into law in 1860, and very little has changed since then. Since the code's passage, there has been a significant growth in the variety of offenses. The Code will become clearer and easier to understand if offenses are divided into separate classes or codes. The penalties must be severe enough to be deterrent, but not too severe. It is now necessary for the Indian judicial system to establish a sentencing strategy so that the judge's prejudice and room for ambiguity do not affect sentencing. Additionally, it will reduce appeals for increased or decreased sentences, which will be a huge relief for the judicial system. Additionally, the Code permits the establishment of a suitable victim compensation fund that may also contain confiscated assets from organized criminals.

⁶ (2013) 2 SCC 452

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