

**“Punishment: An Overview”**

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**Introduction**

The term crime means a wrongful act or omission of such a kind that the state deems it necessary, in the interest of the public, to repress it for its repetition would be harmful to the community as a whole. Crime has been a perplexing problem ever since the beginning of human civilization and man's effort to struggle with this problem has only partially succeeded. There is hardly any society in this universe which is not oppressing with the problem of crime and criminality. As opposed to the individualistic approaches which focus upon the biological, mental and other physical characters of the offender to explain the cause of his criminal behavior there is a sociological approach to explaining criminal behavior with reference to a factor outside the personality of the criminal. The subject matter for the analysis of the criminal behavior also depends upon the society, community and groups in which criminal lives which shape criminal as well as non-criminal behavior. Criminal behavior is looked upon as resulting from social interactions. The act of Criminal is the result of a learning process in the society. Apart from the personality of the criminal and the effect of biological, mental and psychological factors on him, it is necessary to consider various social and environmental conditions within which crime generates.

Reaction to the crime has been different at different human civilization at given time they are different at various societies. Attitude toward criminals represent the basic value of that society and also displayed extreme type of emotions. In the words of Elmer Hubert Johnson Criminal may be described as the monster or pictured as haunted animal or as the helpless victim of brutality.<sup>1</sup> Three types of reactions to crimes can be observed in various societies. Firstly, traditional reaction which is of universal nature termed as punitive approach. It treat criminal as bad and dangerous person and object of this approach to inflict punishment upon offender in order to protect society. Secondly, relatively recent origin in comparison to punitive approach in which criminal can be considered as the victim of circumstances and various factor within the criminal and society. It regards the criminal as sick person and requires treatment; this approach is termed as therapeutic approach. Finally, there is a preventive approach instead of focusing on criminal it seeks to eliminate those factors which is responsible for crime causation. These reactions do not overlap each other but sometimes they may coexist as a part of overall system. The theories which reflect these approaches are not theories in normal sense; they are not assertions but are in the nature of moral claims.<sup>2</sup>

It is well known that punishment is one of the oldest method of controlling crime and criminals in society. However, variations in method of punishment, namely are noticeable because of variations in societal reaction in various societies to law breaking. In some societies punishments may be comparatively severe, swift, uniform and definite while other

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<sup>1</sup> Crime, Correction and Society, at p. 3

<sup>2</sup> See generally, H.L.A. Hart, Punishment and Responsibility(1968)

society may not be so.<sup>3</sup> The use of specific methods of punishment varies from time to time. The different forms of punishment which were in practice in different societies reveal that punishments were based on deterrence and retribution which lost significance in modern penology system. In primitive societies did not have any criminal administrative system, therefore settlement of private wrongs was entirely a personal matter and can be settle directly by wrong-doer. Blood-feud was one of the most common modes of punishments during early societies which were regulated by customary rule of procedure.<sup>4</sup> It is undoubtedly method of revenge which works on principle of an eye for an eye and tooth for a tooth. This method sometimes led to serious clashes between clan and made life worsen. Sometime later, the damage for injury was substituted by payment of money compensation; however it varies upon the nature of crime, age, sex and status of victim. As the time passes, primitive societies gradually transformed into civil societies and involvement of kingship started which exercise his authority to settle dispute. The private settlement or punishment fell into disuse and give rise to public disposition of wrong-doers.<sup>5</sup>

The history of early penal system of most countries reveals that punishments were barbaric, cruel and tortuous. At end of the 18<sup>th</sup> century human began to assert its influence on penal system and severity should be kept at lower level. The institution of police as a law-enforcement agency and a court woks as a system for delivery of justice developed only after crime and punishment become the matters of public control.

The common modes of punishment in different parts of the world are like flogging, mutilation, branding, stoning, pillory, fines, and forfeiture of property. Capital punishment, imprisonment for life and solitary confinement also recognized as modes of punishment.

## **GENERAL FORMS OF PUNISHMENT**

The punishments have some deterrent effect on many people can be widely accepted without any oppose to this principle. But there are some other deeper aspect which cannot be probably be asserted with the same amount of confidence.

Various forms of punishments have been evolved and applied in various societies from time to time. Tortures, sadistic forms of executing death sentences and all sorts of cruelties in prisons were some of the distinguishing features of the penal philosophy all over the world till relatively recent times.

The punishments provided in many parts of the world, including India<sup>6</sup>, are death, imprisonment for life, rigorous and simple imprisonment, forfeiture of property and fine. A discussion of the problems involved in them may be useful at this point.

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<sup>3</sup> Sutherland and Cressey :Principles of Criminology (6<sup>th</sup> Ed.) p. 255

<sup>4</sup> Barnes and Teeters : New Horizons in Criminology (3<sup>rd</sup> Ed.) p. 287

<sup>5</sup> Ibid at p. 288

<sup>6</sup> S.53, Indian Penal Code.

**Flogging**

Flogging was one of the most common methods of punishing criminal. In India, this form of punishment was recognised under the Whipping Act, 1864, which was finally abolished in 1955. English Penal law repealed even earlier than India. Maryland (U.S.A) whipping is recognised as late as 1953 and only limited to wife-beating. This mode of punishment is being used in most of Middle East countries even to this day.

The instrument and method used in flogging differed from country to country. Some of them use straps and whips with a single lash while other use rubber-hose to left behind traces of flogging. In Russia, it was constructed of dried and hardened thongs of raw hide, interpreted with wire with hook at end which could enter and tear the flesh. It has discontinued being barbarous and cruel in form. It does hardly prove effective. It can be seen that hardened criminal who were subjected to whipping repeated their crimes. It can be inferred that it is useful in minor cases.

**Mutilation**

Mutilation was another form of punishment commonly use in early times. This form of punishment was practised during Hindu period. This form dealt with the severance of body parts of criminal like if that person committed theft then one or both of hands were chopped and if indulged in sec crime his private part was cut off. The system was prevalent in England, Denmark and many other European countries.

The justification which was given for the system was that it serves as an effective measure of deterrence and retribution. This system however stands completely discarded in modern time due to its barbaric nature. It is believed that such punishments have an inevitable tendency to infuse cruelty among people.

**Branding**

Branding was another form of punishment which was commonly used in oriental and classical societies. Roman penal code supported this system as criminals were branded with appropriate mark on the forehead so that they could be identified anywhere and subject to public mockery. This acted as forceful weapon to combat criminality due to fear of society. England also branded its criminals till 1829. The system was also common to American penal systems. The burglars were branded by letter “**T**” on their hand and those who repeated branded with “**R**” on the forehead. In Maryland Blasphemy was punishable with branding the letter “**B**” on forehead. In India branding was practised during Mughal rule. This system of punishment was completely abolished with the advent of humanitarianism in the field on penal system.

**Stoning**

Stoning was also practised during the medieval period. This mode of sentencing the offender is still in practise in some of Islamic countries, particularly in Pakistan, Saudi Arabia etc. The offender who are guilty of sex crimes are always subject to punish by stoning to death. The

guilty person made to stand in a small trench dug in the ground and people surround him from all side and started pelting stone until he dies. Although it is a punishment barbaric in nature, but due to its deterrent effect, the sex crimes particularly, crimes against women are well under control in these countries.

### **Pillory**

Pillory was another form of punishment which is cruel and barbaric in nature which was in practise until the end of the 19<sup>th</sup> century. The criminal was made to stand in a public with his hand and head locked in an iron frame so that he could not move his body. The offender could be whipped, branded or both while in pillory. He could be stoned if crime is of serious nature, sometimes the ear of were nailed to pillory. Restraining the physical activity of criminal had the most agonising effect on him and it was believed that deterrence involved in this mode would surely bring offender to books.

### **Security Bond**

A security bond was not basically a punishment but a bond for good behaviour, may serve a useful purpose as a form of restraint on the offender<sup>7</sup>. This may involve compulsory treatment or supervision of the offender. The court may defer sentence on some offender conditionally subject to his normal behaviour. This is recognised as an effective mode of corrective justice in modern penology.

The purpose of this punishment is to offer an opportunity to offender to become a law-abiding citizen and chances of his reformation are better than those who are imprisoned. The family members of the offender are not affected their basics need were fulfilled as they are not deprived of their bread winner.

### **Banishment**

The punishment is one of the most ancient ones. The object is to eliminate criminals from society by sending them to far-off places and sometimes even rebels, revolutionaries and reformers were also taken care of by this process. In India, transportation means dispatch of offenders to “Kala Pani” i.e. to Andaman and Nicobar Islands. It creates extraordinary fear among Indians of sea; particularly living far away from it and punishment causes more fear among Indians. It had an additional dimension for Hindu because going beyond the seas involved the forfeiture of one’s caste.<sup>8</sup>

This practise was come to halt in early forties during the occupation of island by Japanese. Finally, by amending act of 1955 it was abolished altogether. In England also this system of punishment was abolished in 1854. This punishment was possible in erstwhile USSR where it is known as exile, which means removal of offender from place of residence, with obligatory settlement in certain locality, usually Siberia, where living conditions are extremely bad due

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<sup>7</sup> Section 106 to 110 of the Code of Criminal Procedure, 1973.

<sup>8</sup> Penal law of India, Vol. 1 (1972) at p. 380

to freezing cold. The rationale of this punishment was that dissociation of the offender from his surroundings may reduce his capacity to commit crimes of a particular nature.

### **Kinds of punishment under Indian penal code**

There are five kinds of punishments which prescribed under the India Penal Code, 1860. Section 53 of Indian Penal Code prescribes for following punishments:

1. Death sentence or Capital Punishment
2. Sentence of life imprisonment
3. Sentence for imprisonment for a term either rigorous or simple.
4. Forfeiture of property
5. Fine

### **Capital Punishment**

Of all the forms of punishments, capital punishment is considered as the most controversial form of punishment among the modern penologists. The controversy is gradually begin resolved with a series of judicial pronouncement contain elaborate discussion on this complex penology system. There are only certain objects which are punishable with death sentence under the Indian Penal Code include:

1. Waging war against the state (Sec 121)
2. Abetment of mutiny (Sec 132)
3. Giving or fabricating false evidence leading to procure one's conviction (Sec 194)
4. Murder (Sec 302)
5. Abetment of suicide committed by a child or insane (Sec 305)
6. Attempt to murder by life-convict, if hurt is caused (Sec 307)
7. Kidnapping for ransom etc. (Sec 364A)
8. Dacoity with murder (Sec 396)

Although all the above offences are punishable with death, but there being alternative punishment of life imprisonment hence the court was not bound to award exclusively death for these offences. In fact, court of opinion that no any alternate award to be given then a special reasoned to be mentioned that award or alternate punishment i.e. imprisonment for life would be inadequate in that case.

In recent time, award of punishment give primacy to reformative method of punishment which was hitherto used merely as supplementary measures. Hungary is the first country in the world to initiate reformative educational method for his prisoners. Some sophisticated modes of punishment in an up-to-date penal policy, the measures such as prohibition from certain work or educational prohibition and some local punishment.<sup>9</sup> These measures might work equally effective if adopted in Indian Penal system.

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<sup>9</sup> Hungarian Law Review No. 1-2, (1980) Preface

**Imprisonment for life**

Imprisonment for life was not inserted at time of drafting of Indian Penal Code but amendment by act 26 of 1955 with effect from 1<sup>st</sup> January, 1956. In case of Naib Singh v. State<sup>10</sup> Supreme Court held that nature of punishment is rigorous and a criminal court under Section 418 of Code of Criminal Procedure, 1973 by issuing a warrant and direct the execution of sentence. There are all 51 sections in the Penal Code which provide for sentence of imprisonment for life.

Section 57 of the Indian Penal Code provides that in calculating the term of imprisonment, imprisonment for life shall be reckoned as imprisonment for twenty years.<sup>11</sup> The executive authorities have power to commute sentence for imprisonment of life under section 55 of IPC and Section 433 (b) of the Code of Criminal procedure to rigorous imprisonment for a term for exceeding fourteen years. After the term of fourteen year including the period of remission earned during his incarceration can be set free.

In case of Mohd. Munna v. Union of India,<sup>12</sup> the apex court held that in absence of an order of remission formally passed by appropriate government, there is no provision in IPC or Cr.P.C under which a sentence of life imprisonment could be treated as for a term of 14 years or 20 years and further a life convict could not claim remission as a matter of right. In case of Swami Shraddananda<sup>13</sup> the law related to award of life imprisonment, in this case he was convicted for life and directed that he shall not be released from prison till the rest of his life.

**Imprisonment for a term**

Imprisonment is a most simple and common penal for sentencing for incapacitating criminals. This method is used for temporary elimination of criminal apart from being a general deterrent to individual deterrent. Conditions of imprisonment in civilized nations have undergone many changes. In recent decades the minimum security institutions such as open air prisons and prisons hostel are used for imprisonment.

Despite being a corrective measure the most intricate problem involved in imprisonment as a measure as a punitive reaction to crime is to set behind bars to criminals. The prisoners are confronted with new environment and life and take time to adjust in environment. He loses his personal identity in process of adjustment and converted into impersonal entity. It also damages the family entity of the offender. Offender loses all his contact from society and family if he was sole bread- winner then condition become worsen. Depriving the offender from society create another problem like some new prison discipline occurred as homosexuality, bribery, corruption, revolt etc. Administration faces a lot of problem in handing woman prisoners especially in case of pregnant woman or woman with child.

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<sup>10</sup> AIR 1983 SC 855

<sup>11</sup> AIR 1997 SC 756

<sup>12</sup> (2005) 7 SCC 417

<sup>13</sup> AIR 2008 SC 3040

Indian Penal Code provides for two kinds of imprisonments. Simple imprisonment is suitable where a fine will not be sufficient to award and a very short term of imprisonment has to be needed. This ensures casual offenders being kept apart from the contamination of hardened criminals because they humiliate or manipulate simple offenders for a more heinous crime. The Indian Penal Code provides for "solitary confinement" being awarded up to a certain limit i.e. not exceeding three months in whole. Solitary confinement is appropriate in the case of the more heinous class of offences. It should be borne in mind, however, that solitary confinement can be awarded in the case of offences under the Indian Penal Code only and not in the case of offences under other Acts. Short term imprisonments should be avoided and before passing such sentences the Court should consider some important point as to whether the imprisonment till the rising of the court, allowed by law, could not appropriately be passed instead or the provisions of section 562 of the Code applied in favor of the accused. This is however not intended to fetter the judicial discretion of the Courts.

The social stigma attached to prisoners makes their rehabilitation more difficult. Prisoners often feel that real punishment starts after they free from prison institution. Be that as it may, the fact remains that imprisonment is still one of the most accepted forms in the world. With modern correctional techniques introduced in correctional institution. It serves an efficient method of reforming prisoners at same time protecting society from anti-social elements. So, it serves dual purpose of preventive and reformatory justice.

### **Fines**

The offences which are not serious in nature especially those involving breach of traffic rules and revenue laws is awarded with fine as it was considered as most common mode of punishment. This system of punishment was used in almost all penal system. Financial penalty was either in shape of fine or compensation or cost.

The Indian Penal Code provides for imposition of fine-

1. As only disposition method
2. As an alternative to imprisonment
3. As a punishment in addition to imprisonment
4. Amount of fine is left to the discretion judge

Fine as an alternative to imprisonment is used only against short term imprisonment i.e. imprisonment up to 2 or 3 years.

The real problem arises on the quantum of the fine or cost and enforcement of its payment. The usual methods of enforcement are forfeiture of property,<sup>14</sup> and threat of incarceration.<sup>15</sup> In fixing the amount of fine or pecuniary penalty financial condition of offender must be kept in mind. If it is beyond offenders limit then it would be unrealistic.

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<sup>14</sup> Section 125 to 127 and 169 IPC.

<sup>15</sup> Nigel Walker :Sentencing in a Rational Society.

In India, however, in the matter of recovery of fines the provisions of section 421 of Cr.P.C would apply. The code provides that when a court imposes a sentence of fine or sentence in which fine is a part; it may be directed to pay whole or part paid to victim for loss or injury caused.

In case of default in payment of fine leading to imprisonment of the accused, the ideal policy is to convert unpaid fine into imprisonment not automatically but on discretion of judge.

### **Forfeiture of Property**

Section 53 of I.P.C provides forfeiture of property as a form of punishment. There are two offences which are specified in Section 126 and 169 of I.P.C which provides for confiscation of property beside punishment of imprisonment with or without fine.

Section 126 provides that a person committing depredation on territories of power at peace with government of India shall be punished with imprisonment for a term not exceeding 7 years and fine and property so used.

Section 169 provides a public servant who being a public servant is legally bound not to bound to bid or purchase such property, if he does so then either his own name or name of other shall jointly be punished with imprisonment not exceeding two years and with fine or both and if property purchased then must be confiscated.

### **CONCLUSION AND SUGGESTIONS**

Crime rate in India has been considerably increasing from year to year and the convictions rate hard become very low and that too the courts have been awarding very meagre punishments by using their wide discretionary powers. There are more chances to get lenient punishment by the proved offenders due to loose frame work of the legislature in fixing the punishment for several offences in the Code. There is more probability to apply the personally favored brain and individual opinion of the judicial officers while conforming the sentence to the offenders, due to wide discretion available in the present sentencing jurisprudence. So that, there are more chances to escape for the accused from the clutches of the law.

Already Indian Criminal Justice System is working on the motto of “hundred criminals can be escaped, but one innocent should not be punished”. In these circumstances, if the minimum punishment is conformed in the penal statutes in general and in Indian Penal Code in particular as it is covering substantial portion of the offences in India by the legislature through amendments, the trial court judge will be curtailed by the Statute and he is forced to give punishment within the limit stipulated by the legislature. Crime is age-old phenomenon, a deep rooted evil, born and developed along with the development of man and gradually became universal malady afflicting each and every society. There are various reformative steps which can be taken to curb 432 different crimes which are increasing rampantly.



It became growing societal menace and it is a constant threat to everyday peaceful existence. It is endemic in all governments and there is hardly any society which is totally free from the menace of crime or totally controlled the crime rate, but it has become rampant in India and reached disconcerting levels particularly after Independence. Actually the crime rate of any country decides the safety and security of the people along with the developmental aspects of that country. Crimes can be found in all walks of life and has affected every sector of the society. The present age old colonial punishment system is not suitable to control the offences it should undergo a radical change. The only one way to control the crimes and to diminish its allied bad effects on the society is imposing proper punishment to the responsible persons and implementing them without any delay.