VOL.1 ISSUE.3 DROIT PENALE: INDIAN LAW JOURNAL ON CRIME AND CRIMINOLOGY(ONLINE) ISSN:2456-7280

Punishment: Forms, Theory and Practice

Abstract

Dr. Abhishek Kumar Mishra[1]

Oppenheimer defines *Punishment is an evil inflicted upon a wrongdoer, as a wrongdoer on behalf and at the discretion of the society, in its corporate capacity of which he is a permanent or temporary member.''*[2] Punishment always run with crime and originates as private vengeance. Only victim carries out the sentence to satisfy the feeling of revenge. Only aggrieved person had the right to pardon the offender and no such right vested in public authority. The purpose of punishment has been to inflict 'hurt'. Punishment is also viewed as a means of social control and to prevent crime. The goal of punishment has become change according to the change in social thinking. It starts from retribution and deterrence of criminal and now working on rehabilitation. The sentencing policy under Indian Penal Code are also not static but got change by legislation and also by interpretation of Honourable Courts to fulfil the need and demand of society. New development give a rise to new form and mode of crime such as cyber, financial crime etc with the conventional crime which demand change in the degree of punishment and its implementation. It has been very evident by now that though the concept of punishment is as old as the mankind is, there has been a tremendous change in the overall form of punishment and its acceptance in the penal system of different countries.

[1] Assistant Professor, School of Law, Maharaja Agrasen University, Baddi, Solan, H.P.

[2] Heinrich Oppenheimer, *The Rationale of Punishment*, University of London Press,1913,p.4 available at http://www.archive.org/stream/cu31924030331676#page/n17/mode/2up

INTRODUCTION

It is often said that 'the mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of civilization of any country.[3] Views on punishment has undergone a sea change over the years and now, it is seen as measure to protect the society which is achieved partly by reforming the criminal and partly by deterring him and others from committing crimes in future. The concept of punishment is very complex and is intrinsically connected with the concept of crime or offence. A crime or offence, simply stated, is the conduct that is forbidden by law and to which certain consequences, called punishment will apply on the occurrence of stated conditions and following stated process.[4]

Punishment is perhaps as old as crime. Oppenheimer defines punishment as-

"*Punishment is an evil inflicted upon a wrongdoer, as a wrongdoer on behalf and at the discretion of the society, in its corporate capacity of which he is a permanent or temporary member.*"[5]

The idea of punishment, and a sense of the need for it in certain circumstances, has probably existed as long as man himself. Every child learns how to conduct himself by a system of rewards and punishments. Thus, punishment has been the experience of every one of us, and of mankind in general, since time immemorial. It has entered deeply into our imagination, and we are used to the idea, and even to the expectation of it.[6]

It can be also said that, Punishment is the universal response to crime and criminal in all societies. As such it takes various forms. Criminal sanctions like imprisonment and death sentences are allocated and dispensed by state authorities. Other formal punishments involve

* Assistant Professor, Maharaja Agrasen University, Solan

[3] Sir. Winston Churchill, as seen K.N. Chandrasekharan Pillai and Shahiban Aquil , *Essays on Indian Penal Code*, (2005), p. 236.

[4] Herbert Packer, *Limits of Criminal Sanction*, (1968), p.18.

[5] Heinrich Oppenheimer, *The Rationale of Punishment*, University of London Press,1913,p.4 available at http://www.archive.org/stream/cu31924030331676#page/n17/mode/2up

[6] Gerald Gardiner, "The Purposes Of Criminal Punishment", *Modern Law Review*, Vol.21, no.2, March 1958, p.117

civil lawsuits and administrative decrees to reconcile or restore relations among the parties, compensate for personal injuries and prevent further wrongful conduct through restrictions of ongoing practices. Different types of punishments are used for different purposes. Criminal sanctions serve to reinforce cherished value and beliefs, incapacitate and deter those who may be considering criminal misconduct and often function to maintain power relations in a society and to eliminate threats to the existing social order.

Punishment originates as private vengeance. Then it convert into social vengeance where reaction to a crime originates not from an individual but from the society. Will of the rulers gains primacy in the next stage of development of punishment. This is the time when state takes charge of the responsibility of inflicting punishment. Traditional forms of punishment like imprisonment or awarding capital punishment may not create much problem as they will be readily accepted as qualifying the idea of punishment even for the popular mind. But there are other kinds of sanctions imposed by criminal law which make the issue of defining punishment a herculian task. For instance, sanctions like deportation of an alien enemy, revocation of driver's licence, forced hospitalization of a mentally ill person, award of damages for breach of conduct etc. where difficulties might arise as it would not entail a strict classification. These kind of examples lead to the inescapable conclusion that any attempt to give a general definition for punishment is misguided and according to many, it must be an inquiry in each case in to specific consequences, if any that will follow from classifying an action as punishment.[7]

A standard case of punishment, it is argued, exhibits the following five characteristics[8]-

(1) it must involve pain or other consequences normally considered unpleasant.

(2) it must be for an offence against legal rules.

(3) it must be imposed on an actual or supposed offender for his offence.

(4) it must be intentionally administered by human beings other than the offender.

(5) it must be imposed and administered by an authority constituted by a legal system against which the offence is committed.

[7] Supra note 2
[8] *Id.* p.21.

DEFINITION AND PURPOSE

A definition that punishments are official infliction of pain would bring many things which would not strictly qualify to be treated as punishment. Traditionally, the purpose of punishment has been to inflict 'hurt'. The purpose of hurt is to discourage future crimes. Though, it is often argued that punishments seldom deter criminals it can be demonstrated that some punishments deter some crimes by some people.

Rawls states-"*A person is said to suffer punishment whenever he is legally deprived of some of the normal rights of a citizen on the ground that he has violated a rule of law, the violation having been established by the trial according to the due process of law, provided that the deprivation is carried out by the recognized legal authorities of the state, that the rule of law clearly specifies both the offence and the attached penalty, that the courts construe statutes strictly and that the statute was on the books prior to the time of the offence*."[9]

Jerome Hall describes punishment as:

1. Punishment is a privation (evil, pain, and disvalue).

2. It is coercive

3. It is inflicted in the name of the state

4. Punishment presupposes rule, their violation and a more or less formal determination of that expressed in a judgment

5. It is inflicted upon an offender who has committed harm and this presupposes a set of values by reference to which both the harm and the punishment are ethically significant

6. The extent or type of punishment is in some defended way related to the commission of the harm and aggravated or mitigated by reference to the personality of the offender, his motives and temptation.[10]

Herbert Parker makes a fourfold classification of sanctions- punishment and treatment, compensation and regulation. Compensation, simply stated is making another person whole following the infliction upon him of an actual or threatened injury. It would always involve

[9] John Rawls, *Two Concepts of Rules*, Philosophical Review,1955

[10] J.P.S. Sirohi, *Criminology and Penology*, Allahabad Law Agency,7th ed.,2011,New Delhi,pp.187-189

giving something to the injured person and thus would always involve an identifiable beneficiary. Regulation may be defined as the control of future conduct for general purposes excluding the interests of identifiable beneficiaries. It differs from compensation in that it does not have an identifiable beneficiary and are typically administered by agencies of government. The difference between treatment and punishment is much more difficult to express as the degree of unpleasantness or severity of the sanction are not the differentiating factors. According to him, there are two factors which differentiate between treatment and punishment. Firstly, the difference in justifying purposes and the larger role of the offending conduct in the case of punishment. The primary purpose of treatment is to benefit the person being treated and the stress is on helping him rather than evaluating his past or future conduct. This, of course, involves the imposition of a short-term detriment, such as the loss of liberty, in the interest of a long term benefit, such as loss of liberty which is intended to improve or eliminate the disabling condition.[11]

AIMS OF PUNISHMENT:

There are four main goals of punishment which are discussed below:

DETERRENCE

Many person see criminal punishment as the basis for affecting the future choices and behavior of individuals. Politicians frequently talk about being tough on crime in order to send a message to would be criminals. The root of this approach, called deterrence, lay in eighteenth-century England among the followers of social philosopher Jeremy Bentham.[12] There are broadly two types of deterrence; first is general deterrence and the second is Specific deterrence. General deterrence presumes that the members of general public, on observing the punishment of others, will conclude that the cost of crime outweighs the benefits. For general deterrence to be effective, the public must be constantly reminded about the likelihood and severity of punishment for various acts. They must believe that they will be caught, prosecuted and given a specific punishment, if they commit a particular crime. Moreover the punishment must be severe enough that the consequences of committing crimes will impress them. For example, public

[11] *Supra note 2 p.21*

[12] Terence D. Miethe, Hong Lu, *Punishment: A Comparative Historical Perspective*, London, Cambridge University Press, 2005, 18

hanging was once considered to be an effective general deterrent. On the other hand the specific deterrence targets the decisions and behavior of offenders who have already been convicted. Under this approach, the amount and kind of punishment are calculated to discourage that criminal from repeating the offences

RETRIBUTION

Retribution is punishment inflicted upon a person who has infringed upon the rights of the others and deserves to be penalized. The biblical expression, "an eye for an eye, a tooth for a tooth" illustrates the philosophy underlying this kind of punishment.[13] Retribution means that those who commit a particular crime should be punished alike, in proportion to the gravity of offence or to the extent to which others have been made to suffer. Retribution is deserved punishment; offenders must "pay their debts".

INCAPACITATION

Incapacitation assumes that society, by means of prison or execution, can keep an offender off from committing any crime in the society.[14] Many people express their opinions by urging the officials to lock them up and throw away the keys. In primitive societies, banishment from the community was the usual method of incapacitation. Actually any sentence, which physically restricts an offender usually, incapacitates the person, even when the underlying purpose of the sentence is retribution, deterrence or rehabilitation. Sentences based on incapacitation are future oriented. Whereas retribution focuses on harmful act of the offender, the incapacitation looks on the offenders potential actions. If the offender is likely to commit future crimes, then a severe sentence may be imposed- even for a relatively minor crime.

REHABILITATION

Rehabilitation refers to the goal of restoring a convicted offender to a constructive place in society through some form or therapy. Rehabilitation focuses on the offender. Its objective does not imply any consistent relationship between the severity of the punishment and the gravity of the crime. People who commit lesser offences can receive long prison sentences if experts believe that rehabilitating them will take long time. By contrast, a murderer might win early release by showing signs that the psychological or emotional problems that led to crime

[13] *Ibid*.
[14] *Ibid*.

have been corrected. According to the concept of rehabilitation, the offenders are treated not punished and they will return to the society when they are cured.

THEORY OF PUNISHMENT

The object of punishment is to prevent crime. Philosophy of punishment is traceable in the attempts to define it. Every punishment is intended to have a double effect viz. to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes. **Bentham** advocated different magnitude of punishment for different offences .*Individualization of punishment* implies that instead of fitting the offence the criminal sanction should fit the offender.[15]

As punishment involves voluntary infliction of pain by the state, there ought to be some justification for it. Various theories justifying punishment have been propounded over the years and it is to be conceded that no single theory can satisfactorily justify all dimensions of imposition of punishment. The often referred theories of punishment are retributive, deterrent, preventive and reformative.

The retributive theory holds that man is a responsible moral agent to whom rewards are due when he makes right moral choices and punishment is due when he makes wrong ones.[16] According to this view these imperatives flow from the very nature of man and do not need any justification. The individual desire to take revenge on the wrongs done is reflected in the same way on the society. As a society, it is demanded that the constituted authority punish those who unjustifiably inflict injury on others or otherwise act in ways which the society deems to be wrong. There is no other justification needed for punishment and if some other benefits accrue out of punishing the wicked, they are purely incidental. The purpose of punishment is to inflict deserved suffering and the purpose of criminal law is to provide an acceptable basis within the social framework for doing so. Retribution theory has a strong hold in the popular mind.

This is rightly expressed by Stephan when he said that, “criminal law stands in the same relation to the passion for revenge as the marriage does to sexual passion.” In primitive societies

[15] *Halsbury’s Laws of England*,3rd ed.,Vol.X.,p.487
[16] Herbert Packer, *Limits of Criminal Sanction*, (1968), p.9.

punishment was mainly retributive in the sense of satisfying the feelings of revenge of the victim. According to many scholars, including Gardiner, punishment is still retributive in the sense that it expresses the solemn disapprobation of the community- not always unmixed in the popular mind with atonement and expiation.[17] There is also the view that all three elements- justice, deterrence and reformation are essential.[18]

There has always been an opposite current to the theory of retribution which may be broadly stated as utilitarianism. It holds that the purpose of the criminal law is to prevent or reduce the incidence of behavior that is viewed as anti social. According to them retributive theory is backward looking as there so no good in making people suffer unless some secular good can be obtained from it. The utilitarianism assesses punishment in terms of its propensity to modify the future behaviour of the criminal and others who may be tempted to commit a crime. The main emphasis of the utilitarian theory is on deterrence.

A modern view can be seen even within utilitarianism which may be classified as modern utilitarianism as opposed to the above mentioned classical view. The modern view also known as behaviorism, maintains that, the occurrence of a disturbing event usually designated as a crime is nothing but an occasion for social intervention. Commission of a crime is a signal for the society that a person needs to be dealt with. The principal bases of behaviorism are the following- firstly, free will is an illusion because human conduct is determined by forces that lie beyond the power of the individual to modify. Secondly, moral responsibility accordingly is an illusion, because blame cannot be ascribed for behaviour that is ineluctably conditioned. Third, human conduct being causally determined can and should be scientifically determined and controlled. Finally, the function of the criminal law should be purely and simply to bring in to play processes for modifying the personality and hence the behaviour , who commit anti-social acts, so that they will not commit them in the future or if all these fails, to restrain them from committing offences by the use of external compulsion. The behavioral view has gained much support from persons

[17] Sir. Winston Churchill, as seen K.N. Chandrasekharan Pillai and Shahiban Aquil , *Essays on Indian Penal Code*, (2005), p.236.

[18] As per the deterrent theory by inflicting punishment on the offender the society deters him as well as potential offenders from committing crimes. The theory of reformation holds that the aim of criminal law can be achieved by reforming the criminals by way of rehabilitative measures. Punishment can be preventive and in this context it is called the preventive theory of punishment.

who are capable of influencing the public policy like psychiatrists, sociologists, probation officers, etc. who are working on areas related to criminality and treatment of criminals.[19]

Another notable change that has happened in the recent years is the individualization of punishment, resulted by investigation in to crime causation, by the research in to the effects of different forms of punishment, by the development of social sciences, psychological studies and modern statistics. This change has been brought about also by the humanitarian forces, and theories of individualization of punishment. The view has gained ground that the law should look in to the criminal and not merely in to the crime. A notably varied system of sanctions is now applied with a view to adapt the punishment to each particular category of criminals. Correspondingly the traditional attitude regarding the responsibility has undergone a change. Different sanctions are now applied to children and adolescents as opposed to adults, to mentally abnormal persons as against the sane individuals, to the first offenders as against the recidivists. In all these society is trying to utilize every scientific method for self-protection against destructive elements in its midst.[20] This attitude has caused increased acceptance to the theory of reformation and rehabilitation.

The Supreme Court of India has been giving emphasis on reformation in contra to its earlier adherence to retribution.[21] In *Rajendra Prasad* v. *State of U.P*,[22] repudiating the theory of retribution the court made the following observations-

> *"the retributive theory has had its day and is no longer valid deterrence and reformations are the primary social goals which make deprivation of life and liberty reasonable as penal panacea."*

The emphasis on the different aspects of punishments depending on the needs of the case in question can be seen in the various decisions of the apex court.The court emphasized deterrence for white collar crimes in Mohammed *Giassuddin* v. *State of A.P.*[23] While dealing

[19] *Supra* note, 2, p.12.
[20] Sir. Winston Churchill, as seen K.N. Chandrasekharan Pillai and Shahiban Aquil , *Essays on Indian Penal Code*, (2005), p. 239.
[21] Reformative theory has been emphasized by the Supreme Court in *Sunil Batra* v. *Delhi Administration*, AIR 1978 SC 1675.
[22] (1979) 3 SCC 646.
[23] (1977) 3 SCC 287.

with sex offenders and juvenile offenders, *Phul Singh* v. *State of Haryana:* [24] observed, " For sentencing efficacy in cases of lust-loaded criminality cannot be simplistically assumed by award of long incarceration, for often that remedy aggravates the malady. Punitive therapeutics must be more enlightened than the blind strategy of prison severity where all that happens is sex starvation, brutalization, criminal companionship, versatile vices through bio-environmental pollution, dehumanized cell-drill under zoological conditions and emergence at the time of release, of an embittered enemy of its society and values with an indelible stigma as convict stamped on him- a potentially good person 'successfully' processed with a hardened delinquent thanks to the penal illiteracy of the prison system. The court must restore the man."

Emphasizing the correctional aspect of punishment court observed in *Satto* v. *State of U.P*[25], *"correction informed by compassion not incarceration leading to degeneration, is the primary aim of this field of criminal justice. Juvenile justice has constitutional roots in the articles 15(3) and 39 (e), and the pervasive humanism which bespeaks the super-parental conern of the state for its child citizens including juvenile delinquents. The penal pharmacopoeia of India in time with the reformatory strategy currently prevalent in civilized criminology has to approach the child offender not as target of harsh punishment but of humane nourishment that is the central problem of sentencing policy when juveniles are found guilty of delinquency."*

But in cases of crimes of a serious nature, the Indian Supreme Court has not departed from the retributive theory of punishment. In *Dhanajoy Chatterjee* v. *State of West Bengal*[26] court held that '*justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. ..the courts must not only keep in view not only the rights of the criminal but also the rights of the victim and society at large while considering the imposition of appropriate punishment*.' thus, it can be seen that though every legal system adhere principally to one theory of punishment, other views cannot be ignored completely. Imposition of just punishment satisfying the retributive instincts of the society, at the same time catering to its long term needs like reduction in the incidence of crimes and reformation of criminals demands a combination of various approaches, depending on what each case demands.

[24] (1979) 4 SCC 413.
[25] (1979) 2 SCC 628
[26] (1999) 2 SCC 220.

PUNISHMENT UNDER THE INDIAN PENAL CODE

The Indian Penal Code reflects the influence of Benthamites in relation to penal legislation. Grading of various offences is based on their gravity as understood by the legislature and the gravity of offence is generally understood in terms of social danger posed by the offence.[27] Determinants of grading of offences are based on social danger, alarm to the potential victim and others, social disapproval of some acts, basis on harm faced , greater wickedness should carry greater punishment. Punishment under the code encompasses different principles of criminal sentencing. Doctrine of proportionality finds place with latitude being given to judges to determine an appropriate sentence.

Section 53 of the Indian Penal Code describes the kinds of punishments provided for the various offences. They are, death, imprisonment for life, imprisonment which is of two descriptions, namely, rigourous, and simple, forfeiture of property and fine. There are two categories of imprisonment that are provided under the Code- imprisonment for life and imprisonment, which is of two descriptions namely rigorous and simple. Rigorous imprisonment means imprisonment with hard labour, whereas simple imprisonment does not involve any labour. Sections 53 to 75 of the Indian Penal code lay down the scheme of punishment. Five sections i.e. 56, 58, 59, 61 and 62 have already been repealed.

Code as originally enacted contained one more type of punishment known as “transportation for life”. This has now been substituted by imprisonment for life by the Code of procedure Amendment Act, 1955 and a new section 53-A was inserted. As per section 53-A now wherever there is any reference to “transportation for life” it shall be construed as a reference to imprisonment for life. Transportation was dreaded. Explaining the penology of transportation Macaulay said:

“*The pain which is caused by punishment is unmixed evil. It is by the terror which it inspires that it produces good; and perhaps no punishment inspires so much terror in proportion to the actual pain which it causes as the punishment of transportation in this country. Prolonged punishment may be more painful in the actual endurance; but it is not so much dreaded*

[27] Rupert Cross, *English Sentencing System* (1971), p.139

beforehand; nor does a sentence of imprisonment strike either the offender or the bystanders with much horror as a sentence of exile beyond what they call the black water."[28]

In *Bantu* v. *State of U.P*[29]. Court said that "*imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against a women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude which have great impact on social order ,and public interest cannot be lost sight of and per se require exemplary punishment*."

CAPITAL PUNISHMENT

The framer of the Indian Penal Code, Sir James Stephen favored the retention of capital punishment and observed, "No other punishment deters men so effectively as the punishment of death". He therefore, provided death sentence for certain specified offences which are given below:

1) Waging war against the Government (Section 121 I.P.C.)
2) Abetment of Mutiny (Section 32)
3) Fabrication of false evidence leading to one's conviction for capital offence(Section 194)
4) Murder (Section 302)
5) Murder by a convict undergoing a term of life imprisonment (Section 303)
6) Abetment of suicide of child or insane person (Section 305)s
7) Attempt to murder by a life- convict (Section 307)
8) Dacoity with Murder (Section 396)

By the criminal Law amendment Act 2013 two new ground for death penality is added in case of crime of rape causing death of victim or resulting in persistent vegetation state of victim (376A) and under section 376 E in case of repeat or habitual offender of rape crime.

[28] Law Commission of India Report, 39th, 1968

[29] Supra note 35

Till 1983, all the above offences excepting murder committed by a life- convict (i.e. Section 303) provided for alternative punishment of imprisonment for life. Thus death sentence was mandatory only in case of offence falling under Section 303, I.P.C. But the Supreme Court in *Mithu* v. *State of Punjab*,[30] observed that Section 303 I.P.C. was unconstitutional and violative of Articles 14 and 21 of the constitution of India. Consequent to this ruling, Section 303 now virtually stands repealed and all cases of murder are now to be punishable under Section 302, I.P.C.

Prior to the amendment made in the Code of Criminal Procedure in 1955, it was obligatory for the courts to award death sentence for the offence of murder and if they opted for any leniency, they had to record reasons for it. But this position was reversed by the Amendment Act of 1955 and now the court is required to record reasons for awarding death sentence. Validity of death sentence being violative of articles 14, 19 and 21 of the constitution was challenged for the first time in *Jagmohan Singh* v. *State of U.P.*[31]The court upheld the constitutional validity of the section 302 of the code. In the meantime new provisions were added to Criminal Procedure Code, 1973 and as per section 354(3) judges will have to state special reasons in the judgment for inflicting death penalty.

In *Bachan Singh* v. *Punjab*[32] in 1980 has ended the controversy by providing that death sentence should be sparingly used in rarest of rare cases. A perusal of few more Supreme Court decisions involving death sentence would reveal that sudden impulse or provocation, uncontrollable hatred arising out of sex- indulgence, family feud or land-dispute, infidelity of wife or the sentence of death hanging over the head of accused as extenuating circumstances justifying leniency and commutation of death sentence to that of imprisonment for life. Justice Krishna Iyer made it clear in the case of *Rajendra Prasad* v. *State of U.P.*[33] that where the murder is deliberate, premeditated, cold-blooded and gruesome and there are no extenuating circumstances, the offender must be sentenced to death as a measure of social defence.

[30] AIR 1983 SC 473.
[31] 1973 1 SCC 20
[32] AIR 1980 SC 898.
[33] AIR 1979 SC 916

LIFE IMPRISONMENT

In *Gopal Vinayak Godse* v. *State of Maharashtra*[34]the Constitution bench held that a sentence for imprisonment for life means imprisonment for the whole of remaining period of the convicted person's natural life unless said sentence is commuted or remitted by the appropriate authority under the provisions of Indian Penal Code or Criminal Procedure Code. A landmark judgment of the Supreme Court, namely *Kartik Biswas* v. *Union of India*,[35] deserves to be discussed in reference to Section 53 of the IPC. The Court made it clear in this case that life imprisonment is not equivalent to imprisonment for 14 years or 20 years. The apex Court in the case of *Murli Manohar Mishra* v. *State of Karnataka*[36] made it explicitly clear that a convict punished with life imprisonment means imprisonment till his last breath.

Law Commission in its 154th report observed that Criminal Procedure Code and Indian Penal Code make distinction between "Imprisonment for life" and "imprisonment for a term". Section 433A of Criminal Procedure Code, inserted by Amendment Act no.45 of 1978 makes it clear a person sentenced to life imprisonment and where his sentence has been commuted such person shall not be released from prison unless he had served at least fourteen years in prison.

IMPRISONMENT

The recommendation of the Malimath committee, regarding life imprisonment is worth mentioning here. The recommendation was that wherever imprisonment for life is one of the penalties the following alternative punishment is to be added namely 'imprisonment for life without commutation or remission'. Thus the committee recommended amendment to the relevant provisions to the effect that there will be two classes of offences even within the cases of imprisonment for life ie one where the state government can exercise the power of remission or commutation and the other where there is mandatory imprisonment till the end of the prisoner's natural life.[37]

Imprisonment is of two kinds, rigorous and simple. In the case of rigorous imprisonment the offender is put to hard labour. Punishments of rigorous imprisonment oblige the inmates to do

[34] AIR 1961 SC 600
[35] AIR 2005 SC 3440.
[36] AIR 2008 SC 3040.
[37] See Government of India, *Committee on reforms of criminal justice system*, (Ministry of Home Affairs, New Delhi, March, 2003) para 14.

hard labour and not harsh labour. The hard labour cannot be particularly harsh or humiliating, and thus it has to be given a humane meaning. It has been held by the Supreme Court that it is lawful to employ a prisoner sentenced to rigorous imprisonment to do hard labour whether he consents to it or not.[38]

One special kind of imprisonment which is awarded by the courts in India is **'imprisonment till the rising of the court'**. A direction by the court that a person shall be confined in the court premises till the court rises constitutes imprisonment within the meaning of the Penal Code and the Code of Criminal Procedure. The court can impose such kind of punishments where the facts of the case warrant so, but it has been held in various decisions that it shall be resorted to in exceptional cases[39] and shall not be awarded in serious offences.[40]

SOLITARY CONFINEMENT

Solitary confinement is another form of punishment under the Penal code. This can be awarded to persons punished with rigorous imprisonment with the condition that whole period of solitary confinement should not exceed three months. Solitary confinement can only be awarded for offences under the penal code in most exceptional cases. According to Section 73, solitary confinement should not be exceeded three month. If term of imprisonment is 6 months then Solitary confinement should not exceed one month, in case of one year and more than one year imprisonment solitary confinement will be 2 months and 3 months accordingly.

Section 74 further details out the manner in which solitary confinement is to be awarded. It says that in case of awarding solitary confinement such confinement shall not exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such periods.

FINE

Where no specific amount to be imposed as fine is mentioned it shall be discretionary but not excessive. Section 65 to 70 deal with rule of imprisonment in default of fine. If offence is

[38] *State* v. *Hon'ble High Court of Gujarat,* AIR 1998 SC 3164.
[39] *Muthu Nadar* v. *State*, AIR 1945 Mad 313, as seen in Ratanla 198.
[40] *Public Prosecutor* v. *Kanniappan*, AIR 1955 Mad 425.ratanlal 198.

punishable with fine and imprisonment, the term of imprisonment in default of payment of fine should not exceed one-fourth of the maximum term fixed for the offence. If maximum term fixed for an offence is two years, in default of payment of fine, imprisonment awarded should not be for a term exceeding six months. As soon as payment of fine is made the prisoner shall be set free. If offence is punishable with fine only, the imprisonment in default of payment of fine shall be simple which will be not more than 2 month upto Rs. 50, less than 4 month upto Rs100 and in case of more than Rs. 100 fine it will not be more than 6 months.

Fine imposed by the court can be realized within six years or during imprisonment when the term of the same is longer than six years. The death of a prisoner does not discharge him from liability and this property will be liable for his debt. It has been laid down by the Supreme Court that limitation of six years prescribed under section 70 does not apply to fine imposed for contempt of high court.[41]

section 326A of Indian Penal Code which is related to the crime of Acid attack and section 376Drelated to crime of gang rape purports that fine shall be just and reasonable to meet the medical expense for the treatment of victim.[42]

With the change of purpose of punishment the focus of judiciary has been shifted not only to rehabilitate the criminal but also restore the victim. In many judgments Courts pronounced compensation in place of fine or with fine to minimize the effect of crime. Supreme Court has developed a compensatory jurisprudence through various judgments. Under Article 21 of the constitution Supreme Court pay compensation to the victims. Supreme Court directed the state to pay compensation and gave guidelines for the purpose for illegal detention[43], for custodial torture[44]and rape victims[45] etc. which in effect developed the ground towards developing restorative justice in our criminal justice system.

[41] *R.L. Kapur* v. *State of Madras* (1972) 1 SCC 651:1972 SCC (Cri.)380
[42] Added by The Criminal Law (Amendment) Act 2013
[43] Rudal Shah v State of Bihar, AIR 1983 SC 1086; Sebstian M Hongray v union of India, AIR 1984 SC 1026;Bhim Singh v State of J&K,AIR 1986SC494;Inder Singhu v State of Punjab, (1995) 3 SCC 702.
[44] Nilabati Behra v State of Orrisa,(1993) 2 SCC 746; D.K Basu v State of West Bengal,(1997)1SCC 416.
[45] Bodisatva Gautam v Shubhra Chakroboorty(1996)1SCC490;Delhi Domestic Working Women's Forum v Union of India(1995)1scc14; State of Karnatka v S. Nagraju, AIR 2002 SC 469;Chairman Railway Board v Chandrima Das, AIR 2000 SC 46.

Under section 357 of Criminal Procedure Code it is duty of Court in passing judgement to compensate the victim with whole or part of the fine .In *Baldev singh* v *state of punjab*[46] supreme court made observation that the poser of the courts to award the compensation to victims under section 357 is not an ancillary to other sentences but is in addition there to. It is a measure of responding appropriately to crime and of reconciling the victim with offender. Therefore all courts commended this power liberally so as to meet the ends of justice in a better way.

In 2008 a new section is added as victim compensation scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.[47]

By the Criminal Law Amendment Act 2013 in the form of fine compensation is introduced directly in section 326A and 376D.

CONCLUSION

It has been very evident by now that though the concept of punishment is as old as the mankind is, there has been a tremendous change in the overall form of punishment and its acceptance in the penal system of different countries. Whereas the initial focus of punishment was on revenge, there was a time when the focus shifted on the moral penance of the offender. However, with the passage of time punishment is seen from the perspective of rehabilitation of the offender, which means that it is the aim of the justice system that the offender is rehabilitated properly through the mechanism of punishment. Humanizing the process of administration of punishment is the need of the hour. Punishment must also aim to rehabilitate and reform. This will assist in preserving peace and order in society.

[46] (1995)6 SCC 593.
[47] Added by Code of Criminal Procedure Code Amendment Act 2008.