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MODERN THEORY OF PUNISHMENT – AN ANALYTICAL STUDY

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ABSTRACT

The object of criminal justice system is to protect the society against criminals by punishing them under the existing penal law. The principal object of punishment is the prevention of offences. To inflict punishment, different methods have been adopted in different countries at different times. The early law givers gave their variant opinions on the need of punishment to check criminal behaviour against the society. State should aim to protect the society and reclaim the criminals by taking measures to prevent people from committing crimes. The various theories of punishment are - Deterrent theory, Retributive theory, Preventive theory, Reformative theory and Expiatory theory. It is the settled principle that a person is considered innocent until proved guilty. The nature of proof requires that the evidence must prove beyond reasonable doubt the guilty of the person accused of various offences. The method of proof is through conduct of trial before a competent court. Once the court comes to a conclusion based on evaluation of the evidence admitted before the court, that the accusations are proved against the accused, then the court has to necessarily decide on the quantum of punishment to be awarded to the accused. In a criminal trial, the learned Judge has to consider the different theories of punishment while awarding the most appropriate punishment keeping in mind the various theories of punishment, he has to choose the exact punishment which is called for in the particular facts and circumstances of each case. At the time of imposing punishment, the learned Judge should consider two important factors which would shape the most appropriate punishment – (a) aggravating factors and (b) mitigating factors. The aggravating factors and mitigating factors have to be seriously assessed and properly balanced for fixing the appropriate punishment. These factors are generally considered by the learned Judge at the time of imposing punishment as these are the very important and vital variables. The punishment will be severe if the aggravating factors of a case are more and the punishment will be less or smaller when the mitigating factors of the case are less.

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Introduction

The various theories of punishment have their objectives and each of them tries to justify its claim. After the eighteenth century, the theories of punishment have been changed when the humanitarian movement in Europe emphasized the dignity of the individual, as well as his rationality and responsibility. The quantity and severity of punishments were reduced, the prison system was improved, and the first attempts were made to study the psychology of crime and to distinguish between classes of criminals. Whether punishment has any binding impact on the control of crime, is a debatable issue. Many types of sentences including death sentences have been executed but still, then the crimes are on the rise. The paramount purpose of punishment is social control; grave suspicion arises, whether crime can be controlled by inflicting the punishment only. Punishment must be severe enough to act as a deterrent but not too severe to be brutal. Similarly, punishments should be moderate enough to be human but cannot be too moderate to be ineffective.[2]

Meaning and object of Punishment

The word punishment derives its origin from the Greek root "Pu" meaning to cleanse. In the same way Sanskrit term "Dam" means to check or to restrain and the term *Danda* means a stick, staff or rod; a symbol of authority and punishment. It has been justly remarked that it is needed as retribution, restraint and reformation.[3] The early lawgivers gave their variant opinions on the need for punishment to check criminal behaviour against society.

A 'crime' according to Salmond, is an act deemed by law to be harmful to society as a whole although its immediate victim may be individual. Murder injures primarily the particular victim, but its blatant disregard of human life puts it beyond a matter of mere compensation between the murderer and the victim's family.[4] Those who commit such acts are proceeded against by the state so that, if convicted they may be punished.[5] It is, therefore, evident that the object of criminal justice is to protect

[2] Government of India,"Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, March 2003). at 169,*available at*http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf (last visited on September 23, 2019)
[3]Sukla Das,*Crime and Punishment in Ancient India*57 (Abhinav Publications,New Delhi, 1977)
[4] , P.J. Fitzgerald,*Salmond on Jurisprudence*92 (N.M. Tripathi Pvt. Ltd.,Bombay, 2000)
[5]*Ibid*.

society against criminals by punishing them under the existing penal law. Thus punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. To inflict punishment, different methods have been adopted in different countries at different times. In ancient times the methods were generally severe all over the world and India was no exception to this. The usual forms of punishment employed were hanging, beheading, mutilation, impaling, throwing the convict to elephants or other ferocious beasts kept for this special purpose, or some other severe punishment regarded as appropriate to the offence.[6] For the administration of criminal justice, punishment plays a very vital role. The concept of punishment has been a significant part of legal discourse in every legal theory.

Punishment in ancient time in India

According to P.V. Kane, ancient Smriti writers were quite aware of the several purposes served by punishment for crimes, though they do not develop a regular science of penology. The person wronged feels a great urge for revenge or retaliation and other men sympathize with that emotion. The individual, however, could not, in civilized societies, take the law into his own hands and therefore, the state saw to it that the emotion for relation or revenge was to some degree satisfied by the adequate punishment of the wrongdoer.[7] In ancient India, *danda* was considered to be a crucial constituent of the legal and social system. Manu realized that maintenance of law and order would not be possible without an effective force behind it. According to Manu, the essential characteristics of law is *danda*. It was a significant punishment meant for violating various laws of society. These laws were framed and established by the ruling classes and on many points followed the principles of varna or class legislation. The ultimate sanction behind the exercise of the State Authority lay in the power of the sword which depended on the power of the king.

[6] DrTapas Kumar Banerjee, *Background to Indian Criminal Law* 297(R. Cambray & Co. Pvt. Ltd., Kolkata, 1990)
[7] Dr N.K Chakraborti, *Principles of Legislation & Legislative Drafting* 295(R. Cambray & Co. Pvt. Ltd., Kolkata,2002)

According to Manu, the king should impose just and proper punishment on those who act unjustly, having due regard to the time, the place and circumstances under which the offence was committed, knowledge of law or understanding or education of the offender.[8] Punishment properly inflicted after due consideration makes all people happy. It is inflicted without due consideration, it destroys everything.[9] If the king fails to punish all those who deserve to be punished, the stronger would roast weaker and as a result, the weaker section of the society would suffer.[10]

Manu further opines that an individual is kept under control by the fear of punishment. There is hardly any man in this world who is guiltless. It is only through the fear of punishment, the people yield to the rule of law.[11] If the king fails in his duty to use the power of the state to punish the guilty, individuals with evil propensities would cross all barriers of law and cause injury to others and as a result, the people at large would suffer.[12] But in a place where the punishment is imposed on the sinners, the people will have peace and happiness.[13]

But the power to punish must be used properly after due consideration. The king who is well versed in Trivarga Siddartha (Dharma, Artha and Karma) and who is wise alone can be a proper inflictor of punishment.[14] The power of punishment cannot be exercised by persons who are not well experienced and knowledgeable. It can be imposed only by those who know Dharma fully. Any improper use of the power of punishment is sure to destroy the king (State) himself.[15]

Repeating the idea of Manu, Yajnavalkya remarks that *danda* rules over all people, it protects them and remains awake when the guardians of the law are asleep and it is regarded as dharma. According to Narada wicked people should be punished by the king. As fire is not polluted by burning, soaking is not polluted by inflicting punishment on deserving criminals.[16] Katyana holds the view that the king is the protector of the helpless, home of the homeless, son of the sonless and father of the

[8] Manusmriti VII-16
[9] Manusmriti VII-19
[10] Manusmriti VII-20
[11] Manusmriti VII-22
[12] Manusmriti VII-24
[13] Manusmriti VII-25
[14] Manusmriti VII-26
[15] Manusmriti VII-28
[16] *Supra* note 2 at 56

fatherless person. Thus it is the duty to protect the people from the evildoers and to restrain the delinquent by inflicting punishment commensurate with the wrong done. Brihaspati pointed out that when the safety of many could be ensured by destroying a single offender; his execution was productive of religious merit.[17] Kamandaka repeated the ideas of Manu and Kautilya when he said that *danda* should neither be too severe nor too mild but be just following the offences committed, the Nolamata Purana echoed the same idea that punishment should be inflicted upon the culprits following the gravity of crimes.[18]

Different theories of Punishment

The principal object of punishment is the prevention of offences. Punishment is inflicted as a method of protecting society by reducing the occurrence of criminal behaviour. It is the recognized function of all civilized states that criminals or offenders be punished. The state should aim to protect society and reclaim the criminals by taking measures to prevent people from committing crimes. The various theories of punishment are as follows –

1) Deterrent theory
2) Retributive theory
3) Preventive theory
4) Reformative theory
5) Expiatory theory

1. <u>Deterrent theory</u>

According to this theory, punishment should be inflicted in such a manner that it should deter or prevent not only the offender himself but also others. So the object of this theory is not only to prevent the wrongdoer from doing a wrong a second time but also to make him an example to other persons who have criminal tendencies.[19]

2. <u>Retributive theory</u>

According to this theory, the offender should be made to suffer in proportion to the injury caused to the victim. In primitive society, the punishment was mainly retributive. The victim was allowed to take revenge against a wrongdoer. The

[17] *Ibid.*
[18] *Ibid.*
[19] V.D. Mahajan,*Jurisprudence & Legal Theory* 136-137(Eastern Book Company,Lucknow, 2001)

principle of 'eye for an eye,' 'a tooth for a tooth,' 'a nail for a nail,' was the basis of criminal administration. The theory, therefore, undermined the idea of vengeance or revenge.

3. Preventive theory

This theory is based on the proposition ‘not to avenge crime but to prevent it.’ The preventive theory seeks to prevent the recurrence of crime by incapacitating the offenders. It suggests that privatisation is the best mode of crime prevention as it seeks to eliminate offenders from society thus disabling them from repeating the crime.

4. Reformative theory

According to this theory, the object of punishment is to reform criminals to prevent him from committing further crime. This theory seeks to bring about a change in the attitude of the offender to rehabilitate him as a law-abiding member of society. Reformatory theory condemns all kinds of corporal punishments. The modern criminal jurisprudence has emphasized that no one is a born criminal. A man turns into a criminal by force of circumstances like abject poverty and other circumstantial and environmental conditions and not by choice. Reform the criminal and not punish him is the main object of this theory.

5. Expiatory theory

According to this theory if the offender expiates or repents for the commission of crime or misdeeds then he deserves to be forgiven and let off. Here expatiation or repentance is treated as equivalent to punishment.

Various Jurists on Punishment

According to Jeremy Bentham, punishment is evil in the form of remedy which operates by fear.[20] According to Bentham, he believed Punishment to be the chief end of the General Prevention. Bentham's opinion on Punishment is "All punishment is mischief; all punishment in itself is evil". If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, the punishment would be useless. It would only be adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the

[20] Jeremy Bentham, *The Theory of Legislation*167 (N.M. Tripathi Pvt. Ltd.,Bombay, 1995)

same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all. That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety. Bentham further said that if the evil of punishment exceeds the evil of the offence, the punishment will be unprofitable; he will have purchased an exemption from one evil at the expense of another. According to Jeremy Bentham, the main object of punishment is to produce pleasure and prevent pain. Strictly speaking, punishment is in itself a pain. As suggested by Bentham, pain and pleasure are the great springs of human action. When a man perceives or supposes pain to be the consequences of an act he is acted on in such manner as tends with a certain force to withdraw him as it were from the commission of that act. If the apparent magnitude is greater than the magnitude of the pleasure expected he will be prevented from performing it. Bentham is considered to be the father of deterrent theory. Fundamentally, pleasure and pain are considered to be the basic premises of this theory. If people are deterred by punishment from doing things which may produce more pain, then the punishment is quite justified. If not, there is no scope of punishments or retribution for its deeds. This theory also calculates how much punishment would be adequate. It is that amount whose pain is measured by the pains of the actions it deters. According to Bentham, punishment, when inflicted, should not be more aggravating than the crime committed by the wrongdoer. The 'pleasure' should exceed the 'pain,' otherwise, the object of punishment would be frustrated.

Retributive theory is based on the assumption that causing pain to the offender or making them face other unpleasant consequences is right and proper. According to George Hegel, the great German Philosopher, punishment ‘annuls’ the crime. It aims at restoring the social balance disturbed by the offender. The offender should receive as much pain and suffering as inflicted by him on his victim to assuage the angry sentiments of the victim and the community.[21] George Hegel and Immanuel Kant

[21] S.M.A Qadri, *Criminology and Penology* 129(Eastern Book Company, Lucknow, 2009)

criticized the utilitarian theory and supported the retributive theory which states that punishment is not means to an end but end in itself.

The terms, 'command' and 'sanction' used by John Austin, have an important bearing upon the corporal punishment. According to Austin, 'command' is the wish or desire of the sovereign authority that the subjects shall do or refrain from doing a particular act, otherwise, some evil will be inflicted. Whereas 'sanction' is the contingent evil which will be inflicted on a person who does not obey the commands of the sovereign. Simply 'sanction' means punishment. So according to Austin, the command of the sovereign can only be obeyed if it is supported by punishment or dire consequence if the above-stated command is not being followed.

H.L.A. Hart also suggested the concept of punishment. His nine essay on "Punishment and Responsibility" is the pioneer in this topic, and was published in the year 1968. Many important aspects of punishment are discussed here. In this publication, he propounded that the general justifying aim of punishment is utilitarian which is the protection of society from the harm caused by crime but justice requires that the application of punishment should be restricted to only those who have voluntarily broken the law.[22] He defends punishment as a system designed to reduce wrongdoing but at the same time to respect freedom, especially freedom to choose in the light of the legal consequences.

The Retribution is the oldest and perhaps the most instinctive attitude towards a wrongdoer. According to it, the wrongdoer deserves a punishment to 'pay' for his crime. In the theory of punishment, Bentham suggested that the punishment should go with the crime. Various analytical jurists have faith in the sovereign; they have different opinions on punishment. Hart and Kant are the supporters of retribution, Bentham believed in rehabilitation whereas Austin is the supporter of administration of sanctions to obey the command of the sovereign.

Punishment under Indian Penal Code & Criminal Procedure Code

Sections 53 to 75 of the Indian Penal Code, 1860 (in short IPC) describe the general provisions relating to punishment for different offences. Chapter III of the IPC titled 'Of Punishments' contains sections 53 to 60 dealing with different types of

[22] *Ibid,* p.136

punishments including the death sentence, life imprisonment and imprisonment for certain periods, whether the sentence should be served as rigorous or simple imprisonment and so on. Provisions relating to impositions of fines including provisions for alternative sentences, if the fines are not paid, are mentioned in sections 63 to 70 of IPC, nature of punishment for offences made up of several offences as provided for in sections 71 and 72. Solitary confinement as punishment and limits of its imposition is incorporated in sections 73 and 74. Section 75 provides for enhanced punishment for certain offences for repeat offenders.

A sentence of imprisonment in default, as per section 30 Cr.P.C., should not overpower u/s 29 Cr.P.C. and should not exceed $1/4^{th}$ofthe term of imprisonment which the magistrate is empowered to inflict. However, it may be in addition to the substantive sentence of imprisonment for the maximum term awarded by the Magistrate u/s29. In case of conviction of several offences at one trial, as per section 31Cr.P.C., the court may pass separate sentences, subject to the provisions of section 71 of the I.P.C. The aggregate punishment and the length of the period of imprisonment must not exceed the limit prescribed by section 71 I.P.C. According to section 354(3) of Cr.P.C. when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. Section 360 of Cr.P.C gives wide power to the court to adopt a lenient view in respect of young offenders.

Modern Theory of Punishment

The stage of punishment is the final process of the criminal justice system. It is the settled principle that a person is considered innocent until proved guilty. The nature of proof requires that the evidence must prove beyond a reasonable doubt the guilt of the person accused of various offences. The method of proof is through the conduct of trial before a competent court. Once the court comes to a conclusion based on evaluation of the evidence admitted before the court, that the accusations are proved against the accused, then the court has to necessarily decide on the quantum of punishment to be awarded to the accused.

Sentencing aspects that are relevant for consideration by courts are more or less laid down by courts all over the world except where the statute provides a minimum

mandatory sentence. Factors that influence sentencing process have been settled by a series of court pronouncements. For imposing substantial punishment many aspects are taken into account. Similarly for reducing the quantum, factors which mitigate are also taken into account. Therefore in the sentencing process both these factors are taken together.[23]

In a criminal trial, the learned Judge has to consider the different theories of punishment while awarding the most appropriate punishment keeping in mind the various theories of punishment, he has to choose the exact punishment which is called for in the particular facts and circumstances of each case. At the time of imposing punishment, the learned Judge should consider two important factors which would shape the most appropriate punishment – (a) aggravating factors and (b) mitigating factors. Aggravating factors are those factors which go against the offender and mitigating factors are those factors which go in favour of the offender. Some of the examples of aggravating factors are – brutality in the commission of the offence, excessive cruelty, dangerous manner of commission of the offence to the individual or the society at large, use of dangerous weapons, multiple murders, the murder of innocent helpless woman or child etc. Similarly, some of the examples of mitigating factors are – age, character, antecedents, poverty, transgression the limit of self-defence, family background, circumstances which impel the offended to commit a crime.

So the above aggravating factors and mitigating factors have to be seriously assessed and properly balanced for fixing the appropriate punishment. These factors are generally considered by the learned Judge at the time of punishing these are the very important and vital variables. The punishment will be severe if the aggravating factors of a case are more and the punishment will be less or smaller when the mitigating factors of the case are less.

Some judicial observation on punishment

In modern days of criminal justice system urgently need for sentencing policy in India. In India, neither the legislature nor the judiciary has made sentencing guidelines. Several governmental committees have pointed to the need to adopt such

[23] *Supra* note 2

guidelines to minimize uncertainty in awarding sentences. The higher courts, recognizing the absence of such guidelines, have provided judicial guidance in the form of principles and factors that courts must take into account while exercising discretion in sentencing.

In *Gurubachan Sing v. Satpal Singh*[24], the Apex Court cautioned saying that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion as they destroy the social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escapes than punish an innocent. Letting guilty escape is not doing justice according to law.

The Supreme Court in *Modi Ram & Lala v. State of Madhya Pradesh*,[25] held that keeping in view the broad object of punishment of criminals by courts in all progressive civilised societies true dictates of justice seem to us to demand that all the attending relevant circumstances should be taken into account for determining the proper and just sentence. The sentence should bring home to the guilty party the consciousness that the offence committed by him was against his interest as also against the interests of the society of which he happens to be a member. In considering the adequacy of the sentence which should neither be too severe nor too lenient the court has, therefore, to keep in mind the motive and magnitude of the offence, the circumstances in which it was committed and the age and character (including his antecedents) and station in life of the offender.

The Supreme Court in *Jagmohan Singh v. State of U. P.*,[26] held that It is necessary to emphasize that the court is principally concerned with facts and circumstances, whether aggravating or mitigating, which are connected with the particular crime under inquiry. It was further held that the court should pass the sentence by balancing aggravating and mitigating factors of each case.

In *Alister Anthony Pareira v. the State of Maharashtra*,[27] the Supreme Court held that sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is the imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and

[24] AIR 1990 SC 209
[25] AIR 1972 SC 2438: 1972 Cri.L.J 1521 : (1972) 2 SCC 630
[26] AIR 1973 SC 947
[27] (2012) 2 SCC 648, at para. 69

how the crime is done. There is no straitjacket formula for sentencing an accused on proof of the crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

The Supreme Court in *State of Punjab v. Prem Sagar & Ors.*,[28] held that in our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except for making observations concerning the purport and object for which punishment is imposed upon an offender had not issued any guidelines. The Court stated that the superior courts have come across a large number of cases that "show anomalies as regards the policy of sentencing, adding, whereas the quantum of punishment for the commission of a similar type of offence varies from minimum to maximum, even where the same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed regarding the imposition of fines. In 2013 the Supreme Court, in the case of *Soman v. the State of Kerala*,[29] also observed that giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges.

However, in *M.H. Hoskot v. the State of Maharashtra*,[30] Supreme Court cautioned the judiciary for showing more leniency to offenders based on the reformative theory that would amount to injustice to the society. The offences like serious economic offences and other offences, the balance has to be maintained between the security of society and rights of offenders.

In *Ankush Maruti Shinde & Ors. v. The state of Maharashtra*,[31] the Apex Court held that, protection of society and stamping out criminal proclivity must be the object of

[28] (2008) 7 SCC 550, at para. 2
[29] (2013) 11 SCC 382
[30] AIR 1978 SC 1548
[31] AIR 2009 SC 2609

law which must be achieved by imposing an appropriate sentence. Therefore, the law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be as it should be a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, the law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, how it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance, a murder committed due to deep seated mutual and personal rivalry may not call for a penalty of death. But an organised crime or mass murders of innocent people would call for the imposition of death sentence as deterrence.

Suggestions

The Indian Penal Code prescribed offences and punishments for the same. For many offences, only the maximum punishment is prescribed and for some offences, the minimum may be prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge about selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his judgment. There is, therefore, no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing option is given in the penal code and sentencing guideline laws. There is a need for such law in our country to minimize uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing alternative sentences. This requires a thorough examination by an expert statutory body.[32]

The Law Commission in its 47th report says that a proper sentence is a composite of many factors, the nature of the offence, the circumstances extenuating or aggravating

[32]*Supra* note 2

the offence, the prior criminal record if any of the offender, the age of the offender, the professional, social record of the offender, the background of the offender concerning education, home life, the mental condition of the offender, the prospective rehabilitation of the offender, the possibility of treatment or training of the offender, the sentence by serving as a deterrent in the community for recurrence of the particular offence.[33]

Different kinds of punishments are the need of the hour. Disqualification from holding public office, removal from the community etc. are some of the measures that should be introduced and not punishment in a prison. These punishments are not custodial in nature. In other words instead of conventional punishments enumerated in Sec.53 of the Penal Code which was enacted in 1860 nothing has been done to reform the system of punishment. Considering the new nature, modus operandi and types of crimes in the modernization and globalization of this era, it is suggested that a Committee should be appointed to review the Indian Penal Code and other allied criminal laws deal with punishment and to suggest the creation of new kinds of offences, prescribing new forms of punishments and reviewing the existing offences and punishments. The Indian Penal Code was enacted in the year 1860, the Evidence Act was enacted in the year 1872 and the Code of Criminal Procedure which was enacted in the year 1898 was replaced by the new Code in the year 1973. These laws enacted long back are now found to be inadequate to meet the new challenges. People are losing faith and are rightly demanding stronger laws and greater functional efficiency of the System. Hence there is a need to review all these laws.

Therefore to bring about certain regulation and predictability in the matter of sentencing, the Committee recommends a statutory committee to lay guidelines on sentencing guidelines under the Chairmanship of a former Judge of Supreme Court or a former Chief Justice of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative.[34]

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[33] Law Commission of India, "47th Report on The Trial and Punishment of Social and Economic offences" (February 1972). *available at*http://lawcommissionofindia.nic.in/1-50/Report47.pdf(last visited on September 20, 2019)

[34]*Supra* note 2

Section 53 of the IPC enumerates various kinds of punishments that can be awarded to the offenders, the highest being the death penalty and the second being the sentence of imprisonment for life. At present, no sentence can be awarded higher than imprisonment for life and lower than the death penalty. In the USA a higher punishment called "Imprisonment for life without commutation or remission" is one of the punishments. As death penalty is harsh and irreversible the Supreme Court has held that death penalty should be awarded only in the rarest of rare cases, the Committee considers that it is desirable to prescribe a punishment higher than that of imprisonment for life and lower than the death penalty. Section 53 be suitably amended to include "Imprisonment for life without commutation or remission" as one of the punishments. Wherever imprisonment for life is one of the penalties prescribed under the IPC, the following alternative punishment be added namely "Imprisonment for life without commutation or remission". Wherever punishment of imprisonment for life without commutation or remission is awarded, the State Governments cannot commute or remit the sentence. Therefore, a suitable amendment may be made to make it clear that the State Governments cannot exercise the power of remission or commutation when the sentence of "Imprisonment for life without remission or commutation" is awarded. This, however, cannot affect the Power of Pardon etc of the President and the Governor under Articles 72 and 161 respectively.[35]

So far as sentences of fine are concerned, the time has come to have a fresh look on the amounts of fine mentioned in the IPC and the mode of recovery. As the law stands we have two classes of offences for which only fine can be imposed. Then there are offences for which fines can be imposed in addition to imprisonment. Further for non-payment of fines, imprisonment is also provided. So far as imprisonment in case of default of payment of the fine is concerned it is time that the same is done away with. Given the acceptance that custodial sentences are only to be imposed in grave crimes, there are many areas where correctional approach or community sentences etc., will have the desired effect. Section 64 of the IPC should be amended and Sec. 65 which says that where in addition to imprisonment, fine is imposed as also punishment in default of the payment of fine imprisonment shall not exceed 1/4th of the sentence

[35] *Ibid.* at 175-176

that may be fixed should also be deleted. Sec. 66, 67 should also be deleted as 68 and 69 of the IPC and in all these crimes community services for specified periods should be prescribed.[36]

The need to reclassify crime today is both urgent and compelling. Offences range from the most heinous crime such as murders to a minor offence of appearing in a public place in a drunken state. The result is that individuals, once they are convicted for a minor offence, get labelled as criminals and this stigma makes it difficult for them to get jobs and even a chance to reform and become useful members of society. Where such persons are sent to jail, they often come under the influence of hardened criminals and gravitate towards a life of crime. This is one of the reasons for suggesting fine and not imprisonment as the only punishment in respect of a large number of minor offences. This logic equally applies to increase the number of compoundable offences which while satisfying the victim do not affect societal interests.[37]

Conclusion

In the Criminal Justice System, severe punishment demands a higher standard of proof of guilt. The need for punishment is one of the most important issues. The infliction of punishment should be properly balanced considering the gravity of the offence. Punishment should be moderate enough to be human but cannot be too moderate to ineffective. The conviction rate would be less that is not a healthy sign of the Criminal Justice System. The certainty of punishment much depends upon the simplicity of laws and a good method of procedure. Criminal justice must balance between "Justice delayed is justice denied" and "Justice hurried is justice buried" which are two important basic concepts of criminal justice. No theory of punishment is against the punishing the guilty but the theorists differ on the purpose of punishment. Accordingly, there is an urgent need for guidelines of sentencing policy in India considering the modern theory of punishment as stated above.

[36] *Ibid*. at 176-177
[37] *Ibid*. at 184-185