

EVOLUTION OF PUNISHMENT IN INDIA

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Punishment! The word is not new to us; only the meaning has evolved as we have progressed in life. When we were small children, we got into some mischief. We used to get punishment for that act, but this time the kind of punishment we are talking about is not that punishment; it is punishment in regard to the offenses which are mentioned by laws. However, the nature of the punishment can be interpreted as the same as they were made the laymen's meaning of punishment is to make a person suffer for any unlawful action done by them. Criminal law provides a little wide concept of punishment by saying, any pain, penalty, and suffering inflicted on a person by the law or court.

INTRODUCTION

Of all the living creatures in the world, what makes us different from other living creatures is our brains. As human beings, we can think, build, and invent new things that are helpful to us. In India, punishment is provided under the Indian Penal Code 1860. Before we know about punishment, let's know what the law is. "Law" is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject. A law *is an aggregate rule that directs all members of society to follow a particular course of action and is supported by a penalty*. In India, the punishment provided by the Penal Code is for offenses and not for crimes. The reason is that all crimes are not punishable because there are crimes against morality that are not punishable, but on the other hand, offenses are those acts that are punishable in the eyes of the law.

If we talk about punishment in India, it can be broadly classified as the death penalty, life imprisonment or imprisonment, forfeiture of property, or fine. The essential elements of punishment are¹:

(i) Punishment must involve pain or other consequences that are unpleasant

(II) It must be for a violation of a legal rule.

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¹ Hall, Jerome, General Principle Of Criminal Law

(III) It must be for an offender's offense.

(iv) It must be imposed and administered by an authority that is constituted by the legal system.

THE HISTORY OF PUNISHMENT

Punishment has not been a new concept for us since the beginning of mankind. When we are present, we can find that we always set up some rules and regulations which help us to run our day-to-day lives. Whether we discuss the ancient period, the medieval period, or the modern period, we all set up rules and regulations to run our daily lives happily. But the problem arises in the period between the ancient and medieval periods: what if a person breaches the rules made by them? The knowledgeable people or powerful people of that time then invented the concept of punishment. There is no specific year or date mentioned when the punishment was invented; it is only estimated because the punishment can not be made or formed in one day; it is a process that takes some time to evolve. During the ancient and medieval periods, crimes against humans were only considered crimes if people committed any crime in reference to nature or any other living creature was not considered wrong. This concept, according to me at the time, was not incorrect. In today's era, we think of every individual living being. But at that time, it was more the concept of selfishness. People worked on the concept of protecting their own rights, but now this concept in today's world is changed by the rights of the whole society. Punishment was first introduced to humans through religious spiritual books, which introduced the concept of heaven and hell, which was based on some moral values that people during that time accepted, but since the basis of it was moral values, people slowly started neglecting it. It was necessary at that time to build some efficient punishment, which must have frightened the people because the main reason for setting punishment was to

The early philosophers had such a strong influence on how we understand crime and punishment today. They also help us recognise the significance of crime and punishment. They contributed to the understanding among people that the motivation behind a crime might affect the severity of the punishment. Our knowledge of the relationship between crime and punishment currently is largely due to Plato and Aristotle. These two philosophers educated us as to why it is equally crucial to figure out why a crime is committed as it is to avoid similar offenses from being committed by others. They also noted that the two are frequently connected to one another.

As per Plato, a person's lack of income and education is a critical cause of crime. People who were ignorant and in poverty were more likely to commit crimes, usually just to get by. It was probably because they couldn't afford to go to school. Of course, there are reasons for thinking that punishment for crimes should reflect the degree of guilt rather than the severity of the offense. For example, a man should be punished differently than a man who steals food for himself if he is discovered stealing it to feed his starving family. Meanwhile, Aristotle was advancing the theory that criminal penalties and remedies should be used as a potential tool to stop future criminality. He felt that criminals should be severely punished enough to act as a warning to the rest of society to not commit the same crime, as well as a reminder to the criminal to never do it again.

THEORIES OF PUNISHMENT

To me, the way in which Macaulay drafted the code is very admirable. So far, no major amendments or changes to the code have been made. Those few amendments which have been made are made in reference to changing times. However, many debates still arise that the code was made from the British perspective, which, according to me, is not true. It is based on the universal theory. In support of my statement, I want to say that Sir Babington, while drafting the Penal Code, needed to know the nature of the Indian people and their livelihood. He went to Banaras, where he met with many Brahmins, and found that there was already a code made by Brahmins in reference to criminal law, known as the *Gentoo Code*. This code itself provided many punishments, and under it, the death penalty was also provided for the murderer. This shocked him, and later he saw the *Manusmriti* in which different kinds of punishments were provided, like imprisonment, the death penalty, and forfeiture of property. While drafting, Macaulay also referred to these as "code" and "scriptural."

Before delving into the theory, it is important to understand that in India, punishment is provided under the Indian Penal Code 1860, Chapter III (Section 53-75). This code deals only with the provisions provided under this code; in the case of any special or local law, the punishment shall be provided in accordance with that special and local law, as those special and local laws will always take precedence over this code. The code clearly says that it lays down the maximum punishment that can be provided for the particular offense committed by a person. The judges don't have the power to discriminate on the gravity of punishment; they have to simply provide only those which are provided in the code. They cannot reduce or increase based on their knowledge or will.

Retributive theory -

Tribute is a Latin word that means "to pay back. This theory basically deals with the revenge theory: if a person injures another person, it is considered the right of the injured person to take revenge on the person who has injured him. During this time, "*an eye for an eye*" and "*a tooth for a tooth*" concepts were practiced. If the injured person believes that the state is not providing proper punishment or is dissatisfied with the punishment given by the state (here, state refers to the authority or administrative body that governs the laws), he may initiate a criminal proceeding. In modern times, there is little difference; punishment is now provided by the state and is based on the state's satisfaction with the wrongdoer; the only difference is that the state now considers the gravity of the offender's crime². It is natural that we hate criminals, but a basis of policy should be there for the social protection of those who commit such an act³. The rejection of traditional retributive theory was that merely moral blameworthiness of the offender is the basis of punishment as an end in itself, resulting in a lack of trust by society as people by themselves interpret that the state has not provided a better punishment, so they punish it according to their interpretation. However, punishment can be seen from two aspects: one from the point of view of a method of protecting society, and the other is considered as an end to itself.

Deterrent Theory -

The word "deterrent" means to abstain to stop someone from doing something. With the passage of time, it became necessary to instill fear in the evil person's mind, and according to the time scholar, this punishment, which usually sets an example for society, could be brutally penalized for the offenses they commit. The goal of imposing such a punishment was to set a precedent for others who would commit crimes and be punished in the same manner. By punishing the wrongdoer, an example is set for others who will face the same risk from the same proposition or from the same offender. Punishment is administered in the deterrent theory for two main reasons: first, it creates fear in the mind of the wrongdoer, and second, it scares other prospective criminals away from committing the crime. But the question arises, was it effective? The answer is no because people now assume they will receive the same type of punishment as the other person. However, it stops creating fear of punishment in like-minded people. However, we can not overlook one of the important aspects as it reduces the crime rate

² S.N Mishra twenty second edition pg-126

³ S.N Mishra twenty second edition pg -127

during that time. This is one of the reasons why only a few of the benefits of this theory can be seen in the modern era. So we can clearly state two measure points that come from this theory. These are to set an example and to stop future crimes by the same offender.

Preventive theory -

This theory is based on the concept of disablement. According to this theory, disablement can be provided by the death penalty or life imprisonment. *"This concept is more humane as it shows kindness and humbleness to those who suffer⁴."* *"When we hang a murderer we did not mean that it may put others they like them the fear of a like fate, but for some reason, if we kill a snake which is poisonous because it is better because it should be out of the world causes this snake should not bite any person which causes him death⁵".* Both Bentham and Salmond came in support of this theory. In modern times, many preventive measures have been taken by this theory, like suspension of license, forfeiture of property, and Preventive detention in cases where the offender is threatening to commit an offense. With some pros, there is some cause for this theory, as once a person loses his reputation or his social value, he becomes shameless and fearless that now he has nothing to lose, he becomes a professional criminal, as he thinks now he has a new identity, an identity of a criminal, so he should carry this identity.

Compensatory Theory -

This theory is based on compensating the accused by the defender and the state, as even if the offender is penalized, he needs to be compensated. The reason for this compensation is that offenders are responsible for their actions, and the state has a responsibility to protect the citizens, which the state has abandoned. The compensation provided to the accused will be from both the state and the offender. In today's era, we can also see that it is clearly seen in the Bilkis Bano case that the state has provided compensation to the Bilkis (accuse).

Reformation Theory -

This is also known as corrective theory or rehabilitative theory. This theory is the most common theory in the present world and this theory is very much practiced in India. This theory's agenda is to return a man to society as a better and wiser man, as a good citizen⁶. This theory focuses

⁴ Jeremy Bentham

⁵ Salmond

⁶ Prison Commission Report 1912 p,24

on the psychology of the prisoner that made him commit such an offense and provides him with proper guidance so that he can now live a happy and moral life. It also focuses on teaching moral values to the offender, but as we know, things which we see in books are very different in practice as many offenders take this as an advantage and this theory protects them from rigorous imprisonment. This theory primarily protects the young offender and some sexual offenders, but it does not protect the habitual or professional offender.

CIVIL PUNISHMENT AND CRIMINAL PUNISHMENT

The punishment provided in India is categorized into two parts. The end product of criminal punishment is punishment as provided by law, but the end product of civil punishment is compensation or laying it at the previous stage as it was prior to the suit. This is one of the major differences between both, and the other difference can be stated that Criminal wrongs are the subject of the state as it impacts on society, while civil wrongs are the subject related to wrongs against an individual.

TYPES OF PUNISHMENT

Death penalty

The death penalty is not a new concept provided by our law; however, it has been in practice since the Medieval period when kings used to run the state and, from there, the concept of the death penalty was provided; however, this concept provided by that time was not provided by marginalised people; rather, it was provided by unmarginalised people because there was no particular basis. Earlier, the concept of punishment was based on revenge and not on justice. As I quote a line, "*an eye for an eye makes the whole world blind*⁷". Previously, the death penalty was administered by beating with stones, shooting with guns, killing with swords, and a variety of other cruel and dangerous methods. However, as our understanding grows, so does our approach to enforcing the death penalty changes. Death punishment can be awarded for the following offenses: Section 121, 132, 194, 302, 303, 305, 396, etc.

In India, two categories of people are exemplified by the death penalty.

a-Juveniles⁸

⁷ M.K Gandhi

⁸ Section 21 of Juvenile Justice Act

b-Person suffering from mental illness and insanity ⁹

LANDMARK JUDGMENT OF THE SUPREME COURT

Case: Jagmohan Singh v. State of U.P.¹⁰

This case was prior to the enforcement of Crpc1973 in which the petitioner claimed that providing capital punishment or the death sentence had not been mentioned in the Crpc1898 and providing the death penalty clearly violated Article 14,21 of the Constitution. The Indian Supreme Court, however, rejected the justification and ruled that there was no ground for declaring the death penalty illegal because there was no equivalent to the Eighth Amendment in the Indian Constitution.

Case: Rajendra Prasad vs. State of U.P.¹¹

The Supreme Court addressed the legal doctrine of sentencing discretion and widely covered the definition of "special reasons" for imposing the death penalty on rare grounds. The Court rejected the retributive theory in favor of reformatory theory and deterrence as social goals. In addition, the Court ruled that the "special reasons" needed to inflict the death penalty must not be related to the crime itself but instead must focus on the accused.

Case: Bachan Singh v. State of Punjab¹²

The bench comprising of Justice Y.V Chandrachud held the judgment with 4:1, earlier the concept of only special ground was mentioned to provide the death sentence or capital punishment but this slowly became a very wide concept that need to be comprised giving the concept of "*RAREST OF RARE*".

Case: Machhi Singh v. State of Punjab¹³

The concept of the rarest of rare was elaborated in this case. If a case is satisfied that the only option of the death penalty is left and the case is of such a nature that it is affecting society at its worst level, then the death sentence needs to be provided. Justice must make a concept of why he can't provide life imprisonment rather than give him a death sentence, Justice must look

⁹ Shatrughan v. Union of India,

¹⁰ AIR 1973 SC 947

¹¹ AIR 916, 1979

¹² AIR 1980 SC 898

¹³ 1983 AIR 957

at the gravity of the offense and the heinance behind it. The court must also look towards the barbaric nature of the crime as well while providing a death sentence.

A DEATH SENTENCE IS NOT AN OPTION

The reason for granting punishment is to stop crime, but the question arises whether providing the death sentence stops crime. Answer is clearly "NO." Below are a few reasons why the death penalty should not be provided:

(i) The Indian Judiciary system works on the theory of deterrent and reformative theory, which clearly says that the death penalty is no solution to crime.

(ii) Article 21 of the Constitution clearly states that "no one shall be deprived of his life or personal liberty except in accordance with the method established by law."¹⁴ This means that the state may take your life through the established judicial process if it sees fit, but under no other circumstances will it be possible to take away your right to life.

(iii) The first law commission in his report clearly did not support the death sentence on the grounds of general elements of culture and social life. This report also asked for the retention of Section 303 of the IPC¹⁵.

(iv) The other report in 2015 clearly studied the matter of capital punishment and studied all the circumstances which are there while providing it and this community held that death punishment shall be exploited only for terrorism. The commission also held that providing a death sentence also questions the constitutionality of the penology goal¹⁶.

(v) The 162 death sentences imposed by trial courts in 2018 are the highest rate since 2000. The number fell to 102 in 2019, but the question remains, did this many death sentences reduce crime in 2020? The answer remains no.

(vi) We all are well aware of the Justice JS Verma committee which lead to adding Sections 326A,326B,354A,354B,354C, and 354D under IPC, even though this report also states that providing death sentence in the sexual offence is not an option.

¹⁴ Constitution Of India, part (iii)

¹⁵ 35th law commission report (1967)

¹⁶ 262 law commission report (2015)

Life imprisonment:

Life imprisonment means imprisonment for the whole of the remaining period of the convicted person's natural life. If a person commits a heinous crime such as murder and is impoverished, he is not entitled to life imprisonment. Life imprisonment does not expire at the end of twenty years of imprisonment, including remission. "Life imprisonment" clearly means the entire life of the prisoner¹⁷. Life imprisonment is provided in those barbaric crimes where the court does not find the case suitable for a death sentence. The court states that providing life imprisonment is the last option left. Section 432-433 of the Crpc clearly states that life imprisonment can not be stated for fourteen years; it shall be provided till the end of the life of the prisoner; only he can be released on his good behavior.

Imprisonment for life is not a new concept; it can be seen in practice from the Medieval period when the king used to pass this sentence. In India, it's quite obvious that Section 53 of the IPC stands. "Imprisonment for life" refers to being put in a prison cell until death. In order to determine fractional periods, certain portions of the law mention only fourteen or twenty years for penalties that have been reduced, remitted, or suspended by the appropriate authorities. Life in prison is not the same as fourteen or twenty years, respectively. The Supreme Court of India made major points regarding life imprisonment. A 3:2 majority decision was required to decide whether judges could exclude the term from reduction while reducing a death sentence to life in prison. According to the majority's decision, the sentence could be extended past remission for a specific amount of time by the high courts or the Supreme Court. This punishment was only imposed when life in prison looked too mild and the death penalty seemed too severe¹⁸.

Imprisonment

A prison can be categorized into two parts. Rigorous imprisonment and Simple imprisonment. Rigorous Imprisonment in this prisoner is put under hard labor. The following sections are where this imprisonment is provided: Section 364,392,395,449. Under this type of imprisonment, the prisoner is primarily assigned work to which they are obligated to perform and for which they are fairly compensated. This rate is set up by the state government. But, on the other hand, "Simple Imprisonment" means When a fine is inadequate and a brief period of prison must be enforced, simple imprisonment is provided. Numerous offenses in the Indian

¹⁷ 2001, 1692(SC)

¹⁸ V. Sriharan v. UOI

Penal Code and other Acts specify that offenders must serve an appropriate amount of time in prison and pay a fine as well. In these situations, the offender must get a sentence of imprisonment (however brief), although a fine is not always required.

Property forfeiture and monetary fine

When a state or court determines that a person has committed an IPC offense that clearly grants authority to seize property, the competent authority will do so under Sections 126 or 127 of the IPC. Property can be movable or immovable or can be both. A fine is a concept basically practiced in general civil law where many offenses are under the penal code or other acts which are not considered the most serious, so a fine is imposed on that particular offense. In simple terms, a fine is an amount payable in relation to a violation of any law or rule. It is not necessary that a fine is only provided for civil wrongs or less serious offenses; a fine can also be generated in heinous crimes where the court orders that a fine is imposed on the accused.

CONCLUSION

Justice is not an act of revenge it is just a moral rightness if we look into the growth of punishment over the last two hundred years the punishment is been practiced is the same, during that initial stage it was impactful but if we see the present scenario it is not much impactful so it is needed to be changed according to the present need. The Parliament and The Supreme Court of India may together work on it to make it better, while strongly opposing the death penalty a kind of another alternative needs to be formed, more than 144 countries in the world had removed the death penalty as a punishment¹⁹ as per reports even 2015 Law Commission also emphasis on the removal of death penalty except in the case of terrorism. Project 39A(2015) found that 76% of prisoners belong to SC, ST& OBC groups and one-third of them are economically vulnerable and 62% of them have not completed their secondary school. So with it, the conclusion can be drawn that they are illiterate people and economically backward people who commit a crime but this report is not common for any of us. Crime and Poverty have always been synonyms for us from the medieval period but now the time has come that this can not be ground for negligence. According to me, the government and society both are equally responsible for this where in today's era money is necessary for every person

¹⁹ Amnesty International Report

and people are known by their status, not by their thought or nature it has become important for every person to earn and some are not able to earn so they do commit a crime.

