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Kinds Of Punishment In India: A Historical Perspective

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Abstract:

The kind of punishment to be forced on the criminal is influenced by the kind of society one lives in. The endeavour of the different theories of punishment is to convert the lawbreakers into law-abiders. Whereas crime denotes an unlawful act punishable by the state, to constitute a crime, it is essential to have an act that violates the law. The very purpose of punishment is to establish or maintain the supremacy of the law. In every aspect, law is supreme; no one can break any law prevailing, and if anyone does so, he or she will be liable for punishment. To protect society against criminals and law-breakers, the law holds out threats of punishment to prospective lawbreakers and attempts to make the actual offenders suffer. Therefore, this paper attempts to analyse the concept of punishment, the types of punishment in India in the ancient, mediaeval, and modern eras, as well as the types of punishment in the Indian Penal Code.

Key words: Punishment, Crime, Indian Penal Code etc.

1. Introduction:

A Punishment is an outcome of an offense. Punishments are imposed on the wrong doers with the objective to deter them to recur the same wrong doing and transform them into law-abiding citizens. The kind of punishment to be forced on the criminal is influenced by the kind of society one lives in. The endeavor of the different theories of punishments is to convert the law-breakers into law-abiders. Whereas crime denotes an unlawful act punishable by state. To constitute a crime, it is essential to have an act which violates the law. The very need of punishment is to establish or maintain the supremacy of law. In every aspect law is supreme no one can break any law prevailing and if any one does so he or she will be liable for punishment. To protect society against criminals and law-breakers the law holds out threats of punishments to prospective lawbreakers and attempts to make the actual offenders

suffer. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law.

The concept of punishment is not restricted to one interpretation. It changes constantly through time and from place to place. Punishment may be described simplistically as the infliction of pain on a person as a penalty for a violation, fault or offence. In reality, punishment cannot be defined in simple, unambiguous, UN dimensional terms. It is not, as is sometimes implied, an aspect of the social contract between punisher and punished, in whatever setting - prison, school, household, in some senses, the involuntariness of the person punished may be underestimated. Although there may be consensus that certain core penological activities such as capital punishment constitute punishments, it is more difficult to specify the boundaries between punishment and neighboring concepts such as social control. Social control may be viewed as the more global concept and punishment one - penological aspect of it (Robert Adams 1998, The Abuses of Punishment).

2. Objectives of the study:

- To study the concept of Punishment
- To study the types of Punishment in India in ancient, medieval and modern era

3. Methodology:

The present study is mainly based on secondary sources of information. It has been collected from various Law reports, law journals, Books and articles etc.

4. Historical Background of Punishment:

A Punishment is an outcome of an offense. Its changes from time to time on the basis of types crime, social system, culture, administrative system and as well as regional base. This punishment classified in three eras like that, ancient, medieval and modern era.

Types of Punishment in ancient period:

- 1) **Capital Punishment:** It is considered to be one of the most extreme forms of punishment. In the ancient times, capital punishment i.e., death penalty was executed for small-small crimes. The factor of proportionality in deciding punishment was absent. Through the ages, there have been different methods of execution of capital punishment, such as stoning, pillory, construction into a wall, throwing under an elephant's leg etc. All these methods of execution are very barbaric and were designed to give a very painful death to the convict.
- 2) **Corporeal punishment:** It was a punishment where some sort of physical injury or pain was inflicted to the convict in order to deter him and others from doing such offences. Various methods of corporeal

punishment are mutilation, branding, flogging, bilboes, imprisonment. Etc. from amongst all these punishments, imprisonment gained the most popularity in India.

- 3) **Social Punishment:** Social punishment is a punishment in which a person is restrained from making any kind of contact with any other person, or is moved to a distant place, breaking all of his social connections. No person can extend any help of any sort and if anyone tries to do that, they are held liable for punishment. Social punishment wasn't aimed at inflicting any bodily pain, but a psychological one.
- 4) **Financial Punishment:** It is also known as imposition of fine. It was the common mode of punishment which was not serious in nature and it was awarded specially for the breach of traffic rules, revenue laws and other minor offences. It also included the payment of compensation to the victims of the crime and also the payment of the costs of prosecution.

Types of Punishment in Medieval Period

During the Medieval period various Muslim dynasties ruled the Indian subcontinent. Generally, historians subdivide the period into Sultan of Delhi (1206-1545) and Mughal Rule (1526-1806). Muslim rule in India was firmly established in the thirteenth century and flourished until the beginning of the eighteenth century. The Sultanate of Delhi ushered in a period of Indian cultural renaissance. Despite claims of Muslim rulers about their adherence to Islamic principles of equity and justice they inflicted penalties based upon their personal whims. In fact, intermittent outbreaks of crime such as robbery and murder and the consequent restlessness amongst the subjects tended to increase the uneasiness of medieval rulers and induced them in many cases to inflict penalties wholly opposed to the spirit, if not the letter, of the Sharia¹⁰. The common method of execution was to get the criminals trampled under the feet of elephants. The various Kings used to keep elephants for the execution of malefactors. Jahangir (1605-26) took interest in seeing condemned prisoners torn to pieces by elephants. Terry depicts the horrible scene of torture of being trampled on by elephants as „the elephant will break his bones by degrees, as men are broken upon the wheel, as first his leg, then his thighs, after that bone in his both arms.

The accounts of European travelers reflect that unspeakable methods of execution were in vogue during the reigns of some Muslims rulers. During the reign of Jahangir, a dacoit, with seven previous convictions, was torn limb after limb till he died. Terry asserts that, „among other forms of punishment, malefactors were stung to death by snakes“. Manucci reports that Shahjan used to punish „any official who had failed to administer justice“ by poisonous snakes. Shahjahan ordered corrupt Kotwal (Muhammad Sa'id) to be bitten by a cobra capello in his presence in the open court, and then ordered that „the body should lie two days in front of his court-house“. Execution could take place by throwing a man down from the roof. To serve as deterrence, the executions used to be conducted in public. During the reign of Muhmmad Bin Tughliq, the persons condemned were executed outside the first gate of the court „where their bodies lay exposed for three days and their relatives were not allowed to give a decent burial.

The condition of the prisoner was generally miserable. It was binding upon the Qazis, under the Muslim law, to visit the prisons and inquire into their conditions and to release those who showed signs of repentance but usually they neglected their duty. In this regard, Aurangzeb took special interest and issued instructions to the Kotwals to take the prisoners to the Qazi on the expiry of their term of imprisonment. In short, the period of medieval India (1206-1806 A D) was a continuity of the ancient India's system of monarchy with a new element of the Islamic system of crimes and punishment. In the absence of legislature and constitutional machinery, the domain of legislation, as was the case in medieval Europe, did not belong to the people. Consequently, the medieval Indian state remained autocratic in character throughout and represented in India the western ideal of L'etat c'est moi of the French monarchs. In this scenario, the different sets of people in India were thankful to the King, as a fountain of justice, if he took effective measures to dispense justice.

Types of Punishment Modern Period:

Process of punishment has evolved with civilization; they have become less harsh and cruel. Punishment now focuses more on correction rather than to punish. The Indian Penal Code was codified in 1860, during the British rule and it gave the forms of punishment to be used in the modern India. Section 53 of IPC talks about the existing forms of punishment in India, namely, death, imprisonment for life, rigorous imprisonment, simple imprisonment, forfeiture of property, and fine.⁶ With the evolution in the forms of punishment, the process of punishment and the process through which we reach the stage of pronouncing punishment also evolved and became more precise. In the modern India, it is the work of the judiciary to maintain law and order. The process of a criminal trial has been laid down in the Code of Criminal Procedure, 1973. Both the aggrieved and the accused are examined by the Court of Law, every aspect, every minute detail is liked into by the court and then it arrives to the conclusion of acquittal or conviction. After conviction, comes the question of punishment, on which the court listens to the submissions of the respective lawyers and decides the punishment accordingly.

In the modern days, capital punishment is the most debated form of punishment among the penologists.⁷ Capital punishment is one of the most severe forms of punishment to be given. Under the IPC, it was awarded only in the 'rarest of the rare cases' and it is provided only as an alternative form of punishment and not as a mandatory one. Life imprisonment has come up as the best alternative to death sentence. Besides the above methodology of punishment reigning in Modern India, the court may order the accused to furnish security bond for good behaviour in case of offences which are not profound or serious in nature, the provisions with respect to security bond have been laid down under Section 106 to 110 of Cr. P.C., 1973 and, though it is not a punishment but it may serve a useful purpose to restrain a person from committing a crime and to make him a law abiding citizen.

Types of Punishment under IPC:

In the Indian Penal Code, 1860 Section 53, particularly deals with distinctive types of punishments which can be given by the Criminal Courts in case the individual is held obligated beneath the Code. There are five types of punishments prescribed under Section 53 of the Code:

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

The above said punishments mentioned under section 53 of the code may be categorized under the following subheadings:

1) **Death:**

Capital punishment or death penalty is the state-sanctioned homicide of a natural person as a punishment for a crime. The sentence ordering that someone is punished with the death penalty is called a death sentence, and the act of carrying out such a sentence is known as an execution. In India, the death penalty is given by the strategy of hanging. The other ways, through which death sentences executed at world scenarios, are stoning, sawing, blowing from a weapon, deadly infusion, electric shock, etc. The death penalty under the Indian Penal Code is given in the following circumstances:

- a) Section 115– Abetment for an offence punishable with death or imprisonment for life (if offence not committed);
- b) Section 118– Concealing design to commit an offence punishable with death or imprisonment for life.
- c) Section 121– When armed rebellion (i.e. waging, abetting to waging of war or attempting to wage war) is made against the constitutionally and legally established government;
- d) Section 132– Uprising, supporting and encouraging the formation of the mutinous group of people in the nation's armed forces;
- e) Section 194– Giving or fabricating false evidence upon which an innocent person suffers death ;
- f) Section 302– Causing murder of another;
- g) Section 305– Abetting suicide to an insane or minor person;
- h) Section 303– When a life convict person murders another person;
- i) Section 396– Causing dacoity with murder;
- j) Section 364A– Kidnapping;

k) Section 376A (as per the Criminal Law Amendment Act, 2013)- Rape

2) Imprisonment:

Another form of punishment is imprisonment. Golash writes about imprisonment: “Imprisonment means, at minimum, the loss of liberty and autonomy, as well as many material comforts, personal security, and access to heterosexual relations.” Prison is an institution for the confinement of persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime. If properly implemented, imprisonment can serve all the objects of punishment. However, there is the problem of fixing the period of imprisonment. Both short term and long term punishment have their own advantages and disadvantages. In judging the adequacy of sentence, the nature of the offence, circumstances of its commission, the age and character of the offender, injury to individuals or to the society, effect of punishment on the offender, effort for correction and reformation of the offender are some amongst many other factors which would ordinarily be taken into consideration by the Court.

- **Imprisonment for life:**

Life Imprisonment implies a sentence of detainment running all through the remaining period of a convict’s natural life (until his / she last breathe). Sec 55 of Indian Penal Code, 1860 provides that the appropriate Government may commute a sentence of imprisonment for life, for imprisonment of not more than 14 years.

- **Rigorous Imprisonment:**

Imprisonment may be rigorous with hard labour such as digging soil, cutting wood etc. According to Section 60 of IPC in each case in which an wrongdoer is culpable wit detainment which may be of either description, it shall be competent to the Court which sentences such wrongdoer to direct within the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment should be wholly simple or that any portion of such imprisonment shall be rigorous and the rest simple. The Indian Penal Code recognizes imprisonment as punishment for:

- a) Section 194– Giving or fabricating false evidence with intent to procure conviction of capital offence
- b) Section 449– House-trespass in order to commit offence punishable with death

- **Simple imprisonment:**

Simple imprisonment is forced for small offenses like wrongful restraint, defamation etc. In case of simple imprisonment the convict will not be constrained to do any hard manual labour. There are a few offenses which are culpable with simple imprisonment are as follows:

- Section 178– Refusing to take oath
- Section 500– Defamation
- Wrongful restraint
- Section 510– Misconduct by a drunken person, etc

3) Forfeiture of property:

Forfeiture of property implies taking away the property of the offender/criminal by the State. It used to be a major punishment during the colonial era. However, forfeiture of property is presently nullified except in the case of following offenses:

- Committing depredation on territories of Power at peace with the Government of India (Section 126)
- Receiving property taken by war or depredation mentioned in sections 125 and 126 (Section 127).

4) Fine:

A fine is a penalty of money that a court of law or other authority decides has to be paid as punishment for a crime or other offence. The amount of a fine can be determined case by case, but it is often announced in advance. One common example of a fine is money paid for violations of traffic laws. In Common law, relatively small fines are used for low-level criminal offences. Larger fines are also given independently or alongside shorter prison sentences when the judge or magistrate considers a considerable amount of retribution is necessary. For instance, fraud is often punished by very large fines since fraudsters are typically banned from the position or profession, they abused to commit their crimes. A related concept is the fixed penalty notice, a pecuniary penalty for some minor crimes that can be either accepted (instead of prosecution, thus saving time and paperwork, or taken to court for normal proceedings for that crime. While technically not a fine, which, under the Bill of Rights 1689, may be levied only following a conviction, it serves the same purpose of punishment. The court may force a fine as an alternative for imprisonment or can include it is an expansion to the imprisonment. In certain cases, the fine is included along with imprisonment. Section 63 to 69 covers different fines beneath the IPC. However, as per Section 64 of the Code, when there's a default within the installment of a fine, the court may order for imprisonment.

5. Conclusion:

This study is concluding that the Crime is a violation of criminal law for which formal penalties are applied by some governmental authority. It represents some type of deviation from formal social norms administered by the state. Crimes are divided by law into various categories, depending on the severity of the offence, the age of the offender, the potential punishment that can be levied, and the court that holds jurisdiction over the case. There is no society in any part of the world, which is without crimes. One of the serious problems of today's crimes is that in many cases the criminals are socially, politically and economically so powerful that they decide the course of punishment for others while they themselves manage to get escaped completely²⁶.

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