UNIT – IV: LAW OF CRIMES

Theories and kinds of punishments, Compensation to the victims of crime

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INTRODUCTION

Mere denunciation of crime is not enough; it must be pushed to its logic end that crime does not pay by punishing the offenders. Punishment means, "It is the redress that the commonwealth takes against an offending member"[1]

Man is believed to have evolved from an ape-like ancestor. With the evolution of man has evolved his mind and thinking. This evolution of mind can easily be seen at various stages like, the human beings evolved from having raw leaves and meat to the pizzas and the burgers, from fire to the LPG Gas Cylinder and then to the micro wave ovens, from using animal skin to cover the body parts to wearing the pepe jeans, branded clothes and fancy foot wears. Man, by using his extraordinary thinking power and mental ability, created the luxuries. Due to drastic increase in the population many people were deprived of the basic necessities which led to the development of the negative thinking. People wanted to fulfil their basic necessities at any cost and hence they started resorting to crime.

Crime can be defined as a social wrong which is committed against the state, i.e., it is a gross violation of the laws of the state. Moreover, Crime is defined as:

> *"Acts or omissions forbidden by law that can be punished by imprisonment or fine. Murder, robbery, burglary, rape, drunken driving, child neglect and failure to pay taxes are examples of crimes. The term crime is derived from the Latin word "crimen" meaning offence and also a wrong-doer. Crime is considered as an anti-social behavior."*[2]

[1] Sethna, M.J. *Society and the Criminal*, (3rd Ed) Bombay: (N.M Tripathi Pvt Ltd. 1971) p.236.

[2] https://www.researchgate.net/publication/270238380_Crime_A_Conceptual_Understanding; last assessed on May 8th, 2020.

THE CONCEPT OF PUNISHMENT

According to Austin, law is the command of sovereign, i.e., law is the aggregate of rules made by a politically superior person which aims at imposing a duty on the politically inferior person. The violation or the ignorance of which amounts to sanction. [3]

His definition involves three important elements, i.e., *'Command- Duty- Sanction'*. From the above definition, it is not wrong to state that punishment is an important element in order to implement and enforce the law within the state.

In order to explain the concept of punishment, Sir Winston Churchill quoted that:

> *"The mood and temper of the public with regard to the treatment of crime and criminals is one of the unfailing tests of the civilization of any country. A calm, dispassionate recognition of the rights of the accused - and even of the convicted - criminal against the State; a constant heart-searching by all charged with the duty of punishment; a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts towards- the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man; these are the symbols which in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it."*[4]

Punishment is to inflict pain, it is a moral action against an immoral action. The real difference lies in the fact that moral reprobation emanates from one or more individuals spontaneously; whereas punishment is a conscious action on the part of the collectivity (in casu the State). The content of a reproof is nothing but a moral condemnation; but when it is incorporated in criminal law, and pronounced by a judge, it becomes a punishment.[5]

The courts while ordering any punishment commonly considers the following Conditions necessary.

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[3] Monika, 'John Austin's Analytical Approach to Positive Law: Explanation, Appreciation and Criticism', ipleader.in. https://blog.ipleaders.in/john-austins-analytical-approach-positive-law/; last assessed on May 8th, 2020.

[4] Sir Winston Churchill quoted in C.H. Rolph *"Commonsense about Crime & Punishment"* p.175.

[5] Prof. Dr. M. Shokry EI-Dakkak, *'CRIMINOLOGY And PENOLOGY'*, the Judicial Department - Abu Dhabi

- It is imposed by a recognized authority,
- It involves some loss to the supposed offender,
- It is in response to an offence and
- The person to whom the loss is imposed should be deemed responsible for the offence.

The main objects to punish a wrong doer is to nullify the effect of the wrongful act, to safeguard the interest of the society in the judicial system of the state and to maintain the peace and harmony in the country. From the aforesaid purposes, to sum up it can be said that crime is that crime is a serious offence against the society and in order to rectify that the state reacts consciously which can be done by way of imposing punishment or by taking correctional measures (both by inflicting pain).

H.L.A Hart with *Mr. Bean and Professor Flew* have defined "punishment" in terms of five elements:

- It must entail pain or other outcome normally considered unpleasant.
- It must be for an offence against lawful rules.
- It must be deliberately administered by human beings other than the wrongdoer.
- It must be definite or supposed offender for his felony.
- It must be imposed and administered by an authority constituted by a legal system against which the felony is committed.

THEORIES OF PUNISHMENT

From the ancient times and the very beginning of the civilized mankind, it is the fundamental duty of the state or the sovereign to protect its citizens and in order to do so law must be enforced properly with a sanction attached to it. Hence, the quantum of punishment to be ordered shall be proportionate to the wrong done and shall be determined on the basis of the theories of the punishments.

As mentioned earlier, with the advent of proper administration of justice, there has been a change and shift from traditional punishments towards the new and trending forms of punishments.

Therefore, in order to ascertain the type and quantum of punishment following theories shall be taken into consideration:

- Retributive theory
- Deterrent theory
- Preventive theory
- Reformative theory
- Restorative theory
- Multiple Approach Theory

Retributive theory:

In general terms, retribution is a form of punishment inflicted on someone as vengeance for a wrong or criminal act. This is the most ancient mode of punishment. This was prevailed at times when private vengeance would take place. This types of punishments are based on the ***principle of Tit for Tat,*** which means to return the same injury to the wrong doer which he has committed against the victim. For example, tooth for a tooth, eye for an eye, fracture for a fracture.

The same theory of punishment has also been recognised in the holy Bible. It states that when one strikes another with a motive to kill him and the desire is fulfilled then he shall also be put to death. He shall be injured in the same way as he had injured the other.[6]

Immanuel Kant is the believer of this theory. He discussed the concept of punishment as *The Metaphysics of Morals.* According to him the concept of punishment and morals should be in consonance with the rationality of morality and justice and the proportion of guilt. In addition to that, he further states that crime is an interference with someone's legal rights and when this happens the wrong doer owes a debt to the society in the form of punishment.

In the case of ***Bachan Singh v. State of Punjab***[7], it was stated that the retributive theory of punishment in the sense of society's reprobates is not an outmoded concept in context to serious crimes, further taking the view of Lord Justice Denning it was further stated that punishment as an expression of society should adequately reflect what the society feels, hence crimes which are of an outrageous nature have punishments which the offender deserves because the society insists on adequate punishment, it does not matter if the punishment is deterrent or not, it would be a mistake to consider the objects of punishment as preventive, reformative or deterrent.[8]

However this theory of punishment was criticized by Bentham and Sir Salmond. According to sir Salmond, the retributive punishment aims at avenging the wrong done by the criminal to the society. Unlike the other theories, retributive theory has the retrospective effect, it looks back in order to punish the offender. This theory focuses on '*what the offender deserve according to the act already committed by him rather than prospectively stopping or preventing them from committing crimes'.* He further added that crime is not equivalent to the credit and debit Account in a bank, i.e., it doesn't mean that both the accounts should have the same balance. If you injure the wrong doer he will be compelled to do a wrongful act again in order to take revenge. This process creates a chain reaction in the society and will lead to never ending revenge in the society.

[6] 'An eye for an eye? The morality of punishment', Cambridge Papers- Towards a biblical mind.
[7] AIR 1980 SC 898
[8] http://lawtimesjournal.in/the-retributive-theory-of-punishment-a-brief/; last visited on May 8th, 2020.

"*An eye for an eye will turn the entire world blind.*"

Deterrent theory:

'To deter' means, "to abstain from action/ doing ". Deterrent means, "infliction of severe punishments with punishments with a view to prevent the offender from committing the crime again." The main motive of this theory of punishment is to discourage the offender from committing the wrongful act again in the future date.

This theory believes that imposing a sufficient severe punishment on an offender will deter that individual from committing future crimes and set a lesson for others as well so that they don't commit the crime fearing the consequence i.e. the punishment. To have the deterrent effect the punishments used to be of a very rigorous nature. In the ancient times the hands were chopped of thieves or robbers, sexual offender's organs were cutoff etc. The believers to this theory stated that if the punishment is severe then only it would serve the deterrent effect. Also a Judge once said: '*I don't punish you for stealing the sheep but so that sheep may not be stolen.'* The aim of punishment is not revenge but terror.

Salmond and Bentham considers deterrent aspects of criminal justice to be the most important for control of crime. According to them, the punishment should form a fear in the minds of people that if I commit this crime I'll go through this punishment fearing which he restrains from doing it.

In India during the Mughal period, the penalty of a death sentence or mutilation of the limbs was imposed even for the petty offenses of forgery and stealing etc. Even today in most of the Muslim countries, Such as Pakistan, Iraq, Iran, Saudi Arabia, the deterrent theory is the basis of Penal Jurisprudence.[9]

[9] https://www.srdlawnotes.com/2017/04/theories-of-punishment.html; last visited on May 8th, 2020.

The pitfall in this theory is that sometimes it fails to have effect on the hard core criminals as they are accustomed to the severity of the punishment and sometime it does not tends to have any deterrence in the minds of the new offender as there are certain unplanned crimes, i.e., which are not intentionally done. In such cases the judiciary blends the deterrent punishment with other punishments in order to justify the punishment with that of the proportion of guilt of the offender.

In ***Phul Singh V. State of Haryana***[10] the Supreme Court has observed, "The incriminating company of lifers and others for long may be counterproductive and in perspective, we blend deterrence with correction, and reduce the sentence to rigorous imprisonment for two years."[11]

Preventive theory:

As the name suggests, this theory is used to ascertain the quantum or punishment with a purpose of preventing something from happening or to stop people from doing certain acts. According to preventive theory of punishment, an offender is punished to prevent the happening of the future crimes in the society by isolating the offenders from the society.

This theory of punishment is also known as *'The theory of Disablement'.* The aim of this theory is to disable the criminal. The punishment is awarded to the wrong doer in order to disable the offender from repeating the same crime. As per this theory, an offender may be disabled in two ways, namely, *Incapacitation and Incarceration.*

Incapacitation and Incarceration.

'Lock him up and throw away the key!' may be a line that you recall from fairy tales and movies in your childhood. That line refers to the use of incapacitation as a form of punishment.

As the name suggests, in capacitation means to make the individual incapable of performing any task. It refers to the restrictions on the individual's freedom and liberties that they would usually have in the society.

[10] 1980 AIR 249

[11] Sagar Shelke, Jyoti Dharm, '*Theories of Punishment: Changing Trends in Penology'*, International Journal of Engineering and Advanced Technology (IJEAT)

It aims to deprive somebody of power or to make somebody legally ineligible to perform certain tasks. It aims to punish the wrong doer in a manner proportionate to the seriousness of the crime committed by him. For example: detaining a pre- trial accused so as to prevent him from tempering the prosecution evidences and threatening the prosecution witnesses or to take away the post of the person committing the crime by misusing his position (in case of white collar crimes, etc.), some offenders are kept in solitary confinement with maximum security with no opportunity to interact with other inmates where as some offenders are eligible for payrolls as well (based on the seriousness of the crime committed by them). The incarceration of criminally active individuals will prevent crime through their physical separation from the rest of society.

The preventive mode of punishment can be classified in the following manner;

- By instilling the fear of punishment
- By disabling the criminal, permanently or temporarily, from committing any other crime
- By way of reformation and/or re-education

This implies that the preventive theory of punishment is somewhat closely interlinked to the deterrent theory and the rehabilitation theory of punishment, in fact, we can relate specific deterrence to the preventive theory. To derivate the offender is the ultimate remedy is the principle of this theory.

Reformative theory:

In prehistoric time punishment used to be very ruthless but later with time people started to think about accuse person's rights also. The very fundamental purpose of this theory is to reform/rehabilitate the offenders into law abiding citizen. According to this theory, crime is interrelated with the existing psychological or physical description of the offenders and with the environment and circumstance of the society.[12]

[12] Anubha Agrawal, '*THEORIES OF PUNISHMENT IN INDIA- A BRIEF ANALYSIS'*.

Reformation means to improve, modify or transform somebody by correcting his flaws. The main idea behind this theory is that, 'we must cure our criminal, not kill them'. The reformative theory is reaction to the deterrent theory, which has failed to take into consideration of the welfare of criminal.[13] Reformist looks at sanction as tool of rehabilitation and try to mould the behavior of criminal on the place that criminal is not born but made by the environment of society.

This theory claims that a criminal can be reformed into a law abiding citizen by giving him competent treatment during his imprisonment period. It considers a wrong does as a sick person who is in need of a doctor rather than a jailor. Reformation process is like a surgeon operating on a person to remove the pain. This theory believes that punishment shall not be awarded to an offender on the retrospective basis rather punishment shall be given by considering his future as well.

G. B Shaw said that '*If you are going to punish a man retributively, you must injure him but if you are to improve him, you must improve him and man are not improved by injuries.'* The reformists penned that punishments are only justifiable only if it looks to the future and not to the past. It is a craft or skill in bringing back the tainted and condemned culprits to national mainstream and civil society, as meaningful citizens.

This theory is based on the principle of "*Condemn the Sin, not the Sinner*" – Mahatma Gandhi. According to the supporters of the Reformative theory, punishment is not imposed as a means for the benefit of others. Rather, punishment is given to educate or reform the offender himself. Here, the crime committed by the criminal is an end, not a means as in the Deterrent theory. This view is commonly accepted in the present time.

In ***Narotam Singh v. State of Punjab***[14] the Supreme Court has taken the following view-

"Reformative approach to punishment should be the object of **criminal** law, in order to promote rehabilitation without offending community conscience and to secure social justice."

[13] P.J Fitzgerald, Salmond on Jurisprudence, 12th Ed., Universal Law Publishing Co Pvt, 2008). p.95
[14] AIR 1978 SC 1542

The Probation of Offenders Act, 1958 has been passed with a similar object in view. About the Act, the Supreme Court observed in ***Rattan Lal v. State of Punjab***[15] that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology.

In ***Musa Khan v. State of Maharashtra***[16]**,** the Supreme Court observed that this Act is a piece of social legislation which is meant to reform juvenile offenders with a view to prevent them from becoming hardened criminals by providing an educative and reformative treatment to them by the government.

Restorative theory:

This theory is also known as expiatory theory. All other theories of punishments are relating to the punishments to the offender whereas the theory of restoration is a victim oriented theory. This theory recognizes the rights of the victims of crime.

Expiatory theory states that compensation is awarded to the victim from the wrong doer, awarding compensation from the accused though accused is not physically punished. [17] The concept behind this theory is that criminal will serve the victims and their dependents to compensate the deficiency which will create the sense of repentance and cleaning of heart. This theory follows the concept of indemnity, which means compensating the victim as if the loss has never had happened. It aims as restoring the victim back to the same position as he was before the crime has been committed.

Enrico ferri summarized this theory by defining criminal psychology as a defective resistance to criminal tendencies and temptation. This theory has practical difficulty in the matter of assessment of quantum of punishment which may be equal to or which may be capable of washing out the moral guilt.

[15] 1965 AIR 444
[16] AIR 1976 SC 2566
[17] https://www.lawctopus.com/academike/reformative-theory-of-punishment/; last assessed on May 8th, 2020.

In yet another landmark case on victim's compensatory relief, namely, ***D.K. Basu v. State of West Bengal***[18], the Supreme Court, inter alia made the following observation:

> *"The monetary and pecuniary compensation is an appropriate and indeed an effective arid sometimes perhaps the only suitable remedy for the Redressal of the established infringement of the fundamental right to life of a citizen by the public servants. The State is vicariously liable to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the state; which shall have the right to be indemnified from the wrongdoer."*

The question of award of compensation to a victim of rape came up for adjudication before the Supreme Court in the historic ***Bodhisatva Gautam v. Subhra Chakraborty's*** **case**[19]**.** The Court in this case noted:

> *"Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim's most cherished right, namely right to life, which includes right to live with human dignity as contained in Art. 21 of the Constitution."*

Multiple Approach Theory:

Application of any single theory may not render complete justice. The aforesaid theories are not mutually exclusive. Hence judicious combination of theories is the latest approach.

Case: Dr Jacob George v. State of Kerala[20]

It was stated, that the purpose of punishment is four-fold. First is retribution which is for vengeance, second is preventive which is an eye opener for the criminal, the third is deterrence

[18] AIR 1997 SC 610
[19] 1996 AIR 922
[20] 1994 SCC (3) 430

which provides punishment and the fourth is reformation. One theory cannot be preferred over another, there should be independent usage of each theory of punishment and should combined according to the merits of the case.

In ***Narinder singh & Ors. V. State of Punjab & Anr***.[21]There was a brief narration of the jurisprudential theories of Punishment:

- *Firstly, there are certain acts which are prohibited by the law. Such prohibited acts are offences. Whoever commits an offence has to face the consequences of his wrong doing. Such consequences are in penal form. It may be an imprisonment, monetarily or both and for serious offences capital punishment. In fact even imprisonment has its gravity. It may be simple one or rigorous.*

- *Secondly, the question arose as to why the persons who commit crime have to be subjected to the penal consequences. Many philosophies/jurisprudence justify the penal consequences as having retributive, rehabilitative, deterrence or restoration effects. Any or combination of this is the ultimate goal of sentencing.*
- *Thirdly, sentence guidelines are provided to guide the judges in awarding sentences in various countries. Such guidelines are provided statutorily or otherwise. Whereas till date in India we do not have such policy.*

- *The aim of such policies might not only aim at achieving consistencies in awarding punishment but to prescribe sentence policy or purpose for awarding it, like whether deterrence , retribution etc.*
- *In India the courts go by their own perception on awarding sentences. If the nature of a judge is to give punishment in form of retribution he'll grant that. If other judge is of different outlook and believes in rehabilitation he'll follow that. It depends on all the philosophy of the judge.*

[21] (1999) 7 SCC 409 [2].

- *In cases of crime against society and heinous crimes the deterrent theory of punishing the offender becomes relevant.*

However now the focus of criminologists and penologists is on victimology and it was observed in ***Hari Singh V. Sukhbir Singh and Ors***[22].

EVOLUTION OF THEORIES OF PUNISHMENT IN INDIA

On the basis of the above mentioned theories and on the basis of the judicial interpretations, following two case laws shows how the punishment theories are evolved in India:

In ***Saradhakar Sahu vs State Of Orissa***[23], The Supreme Court held that the retributive theory of punishment has lost its potency in the civilized nation and the deterrent and the preventive theory serves the purpose to the fullest. Along with that the court also stated that the modern trend places more emphasis on the reformation of an offender and its rehabilitation. The court stated that, '*Reformation and not retribution should be the purpose of punishment'.*

In ***T. K. Gopal V. State of Karnataka***, the Supreme Court held that on commission of crime, three types of reactions may generate:

1. Traditional reaction of universal nature or the punitive reaction
2. Preventive reaction
3. Therapeutic reaction

It is regarded that criminal is a dangerous person who must be inflicted with severe punishment to protect the society from his criminal assault whereas in the Therapeutic approach, criminal is regarded as a sick person who is in need of care and treatment. The whole goal of punishment is curative, therefore, more emphasis should be given on rehabilitation rather than retribution.

[22] (1988) 4 SCC 551
[23] 1985 CriLJ 1591

KINDS OF PUNISHMENT

The practice of awarding punishments is a very important part of the criminal justice system as it a form of society's manifestation of the admonition of the crime by a collective conscience as specified by Durkheim. The object of the punishment in Manu's words is- "*punishment governs all mankind; punishment alone preserves them; punishment awakes while their guards are asleep; the wise consider the punishment (danda) as the perfection of justice."*[24]

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*."[25]

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.

In ***Bantu v. State of U.P***[26] 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*

[24] Institutes of Hindu Law (translated by Haughton, G.C.1835) Ch. 7, para 18 p.189
[25] John Rawls, *Two Concepts of Rules*, Philosophical Review,1955

[26] *Criminal Appeal No. 117 of 2007*

social order ,and public interest cannot be lost sight of and per se require exemplary punishment."

Capital punishment

"No other punishment deters men so effectively as the punishment of death". Below mentioned are the offences which provide for death penalty-

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

The Supreme Court in ***Mithu* v. *State of Punjab***,[27] 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.

[27] AIR 1983 SC 473

In ***Bachan Singh* v. *Punjab***[28] in 1980 has ended the controversy by providing that death sentence should be sparingly used in rarest of rare cases.

Life Imprisonment

Life imprisonment means the whole life in prison. Prisoners has to end up their life in prison. They have no other options of release. According to the Supreme Court life imprisonment means jail term for the prisoner for entire life.

- There will be no release before fourteen or twenty years of life imprisonment.
- The prisoner has no such right as to release.
- The period of life imprisonment cannot be reduced.

In ***Gopal Vinayak Godse* v. *State of Maharashtra***[29] 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***,[30] 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***[31] made it explicitly clear that a convict punished with life imprisonment means imprisonment till his last breath.

Solitary confinement

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

[28] AIR 1980 SC 898
[29] AIR 1961 SC 600
[30] AIR 2005 SC 3440
[31] AIR 2008 SC 3040

one year and more than one year imprisonment solitary confinement will be 2 months and 3 months accordingly.

Indian Penal Code provides for imprisonment that may be rigorous or simple. Rigorous imprisonment for a specified duration is awarded in offences of serious nature such as house trespass (Section 449) or giving or fabricating false evidence with intent to procure conviction of capital offence (Section 194). During this period the convicts are made to do hard labour such as breaking stones, digging the earth, agriculture, carpentry etc. The imposition of hard labour is expected to have a deterrent effect on criminal behavior. In the case of ***Sunil Batra v. Delhi Administration***[32] the court ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Hard labour in Section 53 of the IPC has to receive a humane meaning. The prisoners cannot demand soft jobs but may reasonably be assigned congenial jobs. Sense and sympathy are not enemies of penal asylums.

Simple imprisonment means lodging of a person inside the prison with only light duties and such persons are not required to do hard labour. Prisoners sentenced to simple imprisonment are given work only on the basis of their request and subject to their physical fitness. Simple imprisonment is imposed for lighter offences such as wrongful restraint or defamation.

Fine

The court may impose a fine as an alternative for imprisonment or can add it is an addition to the imprisonment. In certain cases the fine is added along with imprisonment. Section 63 to 69 covers various fines under the IPC. However, as per Section 64 of the Code, when there is a default in the payment of a fine, the court may order for imprisonment.

Amount of Fine should not be Excessive

As per Section 63 of the IPC, when the sum is not expressed under the provisions of the Code, the amount of fine to which the offender is liable is unlimited, however, the fine shall not be

[32]AIR 1980 SC 1579

excessive. In the case of ***Palaniappa Gounder v. State of Tamil Nadu***[33], the Apex Court stated that the sentence given by the court shall be proportionate to the nature of the offence which includes the sentence of fine. And the punishment shall not be unduly excessive.

Sentence of Imprisonment for Non-payment of Fine

Under IPC Section 64, the following offences are covered:

1. Imprisonment with fine;
2. Imprisonment or fine;
3. Fine only and where the offender is sentenced to:

In such cases, the court of competence shall direct the sentence to the offender for a certain term. Under Section 66 of the IPC, the court has the discretion to provide any description for the imprisonment.

In the case of H.M Treasury (1957), the court said that in the case if the death of the convict has occurred then also the fine will be recovered from his property.

Forfeiture of Property

Forfeiture generally means the loss of property without any compensation in return, which is the result of the default caused by the person in terms of contractual obligation, or in paying penalty for illegal conduct.

In two provisions the forfeiture of the property has been abolished:

1. Under Section 126 for committing depredation on territories of Power at peace with the Government of India.
2. Under Section 127 for receiving property taken during war or depredation mentioned in sections 126 and 126 of IPC.

[33] 1977 AIR 1323

COMPENSATION TO THE VICTIMS OF CRIME

Reliance can be placed upon ***United Nations General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of Power*** adopted in November 1985, which through Article 1&2 gives exhaustive definition of the phrase:

> ***Article1***. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.*
>
> ***Article2***. *A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*[34]*Therefore the combine effect of these Articles probably encompasses everything under the sun that ought to have been the part of definition of the phrase.*

The word compensation in literal sense[35] men's a thing that compensates or is given to compensate (for); a counterbalancing feature or factor; amends, recompense; spec. money given to compensate loss or injury, or for requisitioned property. When we talk about Compensation to the victims it means something given in recompense i.e. equivalent rendered. It is to be noted that the whole purpose of compensation is to make good the loss sustain by the victim or legal representative of the deceased. Generally when we talk about compensation in the present

[34] https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf, last visited on 10th March, 2020.
[35] dictionary.cambridge.org

context it only limits itself to monetary compensation which is calculated on the basis of two head i.e. pecuniary loss and non-pecuniary loss.

The legislative framework in India regarding compensation to victim of crime

The legislative framework in Indian regarding compensation to victim of crime can be trace through these major legislations i.e. Code of Criminal Procedure, 1973 and Probations of Offenders Act and Constitution of India.

Code of Criminal Procedure, 1973

Under the provisions of code of criminal Procedure the power to award compensation is vested under section 357[36]. The plain reading of the section shows that sub-section (1) and (3) vests power on the trail court to award compensation and sub-section (4) gives power even to appellant or revision court to order for compensation. Sub section (1) empowers the courts to appropriate the whole or any portion of fine recovered for the purpose mentioned in the clauses to the sub section, under which Clause (b) is most important and of our use . It demands that claim of compensation must be accompanied by following conditions:

- Loss or injury suffered
- Loss or injury must be caused by the offence
- Such person can recover the compensation in a civil court

Sub section (3) empowers the court, in its discretion, to order the accused to pay compensation even though fine does not form part of compensation and hence although inserted in 1973 added new positive dimension to Indian philosophy of compensation.

According to this provision, the criminal courts may order to pay compensation to the victim out of the money received as fine only if such compensation is recoverable under the civil courts. This provision also provides that in case if the victim dies, his legal heirs can also claim the

[36] http://devgan.in/crpc/section/357/; last visited on 19th March, 2020.

compensation. Whereas, any case relating to the property like theft, cheating, misappropriation or criminal breach of trust and if the property is restored back to the victim by a bona fide purchaser, then the court may also order the offender to compensate the bona fide purchaser.

This provision also states that wherein if the court awards any such punishment to the offender which does not include fine, there the court may order the convict to pay a certain amount to the victim as compensation provided that the convict had not filed the appeal within the period of limitation or if in case the appeal has been filed, it is heard and finally decided. However, this section has certain limitations. They are:

- The compensation is awarded only after the conviction is proved, i.e., at the end of the trial. It does not provide for any interim measures.
- What if the accused if acquitted or discharged or does not have the paying capacity to compensate the victim or what is the accused is not identified and the trial does not commences.

In order to handle such situations, Section 357A was inserted in the CrPC in the year 2009. According to this section, it is the responsibility of the state to compensate the victim.

Section 357A- Victim Compensation Scheme

According to this provision, every state government in coordination with the central government shall make a scheme in order to compensate the victim and a victim compensation fund has to be maintained. If the trial court is in the opinion that the victim is in need of rehabilitation, it can send its recommendations to the district or the state legal service authorities.

On the other hand if the trial does not commence or the victim dies then the victim or the legal representatives of the victim (as the case may be) may file an application with the legal service authorities and after the due verification of the application, these authorities shall release the compensation amount within 2 months. Along with this, if necessary on the orders of the station

head officer or the district magistrate all the cost of health care will be borne by these legal service authorities.

Victim compensation fund

Governmental compensation for crime victims dates back to the ancient Babylonian Code of Hammurabi, considered to be the oldest known written body of criminal law. Along the same lines as restitution, compensation to crime victims diminished and extinguished during the middle ages, when, with the rise of the nation-state, government assumed the primary role as "victim".[37]

Compensation refers to monies paid by the government, or by another party unrelated to the offender, to the victims of crime (Van Ness and Strong, 1997). The amount of monies paid typically reflects the nature and extent of the injury suffered by the victim.

The welfare perspective argues that government ought to protect the disadvantaged segments of society. Since most crime victimizes the poor, compensation funds provide another welfare safety net to those who need it most.

Following in the footsteps of Margery Fry's reasoning[38], many advocates of compensation programmes argue that since individuals have relinquished their rights to take justice into their own hands, government then is responsible for their protection. Crime represents a failure of that responsibility, for which the government ought to compensate victims.

Other advocates say that it is just a matter of social justice. Government must compensate victims to allow them to be vindicated, especially when offenders are accorded so many protections,

[37] https://wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf, last visited on 19th March, 2020.
[38] Introduction to restorative justice, Centre for justice and reconciliation.

However, critics of compensation programmes attack them on these very grounds. Many are opposed to increased government and taxation. Others believe that compensation could actually increase crime as offenders justify committing crimes based on the fact that the victim will be compensated by the government. As far as the social insurance perspective goes, others say there is no reason why relatively safe suburban taxpayers should have to subsidize a compensation programme predominantly catering to victims of poor, urban areas.

Under section 357A of CrPC, the states made their compensation schemes but due to policy conflicts and very low minimum amount of compensation, the Supreme Court of India in ***Laxmi v. Union of India***[39] showed its disagreement with the state schemes. In the year 2015, the Central Government notified the Central Government Victim Compensation Scheme in which the losses and injuries were categorized and the minimum amount of compensation is specified as per the categories.

In 2018, on the direction of the Supreme Court of India the National Legal Services Authority has made a model scheme for the female rape survivors and the acid attack victims. This scheme was enforced on October 2nd, 2018 and was applicable on female victims of rape, sexual assault, etc. this scheme was named as ***COMPENSATION SCHEME FOR WOMEN VICTIMS/ SURVIVORS OF SEXUAL ASSUALT/ OTHER CRIMES, 2018.***

The above mentioned scheme of NALSA was the outcome of ***Nipun Saxena v. Union of India (PIL)***[40]**,** in which the Apex Court after getting no satisfactory report by any of the scheme relating to the compensation, Supreme Court observed that victim compensation is not taken up seriously by the state government. As a result of it the Apex Court directed the NALSA to constitute a committee to work for the model guideline for compensation to the female rape victims and the acid attack survivors.

These guidelines were approved by the Supreme Court on May 11th 2018 and directed all the states and union territories to incorporate this scheme in their respective victim compensation scheme.

[39] 2014 SCC 4 427
[40] 2018

Probation of Offenders Act, 1958

Probation of Offenders Act vide its section 5 empowers the trail court to order for compensation. The plain reading of this section clearly shows that the power in case of this Act vests only with the trail court and non-else. The whole discussion about legislative framework is incomplete until Section 431 and 421 of Cr.P.C. is read with above two substantive sections. Section 421 provides for means to recover the fine by attachment and sale of movable property of the offender and also from both movable and immovable as arrears of land revenue. Section 431 empowers the courts to recover any money (other than fine) payable by virtue of any order made under as if it were fine if method for its recovery is not expressly provided.

The first case in the line, which attracted the mind of the court came way back in 1952 where the Hon'ble court connected general principle of sentencing i.e. while passing a sentence the court must bear in mind the proposnality between offence and penalty with granting of compensation and observed that while imposing the fine court must consider gravity of offence and the pecuniary condition of the offender.

Then came the case of ***Prabhu Prasad Sha v State of Bihar***[41] where the Hon'ble court not only uphold the conviction of 15 years old boy (actually at the time of commission of crime the accuse was of 15 years) but also observed that although requirements of social justice demands the imposition of heavy fine but taking in to consideration the condition of the accuse awarded fine of Rs 3000 to be paid by him to the children of the deceased.

In another case of ***Palaniappa Gounder v State of Tamil Nadu***[42] Supreme Court following the same view as of earlier not only reduced the amount of fine imposed by the High Court from Rs 20,000 to Rs 3,000 but also observed that:

It appears to us that the High Court first considered what compensation ought to be awarded to the heirs of the deceased and then imposed by way of fine an amount which was higher than the compensation because the compensation has to come out of the amount of fine. Apart from the fact that even the compensation was not fixed on any reliable data, the High Court, with respect, put the cart before the horse in leaving the propriety of fine to depend upon the amount of

[41] AIR 1977 SC 704
[42] 1977 AIR 1323

compensation. The first concern of the Court, after recording an order of conviction, ought to be determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and the sentence, including the sentence of fine, must be unduly excessive.[43]

Constitution of India, 1950

As far as the Constitutional scheme is concern it is to be noted that it is outcome of various decision of Supreme Court of India either by reading Part third rights (in some cases part four as well) with Art. 32, 136 and 142 of Constitution of India, which is to be given either by the state or accuse.

Rudal Sah v State of Bihar[44] is the most celebrated case where the Hon'ble S.C. directed the state to pay compensation of Rs 35,000 to Rudal Sah who was kept in jail for 14 years even after his acquittal on the ground of insanity and held that it is violation of Article 21 done by the State of Bihar.

The case of ***Bhim Singh v State of J&K***[45] is another important case where Bhim Singh an MLA was arrested by the police only to prevent him to attended the Legislative Assembly, the Hon'ble Court not only entertained the writ petition of his wife but also awarded the compensation of Rs 50,000 to be paid by the state.

Hence the whole gamete of legislative framework about compensation can be summarized in following way:

Compensation from State, which is outcome of Judicial Imposition or some times, even ex-gratia under Constitution of India.

Compensation from an offender which is out come either as a part of fine or allocation of specific sum to victim either under Cr.P.C. or Constitution of India.

[43] https://indiankanoon.org/doc/662559/; last visited on 19th March, 2020.
[44] (1983) 4 SCC 141
[45] AIR 1986 SC 494

COMPENSATORY RELIEF TO VICTIMS - JUDICIAL TREND

The contribution of judiciary to redress the claims of victims of crime is no less significant. The higher courts have played a dominant role in assuring compensatory justice to the victims of crime.

While awarding such compensatory relief, they have exercised due care and caution to ensure that people's faith in judicial process is not shattered and the victims protective rights are not denied to them. Some of the landmark judgments of the Supreme Court ensuring restorative justice to victims of crime reflect the growing concern of judiciary to protect the rights of victims.

The Apex Court in ***Sarwan Singh v. State of Punjab***[46] enumerated the factors which the courts should take into consideration while ordering award of compensation to the victim of crime. These factors include capacity of the accused to pay, nature of the offence and the nature of injury suffered by the victim as also the overall effect of crime on the victim's familial and social life and emotional or financial loss caused to him/her.

The Court ruled that the quantum of compensation must be reasonable, depending upon the facts, circumstances and justness of victim's claim. The accused must be given reasonable time for payment of compensation and if necessary, it may be ordered to be paid in instatements.

The question of award of compensation to a victim of rape came up for adjudication before the Supreme Court in the historic ***Bodhisatva Gautam v. Subhra Chakraborty's***[47] case. The Court in this case noted:

> *"Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim's most cherished right, namely right to life, which includes right to live with human dignity as contained in Art. 21 of the Constitution."*

[46] 1957 AIR 637
[47] 1996 AIR 922

The Court ordered that the accused shall pay an interim compensation of Rs. 1000/- per month to the victim (woman) of his crime (i.e. rape) during the entire period of trial proceedings. The Court further ruled that "compensation to victim under such conditions will be justified even when the accused was not convicted.

In yet another landmark case on victim's compensatory relief, namely, ***D.K. Basu v. State of West Bengal***[48], the Supreme Court, inter alia made the following observation:

> *"The monetary and pecuniary compensation is an appropriate and indeed an effective arid sometimes perhaps the only suitable remedy for the Redressal of the established infringement of the fundamental right to life of a citizen by the public servants. The State is vicariously liable to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the state; which shall have the right to be indemnified from the wrongdoer."*

In ***Delhi Democratic Working Women Forum v. Union of India***[49] seven military jawans raped six village girls who were travelling by train. The court directed the Central Government to pay Rs. 10000/- to each victim as compensation and ordered that the names and identity of the victimised girls be kept secret to save them from social stigma.

The court also directed the National Women Commission to prepare a rehabilitation scheme for such victims and expressed the need for setting up of a Criminal Injuries Compensation Board which should decide the quantum of compensation to be paid to victims of rape after taking into consideration their shock, suffering as well as loss of earning due to pregnancy and the expenses of child birth, if caused as a result of rape.

In the case of ***SAHELI***[50] ***(a women social activist organisation)*** the Apex Court directed the Delhi administration to pay Rs.75, 000/- as exemplary compensation to the mother of a nine year old boy who died due to beating by police officer while extracting information from him

[48] AIR 1997 SC 610
[49] 1995 SCC (1) 14
[50] Saheli, A Women's Resources Centre V. Commissioner Of Police, Delhi Police Head-Quarters And Ors 1990 AIR 513

regarding the offence. The dispute in this case was related to the land lord (house owner) trying to oust the appellant (mother of the deceased boy) from his house and the police was allegedly favoring the land lord.

In ***Ankush shivaji gaikwad v. State of Maharashtra***[51], Supreme Court held that it is the duty and the power of the trial court to apply a prudent mind while awarding compensation along with such order must be a speaking order.

In ***Suresh & anr V. State of Haryana***[52] the Apex Court held that at the time of taking cognizance of the case it is the duty of the court to find whether the victim is in the immediate need of financial relief, accordingly interim compensation may be granted. Along with that if the court is in the opinion that the compensation recovered by the accused is inadequate then in such situation, the court may direct the state government to provide suitable sufficient compensation to the victim.

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.

And where it comes to the aspect of victims, it is need of the hour that there should be a change in the focus from offender oriented- justice to victim-oriented-justice, and justice to victim should be perceived as complementary and not contradictory to criminal justice. And with help

[51] (2013) 6 SCC 770
[52] 2014

of Plea bargaining anxiety of victim and offender is minimized. It also makes the victim totally satisfied because he gets compensation and accused is punished. According to Article 9(5) of International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

> *"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."*

This humble effort would be a step towards the main objective of providing a viable legislation which could provide compensation to the victims of crime so that the victim is not ignored in the whole process of administration of justice. Thus this research is an attempt to streamline the existing laws relating to payment of compensation, particularly with special reference to plea bargaining under criminal justice system.

PRACTICE QUESTIONS

The preventive mode of punishment can be classified in the following manner;

A. By instilling the fear of punishment

B. By disabling the criminal, permanently or temporarily, from committing any other crime

C. By way of reformation and/or re-education

D. All of the above

Answer: D

According to the deterrence theory, people avoid committing crimes because of all of the following EXCEPT:

A. they are afraid of getting caught

B. they have a deep moral sense

C. they know there are penalties

D. they fear swift, certain and severe punishments

Answer: B

Which of the following is a criticism of deterrence theory?

A. It assumes people know the penalty for crimes.

B. It assumes people cannot control their actions.

C. It assumes people do not make logical decisions

D. All the answers are correct.

Answer: D

Which of the following case talks about elimination of death sentence?

A. Bachan Singh v. State of Punjab
B. Phul Singh V. State of Haryana
C. Narotam Singh v. State of Punjab
D. Ratan Lal v. State of Punjab

Answer: A

'COMPENSATION SCHEME FOR WOMEN VICTIMS/ SURVIVORS OF SEXUAL ASSUALT/ OTHER CRIMES, 2018' was the outcome of which case law?

A. Laxmi v. Union of India
B. Nipun Saxena v. Union of India
C. Prabhu Prasad Sha v State of Bihar
D. Rudal Sah v State of Bihar

Answer: B

Who among the following criticized the retributive theory of punishment?

A. Salmond
B. HLA Hart
C. G B Shaw
D. Austin

Answer: A

Under which section of IPC, 1860, the kinds of punishments are mentioned?

A. Section 52
B. Section 53
C. Section 54
D. Section 55

Answer: B

Through which case law Section 303 of the IPC was repealed?

A. T. K. Gopal V. State of Karnataka
B. Bantu v. State of U.P
C. Mithu v. State of Punjab
D. Gopal Vinayak Godse v. State of Maharashtra

Answer: C