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A Study on Fines and its Penological Effectiveness

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ABSTRACT

The aim and objective of this research paper is to provide its reader a holistic understanding of the topic fines as a form of punishment. The article deals with the concept of punishment as evolved with time and particularly focuses on fines, its evolution as a penal provision, what are the various facets attached to fine when it is imposed as a form of punishment. The research paper deals with different theories of punishment so as to provide a foundational understanding of the concept of punishment and then it deals with fines. The question this papers seeks to answer is are there any guidelines provide by our legislature for imposition of fine as a form of punishment, what are the challenges faced by the judges when warding fine as a punishment, what are the different forms of monetary sanctions provided under the IPC and in each of these provisions what are the statutory challenges that the courts have to deal with when awarding punishment. The last and the final question which this research aims to explore and find an answer to is that, are fines serving purpose of deterrence or punishment and the goal of retribution provided by different jurists. This question gives this paper a broader picture and makes this research crucial if one wants to study about fines.

I. INTRODUCTION

In the Indian Penal Code, 1860 (IPC) there are many offences under which fines are provided as an additional punishment to imprisonment.[2] For some offences like murder, death or life imprisonment is being provided under the relevant section which also provides for fine under the same. The question that research paper seeks to answer is whether fines should be imposed in addition to life imprisonment or not and is yes then what should be the quantum of fine. If we go back to the jurisprudence behind imposing penalties or monetary sanctions then we need to visit the views of certain jurists who were the advocates for such a punishment. Before getting monetary and non-monetary sanctions first we need to understand the jurisprudential history of punishment. Jurist Durkheim states that punishment is the social condemnation of

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[2] Indian Penal Code Act, 1860

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crim by collective conscience of the society. It is also associated with the moral anger and disgust that is associated with the social theory of punishment. If one wants to understand the purpose and goal of punishment then one should look at the different theories of punishment it will help in formulating one's understanding of what are the jurisprudential reasoning behind punishment. The paper would be covering different theories of punishment wherein there would be a substantial understanding behind the punishments given and what is the psychology behind them. Punishment is a concept or phenomenon which is socio-legal in nature it derives its recognition and goals through the sociological understanding and gains its enforceability through codification in statutes. In every sciety there certain norms which are unwritten and followed by individuals to ensure a social setup and order within the society so that each individual is able to live in peace and harmony, then with time as the introduction of legislature happened which passed different legislations codified theses norms and also provided for an institutionalized regulator who would ensure that these laws are being followed by each and every individual of the society. Punishment is not interpreted as something apposite to law rather it is more of a law breaking done by the individual. It is the punishment which aims to protect and regulate the institutions of law making and ensure that if any offence is happened which is of a totally opposite nature trying to digress from the norms of the institution or law then there would be some amount of unpleasant or ill consequences to the offender.

(A) Review of Literature

P.R. Thakur (1999): The researcher in this study provided a detailed understanding on the utility and effectivity of monetary sanctions in IPC. The researcher concluded that a practical approach is needed in order to collect fines and confiscation of property. Monetary sanctions when imposed upon a person shall take into consideration his economic condition, magnitude of the offense, etc. This approach would prevent the arbitrariness in the entire process.

Anupama Sharma (2016): The author in her research covered a lot of aspects in punishment. She dealt with the theories of punishment and provided a jurisprudential understanding behind the same. The research also discussed the role of penological goals of punishment and different types of monetary sanctions provided in the IPC.

Guyora Binder (2002): In his research the author discussed the theory behind punishment the theory behind punishment is either moral or political. The researcher concluded that it is the moral theory that is responsible behind punishment, the author further stated that punishment is not an individual act rather it is an institutionalised act of the entire institution which with the help of codified norms enforces such laws and grants punishment to the offender.

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D.K Brown (2004): The researcher in this research does a cost benefit analysis to understand and improve criminal justice policy making and enforcement practices with special emphasis on monetary sanctions or punishments. Further the article highlights the challenges in the criminal justice system for imposition of fine.

Dr. G.S. Bajpai (2017): the following was a report submitted by the researcher who also was an *amicus curie* appointed by the Delhi High Court. The report covers the legal issues under wrongful incarceration and payment of fine along with suspension of sentence. The research addresses different legal issues formulated and asked by the Hon'ble High Court of Delhi and one of the issues was on fines as a punishment under IPC and the guidelines. The research concluded that there isn't any specific guideline for determining the fine that is to be levied upon an individual rather it is mostly imposed by courts when a judicial order is not followed. Apart from this the research also discussed the judgements of the court providing guidelines in terms of issuance of order related to fines or monetary sanctions.

Bhumesh Verma and Abhisar Vidyarthi (2019): the article analysed the role of fines and penalties levied against accused involved in corporate crime whereby they are indulged in scams exceeding crores of rupees. The researcher explored the question that is fines and penalties enough to meet the mode of deterrence? The research concluded that the courts should adopt both the means; levying fines and also individually punishing the offenders with imprisonment of are the brain behind such corporate crimes.

Nandan Katnath and Ankit Majmudar: The following paper was on terrorism and sentencing policies of Supreme Court. The researcher concluded that fines don't serve the deterrent mode of punishment. In some cases in addition to jail sentences an additional fine of 200-300 was imposed which is very negligible in amount keeping in mind the magnitude of crime committed.

R. Sadasivam (1964): the following research was on studying the cause of crime in order to deal effectively with the offenders. The researcher concluded that in cases where there is a casual offender jail sentences are ideal and rather there should be an imposition of fines in such cases. Jails are a place where if a casual offender is kept, there are high chances of him becoming a more ravenous criminal which won't serve the purpose of punishment.

M.R. Khapali (2013): The researcher in the study concluded that fines provided under various offences in the IPC are very low. The union government must take into account the economic cost incurred by the prosecution right from the start to the end. The cost of bringing in an expert witness is very high and other costs associated with the prosecution and hence there should be

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a steep increase in the fines.

Shouvik Kr. Guha and Abhyudaya Agarwal (2008): The research paper was on criminal liability of big corporations. The authors concluded that fines when imposed on such big corporations are failing to meet the deterrent effect of punishment. Apart from this the fines when imposed on a corporation and then if it is not payed by the offender then there lacks any law to retrieve that money from them. However, they were of this view that heavy fines should be imposed as an alternative punishment to imprisonment though they fail to meet the desired goal of deterrence.

(B) Research Questions

Q.1 What are the different theories of punishments?

Q.2 How did fine evolve as a form of punishment?

Q.3 What are the sentencing guidelines for imposition of fines?

Q.4 What are the different forms of Monetary Sanctions provided under IPC? and its challenges.

(C) Research Objective

i. To study the different theories of punishment and their application while awarding punishments.
ii. To understand the evolution of fines from the ancient period to the modern age.
iii. To study the guidelines for imposing fines if any.
iv. To study the different forms of monetary sanctions under IPC and the challenges under them.

(D) Hypothesis

H1 The structure of monetary sanctions and its applicability ensures deterrence and achieves the penological goal

H0 The structure of monetary sanctions and its applicability does not ensure deterrence and achieves the penological goal.

II. Analysis

(A) Theories of Punishment

1. Deterrent Theory

The main objective of this theory is to instill a sense of fear in the mind of the offender of a criminal act so that the punishment given to him is set as a precedent for the society and no

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other person dares to commit the crime. If we look at the principles laid down by Salmond in his work on jurisprudence. The chief aim of punishment is deterrence and to make the evil doer an example for other miscreants like him and for the common society. This theory leads us to a conclusion that punishment is a mode of social security because the aim of it is to protect the society from potential offenders with a mode of deterrence. The reason why an offence is committed is because of conflict of interest between the society and the criminal offender. The deterrence theory ends that conflict of interest by classifying certain acts as a "crime" and eventually punishing those who have committed it. This end of criminal justice is achieved by inflicting severe punishment on the wrong doer. Although this theory has received its fair amount of criticism, Justice Holmes argues and opposes this theory, according to him this theory on the grounds that it is immoral as it fails to lay down any prescribed mode of punishment and rather, it is left on the judge and thus, becomes highly subjective. The main arguments of the critics of such theory is that it has been highly ineffective in controlling and preventing crimes. If one looks at the reign of queen Elizabeth who was a strong supporter of deterrent theory and who awarded severest punishment to even the smallest offences like pick-pocketing, still there were a large number of incidents of such crimes and pickpockets were busy among the large crowds of people to pursue such crimes during the execution of other pickpockets who were held guilty.

2. Retributive Theory

The theory of retribution states that the evil should be returned for evil. The more articulate meaning of this theory is that the pain to be inflicted on the offender by way of punishment must outweigh the pleasure the offender derived from committing such act. This theory is based on the principle of natural justice which is "an eye for an eye and a tooth for a tooth". Thus, the theory is of the view that punishment is an expression of society's disapprobation for the wrongdoer's criminal act. But if one weigh's this yheory with social policy then this form of punishment definitely outweighs the social policy and order i.e. this theory owes its origin to the crude animal instinct of individual groups to retaliate when hurt and therefore, its approach to offender is outdated and highly vindictive when compared with the modern reformative concept of punishment. Supporters of this theory holds that the punishment is the appropriate moral response to criminal acts because the perpetrators of crimes deserved to be punished. This theory shares a common view with deterrence which also defends punishment as morally just and supports that the gravity of the offence should be a basis of the punishment and the punishment should be in proportion to such offence. This is the reason why the retributivists press so much upon punishments like imprisonment, deportation and even death sentence

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which provides that the theory is irrational, revengeful and utterly barbaric.

3. Preventive Theory

The basis of preventive theory is the different modes through which crimes can be prevented in the society. It aims to achieve such motive by disabling offenders through measures such as imprisonment, forfeiture, death punishment and suspension of license etc. this theory does not focus much on the issue that why did the offender commit such a crime or the motive behind it rather it only seeks to take away the physical powers of such person so that he is not able to commit such crime. Jurists like Fichte when commented on preventive theory holds that the end of all penal laws is that they do not apply. In England, the preventive theory was supported utilitarian law reformers because the effects it has on penal laws is humanizing.

4. Reformative Theory

Reforms have been a crucial element of society it has helped societies evolve with time and adopt changes which were very pertinent and progressive to the society. Coming onto the punishment aspect under this theory, reformative theory of punishment emphasizes on reformation of offenders through the method of individualization. It is based on humanitarian ground that even if an offender commits a crime he does not cease to be a human being. Therefore, when he is kept in prison for the criminal wrong he has committed there should be an effort made to reform him. The judicial approach that this theory suggests is that while awarding punishment the judge must take into account the age and the character of the offender, his antecedents, and also circumstances under which he has committed the offence. This theory opposes the theory of retribution and deterrence and it aims to socialize the offender so that all those factors that led him to commit such crime are eliminated and he is able to live a normal life after serving his sentence. This theory condemns all forms of corporal punishments. The major facet of a reformative theory is rehabilitation of convicts in penal institutions. It is undoubtedly true that modern trend is in favour of reformative justice but there is a strong feeling this method should not be stretched beyond a certain limit. This method has been tries and proven its mettle with juvenile offenders, first offenders and women who commit crime. But that is not the case with hardened professional criminals because the offences they have done are incorrigible in nature for whom crime is not a bad habit and rather it is a habit instilled in them, for such offenders deterrent punishment is the only alternative. It is significant here that the authors of American study have observed that reformative theory never commanded more than a lip service from most of its most vocal and powerful supporters. The idea of rehabilitation embraced by the prison authorities is because of a sole reason that they have

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strong power over the inmates serving their sentences.[3]

(B) Evolution of Fine as a Form of Punishment

The types and forms of punishment are changing as the society is evolving in the historic periods the punishment that were given was more an expression of extreme brutality and transgressed human rights grounds, theses were later criticized because of this reason. In earlier days death as a form of punishment was imposed on offenders who had committed even minor offences such as pickpocketing, cheating etc. but with time as the society evolved other forms of punishment were introduced such as imprisonment, community work and fines. In the case of *Hazara Singh v. Raj Kumar*[4] the court ahs held that it is duty of the courts when awarding punishment to consider all relevant factors which would ensure a just punishment. The legislation with the help of different laws has bestowed upn the courts this very important responsibility of punishing people after a free and fair trial which not only requires utmost caution but also attention to details in any case. Punishment when given to an offender is a sum total and is something which is directly proportionate to the crime committed by the offender. The courts time and again have held this cardinal principal correct that the punishment given to the wrongdoer should be directly proportionate to the crime committed by the accused. It is because of the judicial system and a federal structure that punishment as a concept has able to evolve with time, otherwise in other countries like Saudi Arabia, Afghanistan, etc. where there is no such structure the wrongdoers are executed in public and are left to the public for whichever punishment they want to give.

If we look at the Indian context and particularly the letter of the law then punishment are provided under Indian Penal Code (IPC), section 53.[5] The following section provides for death, life imprisonment, simple or rigorous imprisonment, fine, and property forfeiture as a form of punishment. Their applicability depends upon the magnitude of the crime committed by the offender and accordingly punishment is granted. Since the focal point of this research is 'fine' as a form of punishment and its impact in dealing with different crimes, it becomes very important to understand the evolution and dynamism of fine as a form of punishment and the jurisprudence behind it.

Fine can be defined as a penalty paid in the form of a currency for contravening any orders or instructions by a superior or supreme authority. Fine is a form of punishment used in various realms of law e.g. Civil, criminal. The applicability and quantum of fines differs in every case

[3] Dr. N.V. Paranjpe, STUDIES IN JURISPRUDENCE AND LEGAL THEORY (7th edition. 2015)
[4] Hazara Singh v. Raj Kumar (2013) 9 SCC 516
[5] § 53, Indian Penal Code, 1860

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because since the concept of punishment is subjective in nature depending upon the crime so is fines, different amount of fines are imposed on different types of offenses. A corporation when commits a corporate fraud then the fine would be very high in amount looking at the amount of raud committed whereas if a person has jumped a red signal the fine imposed would be according to that violation. In some of the researches conducted by different researchers it has been concluded that fines do have an important role when imposed on certain people on rest of the society. Before the advent of criminal law fines were used very effectively in resolving disputes of individuals in the society. Private disputes were resolved through compensatory fines imposed on the person at fault which was strong enough to make good the loss suffered by the victim and it also helped in not increasing the tensions between the disputed parties which was a very crucial thing then.

Fines fulfilled the purpose of both compensation and punishment, in ancient laws even after private disputes were given a public regulation still fines were imposed on the faulting parties. With the change and amendments in law certain wrongs were classified as a wrong against the state in such cases the fines were imposed on individuals which was received by the state. But with the advent of different rulers and their reign the concept of punishment changed in the reign of William the conqueror, the wrongdoers were left at the mercy of the king. This form of punishment does not take into account the personal liberty of the wrong doer and which is the most saddening part in such forms of punishment when liberty of an individual is permanently cesseded then it is a sign of a major worry. In the earlier period of monarchy when permanent execution was imposed on an individual then he had an option to pay a certain amount as fine so that he is saved from such an execution. This used as a strategy by kings where they used to furnish funds from themselves and prevented any penological step to be taken in their rule in situations where this was possible. This happened in the year 1383 where the punitive character of fine was restored and it was converted to punishment rather than just being a mode for settlement.

If one focuses on the utility of fines in civil law then the use of it would be immense, because the penological establishment of civil law is to compensate and that of criminal law is to punish. The concept of damages/ compensation is very well exercised in tort law, civil law and contracts law. In the ancient India where the ruling class or monarch used to rule according to the religious teaching or rules then we see that punishment that were heavily imposed were imprisonment and death sentence , monetary sanction when imposed were fines as would go to the royal treasury and not as a compensation that the other party would receive. In the modern day criminal there has been a lot of emphasis on the victim compensation scheme especially

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after the Malimath Commission Report[6] where fine is given by the court as a compensation to the victim. There was another form of punishment given widely in the ancient days and that was "censure" wherein the offender was verbally outraged by everyone which made him realize the wrong and this component was not seen in fines as a form of punishment. But with changes in regimes and rules and also the ideological understanding of the ruling class fines has now become part of almost all the crimes except in exceptional circumstances where the crime committed is heinous and barbaric in nature and no on the punishment other than imprisonment or capital punishment can be imposed on the person committing the crime. However if one closely observes fines and other forms of punishment then it is clearly evident that fines are part of penalty and not punishment and there is a difference between a penalty and a punishment as rightly pointed out by Mr. J. R. Lucas, in his categorization fines form a part of penalty and not punishment. According to him punishment is "mala inse" whereas penalty is "mala prohibitia" in nature. Another jurists Spjut points out that if the classification of offences for which penalties and punishments are awarded does not portray any qualitative difference then in that case the classification of mala inse and mala prohibitia stands weak and is defeated. If this is the acse then the difference should be made that of severity, since punishments are awarded for crimes which are more severe in nature. Another point of differentiation given by him was that punishment are granted when there is a breach of general obligation by the public. Whereas penalties are levied when there is a specific breach of obligation. This concept owes its origin from "*rights in rem*" and "*rights in personam*". Rights in rem are enforceable against the entire world, whereas *rights in personam* are enforced against specific persons. Since fines are levied aginst individual for specific breach and conduct so the reluctance to commit a particular wrong is absent and it is not able to serve its purpose. Another jurist name Feinburg also delves into the question of the difference between punishment and penalty. He holds that punishment has an angle of deterrence in it and it is awarded in the form of hard labour and imprisonment. This doesn't allow fines, penalties etc. to form a type of punishment and hence it is kept in a separate group named Penalties. Apart from the above difference the enxt thing he points out is that penalty is a like a price tag attached to a non-societal or non-confirming behaviour which anyone who wants to commit can do and pay the price thus making it more like a commodity and not thinking about his duties as a citizen. He points out that the characteristic associated with penalty is only miscellaneous in nature whereas the characteristic associated with punishment is a form of an expression of deterrence and social criticism. Ashworth holds that the difference between the two is of is regulatory characteristic and that is

[6] Malimath Commission, (2003)

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penalty posses a regulatory characteristic, whereas punishment posses a punitive characteristic which instils a sense of fear in the minds of other people in the society to not commit such an act. If fines are structured efficiently then they can be implemented with success as a penalty. Another plus for fines as a form of penalty is that it can be adjusted according to the severity of offence committed and is also economical when it comes to administrative costs. But if one wants to impose punishment in the form of a fine then it has to be in proportion on the scale of deterrence when compared with imprisonment. But if one looks at the use of fine by the judiciary then it is limited to more of a victim compensation scheme.

(C) Judicial Guidelines in Determining Fines as a Form of Punishment

Section 63 of the IPC doesn't lay down any particular limit of the fine imposed but only provides that it shall not be "excessive". The phrasing of the section "*ipso facto"* remains a bit of interpretational conundrum for our Hon'ble courts to decide the quantum of fine. In one of the formative cases before the Allahabad High Court in the case of *Emperor v. Mendi Ali*[7] was held that :-

"I cannot think it is proper, in the case of a poor peasant, to add to a very long term of substantive imprisonment for a fine which there is no reasonable prospect……

It becomes all the more undesirable to impose such a fine where the term of imprisonment to be undergone in default will bring the aggregate sentence of imprisonment to more than the maximum term of imprisonment sanctioned by the particular section under which he is convicted"

The operative clause of the judgement was "reasonable prospect". Therefore, the judges opined that it is necessary for us to look at the economic whereabouts of the accused so as to awards punishment which is just and fair.

In *Palaniappa Gounder v. State of Tamil Nadu*[8] the Hon'ble Supreme Court while reversing the judgement held that fines cannot be calculated on the basis of the compensation that the heirs of the deceased ought to receive, but rather on the pecuniary position of the accused and the nature and magnitude of the offence. If the offence is such which is punishable with imprisonment along with fines then on that case, the term of the imprisonment in the case of default of fine will not be more than one-fourth of the longest time of imprisonment fixed by the code. If the offence is one which is only punishable with fine then in that case the imprisonment for default of fine in no case would increase seven days. The above observation

[7] Emperor v. Mendi Ali, (1941) Cr.L.J. 755
[8] Palaniappa Gounder v. State of Tamil Nadu (1977) SCC (2) 634.

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is laid down in section 65 of the IPC[9] and section 30 of the CRPC[10]. There are no specific guidelines which are to be followed by the courts when awarding fines but certain principles are provided in the section between 63 to 70 of the IPC. Section 63 of the IPC layd down that if there is no specific amount of fine mentioned to be imposed then it can be unlimited but reasonable.

The Madhya Pradesh High Court in the case of *Shakir v. State of Madhya Pradesh*[11] has said that while awarding fines one should always consider the principles laid doe=wn between sections 63 to 70 and it should not be excessive but rational to the pecuniary position of the accused. The courts held that since every case is different and subject to different facts there can't be a fixed amount of fine for every offence. The Supreme Court in the case of f *Shahejadkhan Mahebubkhan Pathan v. State of Gujarat* had laid down all the necessary guidelines provided under the IPC between the sections 63 to 70 for imposition of fine. It said that "It said that nature of offence, circumstances in which it was committed, the position of the offender and other relevant considerations such as pecuniary circumstances of the accused person as to character, and magnitude of the offence must be kept in view before sentencing fine". Many a times Supreme Court and various other High Courts have laid down different guidelines for imposition of fine. This in a lot of way has solved the problem of the vagueness in the sections between *Adamji Umar Dalal v. State of Bombay*[12] held that

"In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases." In the same case the court also held that when imposing fine and default imprisonment the court also held that the courts should consider whether the accused was a first time offender or a habitual criminal who has a history of indulging in such crimes. Section 64 of the IPC states about the provision for imprisonment in case of non-payment of fi0ne. The legislature provided that the same court can pronounce imprisonment sentence which will run in excess to the substantial crime committed. This view was clarified in the case of *State v. Krishna Pillai Madhavan Pillai*[13]. The court held in this case that the two cases can never run concurrently and the fine can also be charged even after the death of a person or any such sentence. Moreover, the courts held that sentence of imprisonment awarded in the case of default of fines

[9] § 65 of the Indian Penal Code, 1860
[10] § 30 Code of Criminal Procedure, 1973
[11] Shakir v. State of Madhya Pradesh (2009) CriLJ 2775
[12] Adamji Umar Dalal v. State of Bombay AIR (1952) SC 14
[13] State v. Krishna Pillai Madhavan Pillai (1953) Cri LJ 1265.

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is more a penalty rather than being a sentence which has to be undergone separately. These were the guidelines which the courts have laid down in different cases and it becomes a material thing to study theses in order to understand the guidelines for punishment.

III. TYPES OF MONETARY PUNISHMENTS PROVIDED UNDER IPC

(A) Where the Amount of Fine is mentioned

In these type of provisions the amount of fine is mentioned in the laws drafted by the legislature. The following provisions need a critical analysis and its effectiveness in the modern-day period. Looking at the redundancy of the amounts mentioned it is clear that since the IPC was drafted in 1860 and the value of INR in 1860 is estimated around 10 when compared with USD. The present value of INR 73 so clearly it is evident that the amount of fines is very dilapidated. Since it is really not possible to amend the amount of fines in regular intervals but the government can come up with notification and circulars providing for the same. It is a well-established principle the determination of punishment that has to inflicted against a person has to serve some purpose or aim which it seeks to achieve. In case the legislature wants to achieve the goal of retribution then the amount of fine has to be equal to the criminal gain received by the offender in committing such an offence. It is very unfortunate scenario of the present that the fines such as ₹10, 500 or 100 fails to serve any mode of deterrence. A crime of making counterfeit stamp is one which requires retribution in its punitive approach and it needs to be dealt with strictly by unfortunately the fine imposed on the offenders of such crimes is ₹200 which is very convenient and can be paid by them.

(B) Where the Amount of Fine is Not Mentioned

There are various provisions under IPC wherein the amount of fine is not mentioned this gives flexibility to the courts while awarding fines or ither froms of monetary sanctions. This is a more preferred way of including fines as a form of punishment as with this the scope of materializing different penological goals widens and it is very much easier for the authorities to fulfil the penological goals. But this would also prove to be a disaster if there is a lack of consistency in imposing fine. In the various landmark reports on criminal justice system such as Malimath Commission (2003) and Madhav Menon Committee (2008) it has been highly pressed that there is a need to come up with an extensive and clearly written guidelines for punishment as it provides a basis for the judges to come to a rational decision and award a just and a fair punishment. In context of fines when the decision is pronounced by the judges just because of the lack of guidelines and a proper discretion for awarding fine as a punishment the arbitrariness and inconsistency in the sentence structure is an unavoidable phenomenon. In

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Palaniappa Gounder v. State of Tamil Nadu held that, though for the offence of murder along with sentencing the accused to death the courts also award fines but this power is sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine hardly calculated to serve any purpose. In fact it has been observed that it is a common practice to impose fine along with imprisonment. Before someone imposes a heavy fine along with death sentence or life imprisonment one must take a pause and consider his decision to impose fine and observe what purpose that fine will serve. Along with this the quantum of fines should be determined keeping in mind the circumstances of a case. In *Bipin Bihari v. State of MP*[14] the High Court increased the fine amount from Rs. 5,000 to 30,000. and in lieu of it reduced the imprisonment. This brings us to the question that whether fines can be used as a viable alternative to punishment and is it not commodifying the offence? n *Omanakuttan v. State of Kerala* the fine given by the trial court and high court of Rs. 50,000 was reduced to Rs. 1,000 because the courts failed to justify such a heft amount. These are some of the examples in a panoply of cases with similar problems. Lack of guidelines with respect to imposition of fines is a problem which has lead to a lot of errors in the decision and eventually these cases go the Supreme Court which is already dealing issues of interpretation. It has become highly dependent on the whims and fancies of a judge on what fine will he impose and what would be his approach towards the offender.

When such a hefty amount becomes unpayable then the court orders a sentence of imprisonment according to the facts of the case and this error in our criminal justice system continues to exist.

(C) When the Amount of Fine Stands as an Alternative to Punishment

The most troublesome provisions of punishment is where the amount of fine is mentioned as an alternative to imprisonment. This gives the judges scope to not award punishment and rather fine the accused in question. Offences which are petty in nature and are not of high magnitude fines imposed in such cases serve the purpose of deterrence and the penological goal, but when the crime in question is that of culpable homicide then fine is something which is not desirable by anyone. When a death is caused and committed by the offender then fine fails to meet the retributive goal and is more of a mockery of the crime committed and also that of he criminal justice system. In cases like these loss suffered by the victims cannot be quantified in terms of money as the question is that of humanitarian rights which itself is an ambit which requires attention and caution when dealt with. These are the prime examples of what can be termed as

[14] (crl.) 986 of 2006

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a commodification of crime. This is the major question which waits the answer that in provisions where there is an alternative fine such cases are exact examples of what can be termed as a commodification of offence herein the offender just buys the offence he commits. But if one closely analyses and dissects the concept of fines and punishment and also try to differentiate the two then one would understand that fines involve financial consideration and punishment involves loss of personal liberty, social stigma and monetary loss. Apart from this when fines are granted in offences such as murder or rapes then it shakes the collective faith of the society on the criminal justice system it really demeans the harm and pain suffered by the victim and is highly arbitrary in nature. This will not only demean the victim but will also provide license to the other wrong doers to commit such crimes and pay the fines.

If the price set is high then it will differentiate on the basis of income and whereas it would be a luxury for the rich people and a sin for the poor. To substantiate the above reasoning there are certain cases which have shown that fines as an alternative punishment are used to deal offences of serious crimes and the sentence of imprisonment and death is done away with. In *Allanoor & Anr. v. The State Of M.P*[15] the High Court of MP was bound to follow the Supreme Court's Ruling which reducing the imprisonment from 7 years to 3 and in order to justify the above order they increased the fine from Rs. 2,000 to 10,000. The charge framed under the case was that of attempt to murder under Section 307 and the victim suffered some grievous injuries in the case. In another case of *Jitender v. State of Madhya Pradesh*[16] the accused was charged with rash and negligent driving which led the victim to death under section 304A the sentence of imprisonment was reduced to a shocking 1 month in exchange of fine which was increased to Rs. 5,000 which was initially 50. In the said case it evident that the courts are quantifying the life of the victims and clearly are giving a levee to the accused to pay for the fine and serve a sentence which is as less as 1 month of imprisonment. In another case of *Vasant Maruti Waiker v. State of Maharashtra*[17] the accused in this case was a civil servant and was charged for taking bribe under the Prevention of Corruption act[18] the learned judge in this case reduced a rigorous imprisonment of 6 months to 1 day and in exchange increased the fine from 1,000 to 10,000.

If one looks at the examples provided above in the form of case laws it is evident that in grave offences the accused are being given an alternative of fine and the deterrence that would have been achieved from awarding a sentence of imprisonment or death was reduced to a convenient

[15] Allanoor & Anr. v. The State Of M.P (2016)
[16] Jitender v. State of Madhya Pradesh (2003)
[17] Vasant Maruti Waiker v. State of Maharashtra (1991) CriLJ 3163
[18] § 13 Prevention of Corruption , Act 1988

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fine which was happily paid by the accused and got away with the actual sentence of imprisonment which not just would have served the purpose of retribution but also would have served as an example for others that if a man with muscle power and money power can be send to rigorous imprisonment then for others it is a no brainer that they would also land up there.

The above examples when come in limelight in the form of newspaper articles, research papers or reports it clearly puts our criminal justice system in a bad light. The common people think that we can also commit such crimes and can be saved from such grave punishments by paying a certain sum of fine.

IV. CONCLUSION

The above research tried to provide the readers an insight into "fines" as a form of punishment and what are the various facets attached to it. The first question was the theories of punishment that was stated above and its jurisprudential understanding and also the historical view on the same. The second question was of sentencing guidelines that are there any sentencing guidelines for imposition of fine as a form of punishment. The answer that he researcher got is no there isn't any guidelines for imposing fines as a form of punishment. However, there are sections 63 to 70 in the IPC which provides certain rules on fines when imposed as a form of punishment but theses sections are not just ambiguous in their drafting but also are vague.

Therefore, everything comes to our judges as to how well do they interpret theses sections but it then remains highly on what views and interpretational understanding that judge has and thus making the entire process subjective in nature. The courts in cases mentioned above has laid down certain criteria when imposing fine which are majorly looking at the economic whereabouts of the accused, whether he is a first time offender or a habitual criminal or whether the section imposed is a crime which is heinous in nature or less grave. But apart from these judicial interpretation and guidelines the judges aee facing the problem of not having any proper laid down sentencing guideline.

In some of the landmark reports on criminal justice system which are VN Malimath Commission report (2003) and the Madhav Menon report in (2008) both the commissions pressed on the point that there is a need of proper sentencing guidelines when imposing fine. The other problem that was recognized in this research was a dilapidated satte of fines in terms of amount, since IPC was drafted by Mccauley in 1860 the amounts mentioned are according to the position of rupee in terms of its value as compare to USD which was 10 that time now its 73, one clearly look at the colonial hangover in these provisions. The government should come with circulars or notifications revising the fine amounts as it is not possible to amend

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theses section in regular intervals.

The next question which this research tried exploring was the types of provisions related to fine provided under the IPC. The one was where the amount was mentioned in cases like theses it is not a problem for the judge to decide the quantum of fine to be imposed on the accused as it is easy for him to decide. But the problem in theses provisions is that a lot of time when fines are imposed along with sentences of imprisonment or even death penalty the relevance and utility of fine is a big question mark. It is so because one situation is when the accused is so economically poor that when such fine is imposed on him he is not in such a financial situation that he can afford to pay it and other problem is the problem of fine when imposed with death penalty, what is the purpose when the accused is sentenced with a punishment of death an dis also imposed with the fine. If the fine is used under the victim compensation scheme then also it is fair though still the earlier problem of dilapidated state of fine won't be enough for the victim as a person whose family is a victim of murder and then after the case is completed that family is paid with an amount of 10,000 won't do any good them. So, these are the problem when amount is mentioned as a fine.

The other problem and perhaps the more gruesome one is when the quantum of fine stands as an alternative to imprisonment in cases like these the courts have imposed fine instead of awarding a more deterred punishment like rigorous imprisonment or other. In cases like theses the penological goals that the court should meet is not met and rather the entire process of awarding fines is arbitrary and unjust.

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