Page 1699 - 1716 **DOI:** *http://doi.one/10.1732/IJLMH.25889*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 1

2021

Kinds of Punishment under Indian Penal Code: A Critical Evaluation and Need for Reform

SHYAM PRAKASH PANDEY[1]

ABSTRACT

The Indian Penal Code was enacted in 1860 and has undergone very few changes since its enactment. Various organizations are of the view that kinds and quantum of punishment prescribed in the Indian Penal Code, 1860 are not appropriate as per changed scenario. The purpose of the punishment will be helpful in evaluating the measure and quantum of Punishment of different offences under Indian Penal Code. This paper is an effort to analyze the different kinds of punishments under Indian penal code, 1860 and their suitability to the present scenario.

Keywords: *Deterrence, Reformative, Retributive, Preventive, Imprisonment, Capital Punishment*

I. INTRODUCTION

"People are in check by punishment because it is difficult to find a man who by nature sticks to the path of virtue and this world is unable to afford sources of enjoyment through fear of Punishment." - **Manu**

Punishment is the imposition of an undesirable or unpleasant outcome upon a group or individual meted out by an authority. The study and practice of the punishment of crimes is called Penology. The authority may be either a group or a single person and punishment may be carried out formally under a system of law or informally in other kinds of social settings such as within a family. The reason for punishment includes retribution, deterrence, rehabilitation, and incapacitation.

Punishment may be in the form of positive punishment and negative punishment. The reduction of a behavior via application of an unpleasant stimulus is known as positive punishment whereas removal of a pleasant stimulus is known as negative punishment. Extra chores or spanking are examples of positive punishment, while removing an offending student's recess or play privileges are examples of negative punishment.

[1] Author is a Superintendent of Customs, Indian Customs, Mumbai, India.

 [ISSN 2581-5369]

According to Manu, *"Penalty keeps the people under control, penalty protects them, penalty remains awake when people are asleep, so the wise have regarded punishment as a source of righteousness."*

Punishments differ in their degree of severity, and may include sanctions such as reprimands, deprivations of privileges or liberty, fines, incarcerations, ostracism, the infliction of pain, amputation and the death penalty. Punishments may be judged as fair or unfair in terms of their degree of reciprocity and proportionality to the offense.

Various philosophers have presented definitions of punishment. Conditions commonly considered necessary properly to describe an action as punishment are that

1. It is imposed by an authority,
2. It involves some loss to the supposed offender,
3. It is in response to an offence and
4. The human (or other animal) to whom the loss is imposed should be deemed at least somewhat responsible for the offense.

Punishments are applied most generally to encourage and enforce proper behavior as defined by society. Criminals are punished judicially, by fines, corporal punishment or custodial sentences such as prison. Punishment may also be applied on moral as in penance or imposed in a theocracy with a religious police or by Inquisition. However, Critics argue that punishment is simply revenge. Most prisons are run badly, and in some, conditions are more squalid than in the worst of slums. Vermin and insects infest the building, in which air vents are clogged with decades' accumulation of dust and grime. Even inmates in prisons where conditions are sanitary must still face the numbing boredom and emptiness of prison life.

Professor Deirdre Golash[2] says:

"We ought not to impose such harm on anyone unless we have a very good reason for doing so."

Professor Robert Blecker[3] says that the punishment must be painful in proportion to the crime. Eighteenth-century philosopher Immanuel Kant[4] defended a more extreme position, according to which every murderer deserves to die on the grounds that loss of life is

[2] *Deirdre Golash:* The Case against Punishment: Retribution, Crime Prevention, and the Law, 2004, Page 3. | Online Research Library: Questia.
[3] Robert Blecker: The death of Punishment- Searching the justice from the worst of the worst, St. Martins Press (2013)
[4] Murphy J.G: Kant's theory of criminal punishment. In Retribution, Justice and Therapy. Philosophical Studies series in Philosophy, Vol 16 (1979)

 [ISSN 2581-5369]

incomparable to any penalty that allows them to remain alive, including life imprisonment. Under the sanction of the law, punishment is retribution on the offender to the suffering in person or property which is inflicted by the offender. Punishment is the way through which an offender can be stopped from doing offences against person, property, and government.

II. THEORIES OF PUNISHMENT

A crime is an act deemed by law to be harmful to society in General. The purpose of criminal justice is to punish the wrongdoer. But the question is: what is the purpose of Punishment? In this regard, a number of theories have been proposed from the ancient time. These theories may be divided into two categories. In the first category, it has been proposed that the end of criminal justice is to protect and add to the welfare of the state and society. Deterrence, Preventive and reformative theories are examples of this category. However, the view of second category is that the purpose of punishment is retribution. The supporters of this theory are in the support of "Eye for an eye" principle. The different theories of punishment are as below

1. Deterrence

According to this theory, the object of punishment is not only to prevent the wrongdoer from doing a wrong second time but also to make him an example to other persons who have criminal tendencies. Salmond[5] considers the deterrent aspect of punishment to be the most important. Locke stated that the commitment of every offence should be made a bad bargain for the offender. The deterrent theory emphasizes the necessity of protecting society by so treating the prisoners that others will be deterred from breaking the law. According to Salmond[6], "The chief end of the law is to make the evildoer an example and a warning to all that are likeminded with him."

Punishment is a measure to prevent people from committing an offence deterring previous offenders from re-offending and preventing those who may be contemplating an offence they have not committed from actually committing it. This punishment is intended to be sufficient that people would choose not to commit the crime rather than experience the punishment. The aim is to deter everyone in the community from committing offences.

The deterrent theory was the basis of punishment in England in medieval times and continued to be so till the beginning of 19th century. The result was that severe and inhuman punishments were inflicted even for minor offences in England. The punishment imposed on

[5]Salmond, J.W: Jurisprudence, 12th Edition, Sweet and Maxwell Ltd.,1979
[6] Ibid

the criminals in India during ancient and medieval times was primarily based on the theory of deterrence. The penalty of death or mutilations of limbs were imposed even for petty and trivial offences.

2. Preventive

The objective of this theory is to disable or prevent the criminal from commission of the crime. The offenders are disabled from repeating the offences by such punishments as imprisonment, death, exile, forfeiture of office etc. By putting the criminal in jail, he is prevented from committing another crime. By dismissing a person from his office, he is deprived of an opportunity to commit a crime again. An example of preventive punishments is the cancellation of the driving licence of a person. As he has no licence, he is prevented from driving. This theory does not act so much on the motive of the wrongdoer but disables his physical power to commit the offence.

3. Reformative

According to this theory, the object of the punishment should be the reform of the criminal. Offender must be educated and taught some skills so that he may be able to start his life again after his release from jail. The advocates of this theory contend that by a sympathetic, tactful and loving treatment of the offenders, a revolutionary change may be brought about in their characters. Even the cruel hardened prisoners can be reformed and converted into helpful friends by good words and mild suggestions.

Reformation theory is being growingly adopted in the case of juvenile offenders. The oldest legislation on the subject in India is the Reformatory Schools Act, 1890 which aimed at preventing the depraved and delinquent children from becoming confirmed criminals in the coming years. The Government of India passed in 1960 the Children Act which applies to the Union Territories. This Act was amended in 1978.

The Probation of offenders Act, 1958 has been passed with a similar object in view. About this Act, the Supreme Court observed in **Rattan Lal v. State of Punjab**[7] that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. The Act distinguishes offenders between 21 years of age and those above that age and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence.

In **Musa Khan v. State of Maharashtra**[8], the Supreme Court observed that this Act is a

[7] **(AIR 1965 SC 444)**
[8] (AIR 1976 SC 2566)

 [ISSN 2581-5369]

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.

4. Retributive

The retributive aspect was recognized in ancient penology. Early criminal law was based on the principle that all evil should be required. Plato was a supporter of the retributive theory. Punishment is a form of expiation to suffer punishment is to pay a debt due to the law that has been violated. Guilt plus punishment is equal to innocence. The penalty of wrongdoing is a debt which the offender owes to his victim. When punishment has been endured, the debt is paid and the legal bond forged by crime is dissolved. The object of true punishment must be to substitute justice for injustice. To compel the wrongdoer to restore to the injured person that which is his own by such restoration and repentance, the spirit of vengeance of the victim is to be satisfied. Critic point out that punishment in itself is not a remedy for the mischief committed by the offender. It merely aggravates the mischief.[9]

5. Unified theory

A unified theory of punishment brings together multiple penal purposes such as retribution, deterrence and rehabilitation in a single, coherent framework. Unified theorists argue that they work together as part of some wider goal such as the protection of rights.

III. KINDS OF PUNISHMENT UNDER INDIAN PENAL CODE AND ITS RELEVANCE

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

a) Death

b) Imprisonment for life

c) Imprisonment, which is of two descriptions, namely –

(1) Rigorous, that is with hard labour

(2) Simple

d) Forfeiture of property

e) Fine.

[9] *Falls, Margare: Retribution, Reciprocity, and Respect for Persons. Law and Philosophy. (1987). 6 (1): 25–51.*

 [ISSN 2581-5369]

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

1. **Death**

Capital punishment or death penalty is the state-sanctioned homicide of a natural person as a punishment for a crime. The sentence ordering that someone is punished with the death penalty is called a death sentence, and the act of carrying out such a sentence is known as an execution. In India, the death penalty is given by the strategy of hanging. The other ways, through which death sentences executed at world scenarios, are stoning, sawing, blowing from a weapon, deadly infusion, electric shock, etc. 48 countries retain capital punishment, 108 countries have completely abolished it for all crimes and seven have abolished it for ordinary crimes. Although most nations have abolished capital punishment, over 60% of the world's population lives in countries where the death penalty is retained.

Supporters of the death penalty argued that death penalty is morally justified when applied in murder especially with aggravating elements such as for murder of police officers, child murder and mass killing such as terrorism, massacre and genocide.

Some abolitionists argue that retribution is simply revenge and cannot be condoned. Others while accepting retribution as an element of criminal justice nonetheless argue that life without parole is a sufficient substitute. It is also argued that the punishing of a killing with another death is a relatively unique punishment for a violent act, because in general violent crimes are not punished by subjecting the perpetrator to a similar act.

Abolitionists believe capital punishment is the worst violation of human rights, because the right to life is the most important, and capital punishment violates it without necessity and inflicts to the condemned a psychological torture. Human rights activists oppose the death penalty, calling it cruel, inhuman and degrading punishment. Amnesty International considers it to be the ultimate irreversible denial of Human Rights.

The death penalty under the Indian Penal Code is given in the following circumstances:

- Section 115– Abetment for an offence punishable with death or imprisonment for life (if offence not committed);
- Section 118– Concealing design to commit an offence punishable with death or imprisonment for life.

 [ISSN 2581-5369]

- Section 121– When armed rebellion (i.e. waging, abetting to waging of war or attempting to wage war) is made against the constitutionally and legally established government;
- Section 132– Uprising, supporting and encouraging the formation of the mutinous group of people in the nation's armed forces;
- Section 194-Giving or fabricating false evidence upon which an innocent person suffers death ;
- Section 302– Causing murder of another;
- Section 305– Abetting suicide to an insane or minor person;
- Section 303– When a life convict person murders another person;
- Section 396– Causing dacoity with murder;
- Section 364A– Kidnapping;
- Section 376A (as per the Criminal Law Amendment Act, 2013)- Rape

2. **Imprisonment**

Another form of punishment is imprisonment. Golash[10] writes about imprisonment:

"Imprisonment means, at minimum, the loss of liberty and autonomy, as well as many material comforts, personal security, and access to heterosexual relations."

Prison is an institution for the confinement of persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction for a crime. A person found guilty of a felony or a misdemeanor may be required to serve a prison sentence. Until the late 18th century, prisons were used primarily for the confinement of debtors, persons accused of crimes and awaiting trial, and convicts awaiting the imposition of their sentences usually death or transportation (deportation) overseas. A sentence of imprisonment was rarely imposed and then only for minor crimes.

As the use of capital punishment began to decline in the late 18th century, the prison was increasingly used by courts as a place of punishment, eventually becoming the chief means of punishing serious offenders. The use of imprisonment subsequently spread worldwide, often by means of colonial empires that brought the practice to countries with no indigenous concept of prisons. By the early 21st century a majority of countries had

[10] Supra

 [ISSN 2581-5369]

abolished the death penalty and imprisonment was consequently the most severe form of punishment their courts could impose.

There are a number of accepted reasons for the use of imprisonment. One approach aims to deter those who would otherwise commit crimes (general deterrence) and to make it less likely that those who serve a prison sentence will commit crimes after their release (individual deterrence). A second approach focuses on issuing punishment to, or obtaining retribution from, those who have committed serious crimes. A third approach encourages the personal reform of those who are sent to prison. Finally, in some cases it is necessary to protect the public from those who commit crimes particularly from those who do so persistently. In individual cases, all or some of these justifications may apply. The increasing importance of the notion of reform has led some prison systems to be called correctional institutions.

If properly implemented, imprisonment can serve all the objects of punishment. However, there is the problem of fixing the period of imprisonment. Both short term and long term punishment have their own advantages and disadvantages. In judging the adequacy of sentence, the nature of the offence, circumstances of its commission, the age and character of the offender, injury to individuals or to the society, effect of punishment on the offender, effort for correction and reformation of the offender are some amongst many other factors which would ordinarily be taken into consideration by the Court.

i. **Imprisonment for life**

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

In **Gopal Vinayak Godse v State**[11], it was held that a prisoner sentenced to Life imprisonment bound to serve the remainder of his life in prison, unless the sentence is commuted by the appropriate Government.

ii. **Rigorous Imprisonment –**

Imprisonment may be rigorous with hard labour such as digging soil, cutting wood etc. According to Section 60 of IPC in each case in which an wrongdoer is culpable with

[11] 1961 3 SCR 440

 [ISSN 2581-5369]

detainment which may be of either description, it shall be competent to the Court which sentences such wrongdoer to direct within the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment should be wholly simple or that any portion of such imprisonment shall be rigorous and the rest simple.

The Indian Penal Code recognizes imprisonment as punishment for –

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

iii. **Simple imprisonment-**

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

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

Solitary Confinement

Solitary confinement is a form of imprisonment distinguished by living in single cells with little or no meaningful contact to other inmates, strict measures to control contraband, and the use of additional security measures and equipment. It is specifically designed for disruptive inmates who are security risks to other inmates, the prison staff, or the prison itself. It is mostly employed for violations of discipline, such as violence against others, or as a measure of protection for inmates whose safety is threatened by other inmates.

The practice of solitary confinement traces its origins back to the 19th century when Quakers in Pennsylvania used this method as a substitution for public punishments. In the twentieth century, Scandinavian countries such as Denmark have extensively used solitary confinement for prisoners in pretrial detention with the stated goal of preventing them from interfering in the investigation. Prison records from the Denmark institute in 1870 to 1920 indicate that staff noticed inmates were exhibiting signs of mental illnesses while in isolation, revealing that the persistent problem has been around for decades.

 [ISSN 2581-5369]

The practice is used when a prisoner is considered dangerous to themselves or to others, is suspected of organizing or being engaged in illegal activities outside of the prison, or, as in the case of a prisoner such as a child molester or a witness, is at a high risk of being harmed by other inmates. The latter example is a form of protective custody. Solitary confinement is also the norm in supermax prisons, where prisoners who are deemed dangerous or of high risk are held.

Solitary Confinement implies keeping a prisoner completely disconnected from any kind of contact with the exterior. A cruel and solidified convict may be restricted in a partitioned cell to correct his conduct. Court can grant this punishment only when the offense is punishable with rigorous imprisonment.

Solitary imprisonment may be forced subject to the taking after restrictions –

(a) Solitary imprisonment ought to not surpass three months of the Substantive term of imprisonment

(b) It cannot be granted where detainment isn't portion of the substantive sentence.

(c) It cannot be awarded for the complete of term of imprisonment

(d) It cannot too be granted where imprisonment is in lieu of fine.

According to Section 74 of I.P.C in no case the sentence of solitary imprisonment be granted more than fourteen days at a time and it must be forced at intervals.

3. **Forfeiture of property**

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

1) Committing depredation on territories of Power at peace with the Government of India (Section 126)

2) Receiving property taken by war or depredation mentioned in sections 125 and 126 (Section 127).

4. **Fine**

A **fine** is a penalty of money that a court of law or other authority decides has to be paid as punishment for a crime or other offence. The amount of a fine can be determined case by case, but it is often announced in advance.

 [ISSN 2581-5369]

One common example of a fine is money paid for violations of traffic laws. In Common law, relatively small fines are used for low-level criminal offences. Larger fines are also given independently or alongside shorter prison sentences when the judge or magistrate considers a considerable amount of retribution is necessary. For instance, fraud is often punished by very large fines since fraudsters are typically banned from the position or profession they abused to commit their crimes.

A related concept is the fixed penalty notice, a pecuniary penalty for some minor crimes that can be either accepted (instead of prosecution, thus saving time and paperwork, or taken to court for normal proceedings for that crime. While technically not a fine, which, under the Bill of Rights 1689, may be levied only following a conviction, it serves the same purpose of punishment.

The court may force a fine as an alternative for imprisonment or can include it is an expansion to the imprisonment. In certain cases the fine is included along with imprisonment. Section 63 to 69 covers different fines beneath the IPC. However, as per Section 64 of the Code, when there's a default within the installment of a fine, the court may order for imprisonment.

IV. COMPENSATION TO THE VICTIMS OF CRIME

The IPC provided various provisions under which fine is given as a mode of punishment. However, the fine sometimes is not sufficient enough to realize the actual loss of the victim and the amount prescribed under IPC is minimal which need to be amended as per the current requirements.

In 2009, the Central Government ordered the State to prepare a scheme for the compensation of victims. The main objective of the scheme was to support the dependents of the victims who suffered the loss or injury due to offence. Under this scheme, the rehabilitation can also be made.

Another form of fine is in the form of Compensation to Victims of Crime from Wages of Prisoners. Under this, from the wages of the prisoners, a certain percentage of money is deducted and the saved money is converted into a fund for the welfare of the victims. However, recently a PIL was filed in the High Court of Delhi wherein the deduction of the wage of the Prisoners was considered to be arbitrary in nature and asked for repealing such provisions.

 [ISSN 2581-5369]

V. SENTENCING POLICY

Under the Indian Penal Code, the sentencing policy is measured on the following factors:

- The gravity of the violation;
- The seriousness of the crime; and
- Its general effect upon public tranquillity.

There is a correlation between measures of punishment and the measure of guilt. Accordingly, the sentencing policy in a particular offence is standardized.

In March 2003, a body was established by the Ministry of Home Affairs, the Malimath Committee (the Committee on Reforms of Criminal Justice System) in India. The purpose of the committee was to give recommendations on the sentencing guidelines for the Indian Judiciary. The aforesaid committee had issued its report in which it stated that there is a need to introduce guidelines on sentencing to minimize the uncertainty of awarding sentences. The committee observed that "for many offences, only the maximum punishment is prescribed and for some offences, the minimum may be prescribed" and thereby there is a lack of uniformity. This results in wide discretionary powers to the Judges to decide the sentencing duration, which leads to uncertainty in the sentencing policy. In 2008, the Madhava Menon Committee (the Committee on Draft National Policy on Criminal Justice), again reaffirmed the need for statutory sentencing guidelines.

As per the white paper introduced by the British Parliament, the aim of having a sentencing policy should be "deterrence and protection of society from evils". The lack of sentencing policy will not only affect the judicial system but it will also substantially harm society.

The principle for sentencing developed through court decisions and legislation and these principles form the sentencing decisions. The principles which are generally followed by the court are as follows:

- **Excessiveness/Parsimony**– the punishment which is given shall not be severe unless required.
- **Proportionality**– the sentencing shall fit to the overall gravity of the crime.
- **Parity**– the punishment should be similar for similar types of offences committed by offenders under similar situations.
- **Totality**– when an offender is punished with more than one sentence, the overall sentence must be just and appropriate which shall proportional to the offending behaviour.

 [ISSN 2581-5369]

- **Purpose**– the sentencing shall achieve the purpose of the punishment. The purpose of punishment can be a deterrent, rehabilitative, protection of the public, etc.

- **Simplicity and predictability**– sentencing shall not be depending on the bias or personality of the judge. There shall be a clear and definite scheme of sentencing.

- **Truthfulness-** the sentencing shall reflect the actual term to be served by the prisoner in prison, so there shall be no place for ambiguity.

In the case of **Sangeet & Anr. v. State of Haryana**[12], the court noted that the approach which was laid down in the case of Bachan Singh was subsequently not fully adopted by the courts. The mitigating factors and aggravating factors both need to be considered and balanced while sentencing a punishment to the accused.

VI. FUNDAMENTAL PRINCIPLES FOR IMPOSITION OF DIFFERENT TYPES OF PUNISHMENTS

As per the United States Institute of Peace, the principle of the imposition of punishment can be based on:

1. The necessity for criminal justice compulsion; and
2. The proportionality of punishment based on the nature and degree of the danger which is present against the fundamental freedoms, human rights, social values, rights guaranteed and protected under the Constitution or international law.

In the case of **Soman v. State of Kerala**[13], the Supreme Court of India cited a number of principles while exercising discretionary powers by the Court. The general principles are proportionality, deterrence, and rehabilitation. In the proportionality principle aggravating and mitigating factors should be considered. Mitigating circumstances are related to the criminal and aggravating circumstances are related to the crime.

In para 12 of the Soman's case, the Supreme Court pronounced that "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges." Further, the court acknowledged and opined the observation made in the case of State of Punjab v. Prem Sagar, wherein the Court stated that "In our judicial system, we have not been able to develop legal principles as

[12] (2013) 2 SCC 452
[13] (2013)11 SCC 382

 [ISSN 2581-5369]

regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender have not issued any guidelines." Therefore, there is a necessity to have a sentencing policy with due consideration to the recommendations made by the Madhava Menon Committee and Malimath Committee.

As per the scheme of the Code the maximum punishment is prescribed, leaving the minimum to the discretion of the Judge. The Judge has all the means to form an opinion on the sentence which would meet the end of justice in a particular case. If the offence is grave in nature then the Code had prescribed the maximum and the minimum duration of the punishment. The courts are supposed to follow the procedures and provisions which are prescribed under other adjective and substantive laws. Awarding Appropriate Sentence is the Discretion of the Trial Court

In the case of **Sibbu Munnilal vs State Of Madhya Pradesh**[14], the three-judge bench of the Madhya Pradesh High Court had observed the scheme of punishment as follows:

1. The classification of offences is made with reference to the maximum punishment to which the offender is liable to receive.
2. In the case of the death penalty and imprisonment for life is provided as a punishment under a section. Imprisonment for life shall be considered as an alternative. And death penalty shall only be given if the case comes under the ambit of 'rarest of rare case'. While giving the death penalty as punishment the Judge shall give due importance to the facts and nature of the case.
3. Imprisonment can be categorized into two categories- simple and rigorous.
4. Imprisonment for life means rigorous imprisonment for twenty years.
5. The difference between imprisonment for life and imprisonment is the former can be rigorous and the imprisonment is till his last breath, however, the duration of the latter can vary from period 24 hours to 14 years.
6. Lastly, offences punishable with fine means the offences for which the maximum penalty can be fine only.

In a recent case of 2017, in **State Of H.P vs Nirmala Devi,** the Supreme Court ruled that the trial court has the discretion to give punishments as per the scheme provided under the code. As per Section 386 of CrPC, the Powers of Appellate Court are as follows:

[14] AIR 1968 MP 97

1. The Appellate court can interfere or dismiss the appeal if it finds sufficient grounds to do so after hearing the parties of the appeal;
2. If the matter is an appeal from an order or acquittal:
    a. Then the appellate court can reverse such order and direct further inquiry of the matter or;
    b. Direct for retrial of the accused.

3) If an appeal from a conviction, then the Appellate court have the following powers:

1. Reverse the finding and sentencing and acquit or discharge the accused or order for the retrial by a competent court, or committed for trial;
2. Alter the maintaining, finding of the sentence, or;
3. Alter the nature or the extent or nature and extent of the sentence, with or without altering the finding. However no power to enhance the sentence by the court.

4) If an appeal for enhancement of sentence, then the Appellate court have the following powers:

1. Reverse the finding and sentencing and acquit or discharge the accused or order for the retrial, or committed for trial;
2. Alter the maintaining, finding of the sentence, or;
3. Alter the nature or the extent or nature and extent of the sentence, with or without altering the findings with the power to enhance or reduce the sentence.

5) if the appeal is from any other order, then power to alter or reverse such order;

6) the appellate court can make any amendment or act incidental or any consequential order can be ordered which may seem to be just or proper to the court.

The section also includes a provision wherein it lays out conditions to the Appellate Court while exercising this power:

The conditions are as follows:

1. The Appellate Court shall not enhance the punishment unless the accused given an opportunity for such enhancement;
2. Further, the Appellate Court shall not inflict the punishment given by the court under appeal (trial court or lower court) unless the Appellate Court has a view that the punishment is inadequate.

 [ISSN 2581-5369]

In the case of **State Of H.P vs Nirmala Devi**[15], the Supreme Court held that the Appellate court shall not exceed its powers under Section 386 of Cr.P.C. beyond the statutory scheme provided under the Indian Penal Code. For example, to alter the sentence of imprisonment and fine with a sentence only of fine, the Appellate Court can not alter the order likewise where the consequences will be unjust and unfair.

VII. CONCLUSION AND PROPOSALS FOR REFORM

The Indian Penal Code was enacted in 1860 and has undergone very few changes since its enactment. There is a huge increase in the types of offences since the enactment of the code. Classifying offences into different classes or separating those into different codes will make the Code more understandable and lucid. The punishments need to be deterrent at the same time it shall not be severe. Therefore, it is time for Indian Judiciary to have a sentencing policy, so there is no space for ambiguity and bias of the Judge which creates a barrier while sentencing. It will also reduce the appeals for enhancing or reducing punishment which will be a great relief for the judiciary. Further, a proper victim compensation fund can be created under the Code wherein the confiscated assets from organized crime can also be included.

*****

[15] ibid

 [ISSN 2581-5369]

VIII. REFERENCES

1. K.I. Vibhuti: PSA Pillais Criminal Law, 11th edition, Lexis Nexis (2012)
2. K. D. Gaur: A textbook on Indian penal Code, 6th Edition, Universal Law Publishing (2016)
3. Ratanlal and Dheerajlal: The Indian Penal Code, 36th Edition, Lexis nexis (2020)
4. V. D. Mahajan: Jurisprudence and Legal Theory, 5th Edition, Eastern Book Company (1987)
5. B. N. Mani Tripathi: Jurisprudence- The legal theory (2018)
6. Report of Amnesty International, 1979
7. Keeton, RE: Venturing to do Justice, Oxford University Press (1969)
8. 35th Report of Law Commission of India
9. Potter H: The quest of Justice, Sweet and Maxwell, 1951
10. Hugo, Adam Bedau: Punishment, Crime and the State. Stanford Encyclopedia of Philosophy. 2010
11. Peters, Richard Stanley: Ethics and Education. British Journal of Educational Studies. 1966, 20 (3): 267–68.
12. Kleining, John: R.S. Peters on Punishment. British Journal of Educational Studies. 1972, 20 (3): 259–69.
13. Mungan, Murat: Salience and the severity versus the certainty of punishment. International Review of Law and Economics. 2019, 57: 95
14. W, J.C, Furman, Masters: Affective consequences of social reinforcement, punishment, and neutral behavior. Developmental Psychology. 1980, 16 (2): 100–104.
15. I, Lorge: The effect of the initial chances for right responses upon the efficacy of intensified reward and of intensified punishment. Journal of Experimental Psychology. 1933, 16(3): 362–373.
16. Church, R.M: The varied effects of punishment on behavior. Psychological Review. (1963). 70 (5): 369–402.
17. Fehr, Gatcher, Ernst, Simon: Altruistic punishment in humans. Nature. (2002). 415 (6868): 137–140.

 [ISSN 2581-5369]

18. Lynch, James P.; Danner, Mona J.E.: Offense Seriousness Scaling: An Alternative to Scenario Methods. (1993). Journal of Quantitative Criminology. 9 (3): 309–22.

19. K. M., Carlsmith: The roles of retribution and utility in determining punishment. 2006. Journal of Experimental Social Psychology. 42 (4): 437–451.

20. G.T, Gwinn: The effects of punishment on acts motivated by fear. Journal of Experimental Psychology.1949, 39 (2): 260–69.

*****

 [ISSN 2581-5369]