CHAPTER-VI

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Conclusion

Crime rate in India has been considerably increasing from year to year and the convictions rate have become very low and that too the courts have been awarding very megre punishments by using their vide discretionery powers. There are more chances to get lenient punishment by the proved offenders due to loose frame work of the legislature in fixing the punishment for several offences in the Code. There is more probability to apply the personally favored brain and individual opinion of the judicial officers while conforming the sentence to the offenders, due to wide discretion available in the present sentencing jurisprudence. So that, there are more chances to escape for the accused from the clutches of the law. Already Indian Criminal Justice System is working on the motto of “hundred criminals can be escaped, but one innocent should not be punished”. In these circumstances, if the minimum punishment is conformed in the penal statutes in general and in Indian Penal Code in particular as it is covering substantial portion of the offences in India by the legislature through amendments, the trial court judge will be curtailed by the Statute and he is forced to give punishment within the limit stipulated by the legislature. Crime is age-old phenomenon, a deep rooted evil, born and developed along with the development of man and gradually became universal malady afflicting each and every society. There are various reformative steps which can be taken to curb
different crimes which are increasing rampantly. It became growing societal menace and it is a constant threat to everyday is peaceful existence. It is endemic in all governments and there is hardly any society which is totally free from the menace of crime or totally controlled the crime rate, but it has become rampart in India and reached disconcerting levels particularly after Independence. Actually the crime rate of any country decides the safety and security of the people along with the developmental aspects of that country. Crimes can be found in all walks of life and has effected every sector of the society. The present age old colonial punishment system is not suitable to control the offences it should undergo a radical change. The only one way to control the crimes and to diminish its allied bad effects on the society is imposing proper punishment to the responsible persons and implementing them without any delay.

The historical background of punishment and its implementation shows that the punishments in those days very barbaric, inhuman, fearful and uncivilized and their implementations were also very peculiar. The ancient forms of punishments which are more uncivilized and inhuman such as felting stones until death, parodying nakedly on the Ass in the main streets of the village, cutting of ear, nose, fingers, legs and hands for different offences, branding different kinds of figures on the body of the convicted person etc. changed to acceptable forms of punishments in view of the changing tendencies of the people.

According to the ancient Hindu System even from the days of Gautama that in default of the king or his officers in recovering the stolen properties from the thief, he should compensate the owner from his own treasury. Thus the system of compensation to the victims has deep roots in our ancient Hindu Jurisprudence. It has been continuing even in modern Jurisprudence also.
are no substantial provisions to award compensation to the victims of crime. Only Section 357 of Cr PC has empowered the court to award compensation to the victims of crime. The society appreciates that law should not sit simply while those who defy it go free and those who seek its protection lose hope. It is now felt that as Prof. Friedman has observed, "What kind of conduct an organized community considers at a given time, sufficiently condemnable to impose official sanctions, impairing the life, liberty or property of the offender is a barometer of the moral and social thinking of a community? Hence the criminal law is peculiarly sensitive to changes in social structures and social thinking. Social changes affect criminal law in many ways through development in science; specially in biology and medicine through changes in the moral and social philosophy through changes in the structure of the society specially in its transition from a rural self-contained and relatively sparsely populated to a highly urbanized and industrialized pattern."

Punishment was defined by several jurists in several ways. The consolidated meaning of all the definitions is to subject the offender to fear of pain and loss of purse. The change which will bring in the mind set of offender due to punishment and his restricted life style will deter other like offenders not to commit any offence.

The purpose of the penal law is to express a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it. There was a close relationship between religion and criminal law in Mohammedan political practice in the eighteenth century. When the views held by one Government and its successor differ fundamentally and corresponding change can be
expected in the law of crimes and in the administration of criminal laws. Such a fundamental change took place between 1773 and 1861 in India.

The nineteenth century witnessed the introduction of English Law in India. The Indian Penal Code drafted by Lord Macaulay was introduced in India. In 1833 Lord Macaulay persuaded the House of Commons that the ideal moment had come for codification of Indian Laws. The Indian Penal Code which is the first code prepared by the English authors is praised all over the World in those days due to its greatness in arranging the provisions, defining the offences, division of offences into chapters, simple words used in provisions. It became a model code to some of the adjacent countries. The Code has been in implementation since about 1½ centuries without undergoing to any comprehensive amendment so far. The punishments fixed to the most of the offences defined in I.P.C. are aged about 149 years and offences which are less grievous in those days became more grievous today.

The scale used by the framers of Indian Penal Code who were the English Commissioners to measure the gravity, seriousness of offence was social, economic, religious and political set up prevailed on those days. So the punishments which are really fixed between the years 1834-37 and subjected to alteration by additions and omissions in the hands of eminent English people about 27 years could not be continued as such in the light of present changing scenario.

The United States of America, France, United Kingdom and Canada are the some of the countries whose Penal Laws are more strengthened by keeping the social change in view for effective control of Law and Order. Every citizen should, with a reasonable degree of certainty must know the potential penal
consequence of any act he/she commits. Law and order can be maintained through sociological jurisprudence that is social engineering, as opined by Rosco Pound. The objective and philosophy of the penal law is the same as that of sociological jurisprudence. This is unfortunate, for the absence of a distinct sentencing phase and the attention to sentencing process which enables and impedes the growth of a mature jurisprudence. By maintaining law and order social welfare can be attained in any society very easily.

Many acts amounting to offence under local usage of Mughal rule and Hindu Law were not considered as offences in 1860 Code as those offences were defined afresh in the Code as was suitable to the then prevailed system of the society. So also now after about one and half century it is necessary to re-determine punishments as is suitable to 21st century. As the time and tide wait for none, so also the penal law must change in line with the time and punishments should be re-determined by keeping in view the present social scenario. As N.R. Madhava Menon stated the object and function of law is the creation of a just society. The problem is that law is constructed in different periods of history and carries with it past interpretations that served different purpose in different periods and the countries continued to follow the legal systems of their former colonial powers have a problem in adjusting their constitutional aspirations with the inherited legal ideas and institutions.

With the development of science and technology so many new kinds of things are taking birth which could not be foreseen or even dreamt of in 1860. The computer or its value was not so much known to people about 25 years ago. One could not think of this speedy development of cyber law. It is, therefore, necessary for the law makers, lawyers and judges in particular and people in
general to give a fresh thinking on the subject and change the old laws and bring
the new laws as required for today and tomorrow. The notions of criminal
jurisprudence as contained in the Indian Penal Code originally drafted are not the
same as the notions of today. So that, the Indian Penal Code which is the first
Code of the Land and the punishments in which are not changed as suitable to
the present circumstances either through central amendments or State
amendments considerably except very minute changes.

The 35th report of the Law Commission of India states that India cannot
risk the experiment of abolition of capital punishment as the paramount need is
for maintaining law and order in the country. The Supreme Court observed that
death penalty has a deterrent effect and it does serve a social purpose and that
the law relating to death sentence need not be re-considered. The primary duty
of the society is to protect innocent and law abiding citizens rather than take the
spacious plea on behalf of persons who are not civilized and in human.
Reformation of a hardened criminal like a person who commits deliberate murder
after pre-meditation may be a good idea, but the possibility of his not being
reformed after undergoing the sentence should be taken into account. It is
common knowledge that death sentence serves as a deterrent and will act as a
deterrent for prospective murderers, excepting in cases where the murder
committed on the spur of the moment. Planned murders, murders for money as
in the case of professional criminals, dacoit accompanied by murder, murders of
several persons, causing death of victims of rape are some of the examples in
which death sentence would certainly act as a deterrent.

The aim of criminal justice system of a country is to protect the society.
The society and individual must amicably respond to the system simultaneously.
The Penal law and criminal procedure are two insuperable wings to protect the society. Law is administered through Courts. Social welfare can be achieved through the modernization of punishment system in India.

The concern for the mother and the child and social issues like female infanticide domestic violence, organs transplantation, development of science and technology, rapid industrial growth abnormal development of communication system, growth of literacy, globalization, enhanced earning capacity of an individual such other are emphasizing the need of total new approach in the matter of punishment. The amount of fine fixed for several offences prior to 1860 has not at all till today revised. Now people are living in an age of galloping inflation. Money value has gone down. Incomes have increased and crime has become low risk and high return adventure particularly in matters relating to economic offences and offences like criminal misappropriation, criminal breach of trust and cheating. It is essential that those crimes which are more serious and heinous must be tackled urgently through legislative and other measures. Sunset provisions should not be continued in statutes keeping in view the continuing changes in economy and technology. Such provisions should not be allowed to become out-date which can be ensured by comprehensive drafting of those statutes to cover future exigencies.

Law Commission of India the then Chairman Justice A.R.Laxman has directed Chief Ministers of 20 States to set up State Law Commissions to review outdated laws and to update the Legal system. In his letter to them, Justice Laxmanan stated "In the fast – changing social, economic and political scenario in the country and to meet the ever increasing aspirations of the common man, the legal system needs to be continuously reviewed and updated, otherwise it
would be proven to become obsolete, losing its epicsy and adequacy and consequently seized to be an instrument of dynamic social order and development. He emphasized the need of change in the laws”

The Revision of Laws was a continuous process in a developing country and the role of Law Commission is to make recommendations to the government for effecting changes in the existing statute and to enact new Laws from time to time in the larger public interest. Enormous damage has been done to India by the maintenance of largely unreformed colonial institutions.

In spite of the recommendations of the Malimath Committee, the criminal law has not been revised despite several decisions interpreting the provisions with modern context.

There are lot of new forms of crimes that have manifested in the twentieth and twenty first centuries. False advertisements, destruction of public property, preparation for rioting, disfigurement of monuments and building, false certificates by the government officials, police atrocities, knowingly engaging unsafe vehicles as public carriage, defaming a person involving character assassination, kidnapping for ransom, fraudulent financial transaction by blade mafia, extracting higher rates of interest for loans, etc should be criminalized with appropriate punishment. Companies could also be subjected to punishments under criminal law. Recidivism is rampant in the country. The Penal Code should include a provision enabling the courts to go for a harsher punishment for these repeat offenders. In Indian penal code Sec.75 says that there should be enhanced punishment to the offenders who were already convicted under any provision of chapter XII and Chapter XVII which covers the offences from Sec.230 to 263 A relating to coin and Govt. stamps and the offences from Sec.378 to 462 against
property respectively. But the repeated offences mentioned under other chapters of the code are not covered by this section.

The Indian penal code still has the traditional punishments in its list. New modes of punishment like, prohibition from holding public offices, community service, public censure, reparation by the offender in terms of compensation, publication of conviction, withdrawal of driving license, prohibition from practicing a profession for a period, like in U.S.A. England, France and Canada should be accepted as new punishment in IPC.

In India the punishment for attempts is very confusing and there is no clarity. The law of criminal attempt should also undergo change in the pattern of English criminal Attempts Act, 1981. The Apex court and even though higher courts directing all the sub ordinate courts and trial courts to keep in mind the apathy of victims while pronouncing judgements as they are not getting proper justice. So there is need to follow guidelines laid down by the appellate courts strictly by trial courts. Thus in all concerned criminal cases the victim should be adequately compensated. The vulnerable victims must be specially considered.

There are two developments in India which require special attention. One is the alarming growth of population and the other is the rapidly increasing industrialization of the country. Hence the laws of the nation has to be changed in resonance with the changing circumstances, situations, changing aspirations and attitudes of the people in that particular nation. Thus the law should not be static.

Penal Code required amendment almost immediately after it became law and the first set of amendments came in the year 1870. In other cases amendments became necessary for administrative reasons. In some other cases
the Code had to be amended to bring the law in accord with international requirements, and conventions. But, all that the State wants cannot be put into one piece of legislation by modifications and amendments, hence a large number of additional penal laws have been enacted since 1862. Some of them are special laws relating to particular matters but having all India application.

The time has come to thoroughly examine the substantive criminal laws and to streamline them. Obsolete provisions should be dropped and Indian Penal code which is most important and prominent substantive law in India contains some obsolete provisions which became powerless due to old age and completely changed conditions when compared with the present time with the time when they were born. Within the last one hundred and fifty years, there have been piecemeal amendments to the Indian Penal Code in more than seventy five occasions, but these have been served mostly patch work job. The present age old colonial legal system regarding punishments should undergo a radical change.

Law and order situation is worsening every day. The Indian people are passing through difficult times. Therefore the Criminal Justice system has to be re-strengthened by giving more sharpness to the teeth of Penal statues in general and to India Penal Code in particular.

Today's way of life has become more complicated and complex. Apart from scientific developments and inventions, the concept of globalization, liberalization, and modern technology has given rise to many challenges and problems. Our society has covered a long distance and all man-made progress is due to man's innovative character, imagination and inquisitive. Man is distinct from other animals because it has the faculty of brain and thereby he is
empowered to think and analyse anything rationally. Man has developed certain resources or measures to meet new merging problems.

The authors of the Penal Code state that the punishment of fine is for offences to which men are prompted by cupidity and it is punishment which operates directly on the very feeling which impels men to such offences. The sentence of fine is allied to forfeiture of the property. It is forfeiture of money by way of penalty. It has been justified by the Law Commission on the ground of its universality.

As per Justice R.V. Raveendran of the Supreme Court. The real power of the judiciary is in the trust, faith and confidence of the common people in the system. A justice system that was fair, swift and affordable was also a tool for growth and development. More than six decades after bidding farewell to the British, the imperial jurisprudence is die hard and the Indian courts are even today copying the British precedents as Indian Law. The Bar and the Bench have borrowed even their costume including the collar and bands from the British India is in dress and forms of address in precedents and in parliamentary privileges a foster child of British.

There is still no bar for trying the corporate perpetrators of the Bopal tragedy including Warren Anderson Justice V.R. Krishna Iyer stated "The Bhopal mega-crime trial is over, the barbarity has ended in a light sentence, although the victims are countless. Eight officials of the erstwhile Union Carbide India Limited have been convicted and sentenced to two years rigorous imprisonment. The judge has given the maximum possible punishment Under Section 304A of IPC which has been in force in 1870. Which is inserted by Section 12 of IPC amendment Act, 1870 (27 of 1870).
A colonially-designed administration cannot serve the citizens of a contemporary republic, and so institutional reform is more important to ensure transparency and genuine public accountability. A cruel irony lies in the fact that India's former colonial ruler, the United Kingdom, has radically transformed its own systems of civil and criminal justice over the last two decades. The Union Law Minister Mr. Moily recently expressed his opinion on the age old colonial laws by saying Judicial reforms cannot be done in a partial or fragmented way. There has to be a holistic approach.

There is need to identify and judge the magnitude of social evils and to take necessary steps to remove them. The inadequate punishment to the offences and continuing with them since colonial period is one of the significant evil prevailed in our society. By maintaining law and order social welfare can be attained. So it is essential for the Parliament to consider the imperative need to amend the punishments in Indian Penal Code which contains bulky of colonial style punishments conformed by the then English Commissioners which are not altered so far.

A brief survey of the trend of legislative endeavours by analyzing various amendments done to Indian Penal Code may also serve to indicate whether the people's consciousness has been projected towards narrowing or widening the scope for infliction of death penalty and punishments to other offences. Current criminological theories, the march of the abolitionist movement across the continents, the national heritage and voice of the makers of modern India and parliamentary rethinking on reform of the Penal Code may also be indicators.
Punishments which are need to be changed through amendments to make them more apt and justifiable to the present day Indian society is important requirement. Although there has been some changes made to some of the punishments of offences defined in Indian penal code, yet there were no significant, comprehensive and substantiated reforms brought about. The Government of India has taken several steps to revitalize the criminal justice system of India which is flavored, colored, molded with colonial brains. Constitution of several committees like Santanam, Malimath is some of the recent initiations taken by the Government to strengthen the Indian Criminal Justice system. But the recommendations of these committees are kept aside so they could not see the light of the day. Money and mind power become waste as those recommendations were in vain without implementation. As said by the eminent jurist Fali Nariman while expressing his opinion regarding the constitution of the Malimath Committee that, "it is last bus to go". Thus it is high time to India being emerging power in all fields of the world and more often called by other nations as knowledge hub must become able to bring comprehensive changes in the punishments mentioned in Indian Penal Code which are confirmed in the 1st quarter of 19th century basing on the social, economical and religious, political conditions prevailed on those days, at least in the 1st quarter of 21st century to made them more adequate, reasonable and justifiable to the present situations prevailed in India for maintaining the orderly society and to give more strength to the rule of Law as enshrined by the founding fathers of the Constitution.

In the last it is observed that the punishment system in India is not perfect. It has to be changed as early as possible through the comprehensive amendment
to the Indian Penal Code to protect the Criminal Justice system which is already in peril. The default sentences in case of offences punishable with fine only is presently very meaningless due to highly enhanced earning capacity in the Indian society. Any prudent person can say that there is vast variation in economic position between the people in the periods of 19th century and 21st century. In between these two periods unexpected abnormal changes took place in the Indian society. The punishment for the offence defined in Sec.510 of I.P.C. carries only Rs.10/- fine or 24 hours imprisonment. As per Sec.67 of the Code Rs.50/- fine is equal to 2 months imprisonment, Rs.100/- is equal to 4 months imprisonment and more than Rs.100/- is equal to 6 months imprisonment. This is the scale confirmed by the English legal people to the Code. In Indian all the courts have been following the parameters of the same scale with utmost dedication even though apparently it appearing as inadequate even to a lay man in the existing state of inflation. The punishment provided for different offences are not in systematic order. The offences punishable with 3 years, 2 years, 1 year, 6 months, 3 months and 1 month contains fine as additional punishment in some sections and to other sections fine is given as option of the trial court is very progressively developing in all fields with supersonic speed and competing with the most developed Nations and has been waiting to become member of the U.N.O continuing with Statutes having obsolete provisions is very bad and shame on part of our legislatures. In our country 10 States out of 23 amended the Code several times as for exigencies, re substituted the section 182, 292, 293, 294, 375, 376, 484, 485, 486, 487, 488,489 and 505 in places of original sections so far.
SUGGESTIONS:

After thorough study the researcher made the following suggestions for the better functioning of Indian penal Code in punishments area if carried out effectively:

- All the Sections of Indian Penal Code which mention punishment with fine only should be amended by enhancing the fine amount keeping in view of the country's present economic position.
- Punishment must be specifically fixed to the recidivists by enhancing the punishment proportionally to each time.
- The petty offence must be punished by ordering them to do the public service or community service in a selected institution instead of imposing fine or sending them to jail to undergo short term sentences.
- Amendments should be made to all the offences in the Indian Penal Code which are punishable more than one year imprisonment either with fine or without fine by fixing minimum punishment.
- The offences in which imprisonment or fine or both is fixed as a punishment by giving wide discretion to the court should be made uniform in the entire Code through proper amendment.
- The punishments for offences which are not touched by the legislature since 149 years should be re-strengthened by bringing changes to them, basing on the changed circumstances in the Indian society.
limit of fine amount should be amended by enhancing the fine amount and fixing the minimum limit.

- The permanent Statutory Committees should be established at both national and State levels to monitor the sentencing process.

- The scope of Sec.75 should be extended by applying to the offences mentioned in other chapters of the Code instead only Chapters XII and XVII of the Code.

- The measurement of the scale mentioned in Sec.67 of the Code should be amended by enhancing the fine and imprisonment suitable to the present circumstances.

- The Punishment of the offences covered under Section 138, 143, 151, 175, 178, 179, 182, 183, 369, 271, 272, 273, 275, 279, 282, 284, 285, 286, 287, 288, 289, 291, 294A are to be amended by enhancing the punishment presently provided to them.

- The Punishment of the offences covered under Section 153, 166, 168, 171B, 171F, 190, 229A, 265, 266, 267, 296, 297, 298, 309, 323, 342, 357, 482, 486, 508 and 509 are to be amended to provide uniform punishments and to remove ambiguity regarding 'or fine, and fine'. The amount of fine should be increased to all these offences.

• The Offences covered under sections 117, 129, 159, 152, 167, 218, 225A, 233, 237, 242, 246, 248, 261, 263, 224, 332, 344, 347, 348, 384, 414, 418, 456, 462, 469, 484, 485, 487, 468, 498A 505, which are punishable with three years imprisonment either with fine or without fine should be amended by conforming uniform punishments. In these sections among the words 'or fine', and fine one should be mentioned.

• The Offences covered under sections 153A, 153B, 212, 250, 253, 292, 429, 430, 431, 432, 440, 497 and 505 which are punishable with five years imprisonment either with fine or without fine should be amended by conforming uniform punishments. In these sections among the words 'or fine', and fine one should be mentioned.

• The Offences covered under sections 117, 126, 127, 134, 174A, 193, 195A, 201, 211, 213, 214, 221, 234, 244, 245, 247, 249, 256, 257, 258, 259, 293, 308, 325, 330, 401, 402, 404, 407, 408, 420, 433, 435, 451, 452, 466, 468, 473, 474, 476, 477A, 489C and 496 which are punishable with seven years imprisonment either with fine or without fine should be amended by conforming either one of the option among the words 'or fine', and fine.