CHAPTER – II

THE KINDS AND THEORIES OF PUNISHMENT

I. Introduction

Capital punishment is one of those subjects of human concern which gives rise to an endless debate without producing any conclusion which can scientifically be tested to make them convincing to both the parties to the debate. To abolish the punishment or not is the problem which has been faced in many countries and is being faced in others even now. The issue of capital punishment involves questions of dialectical nature and some of the issues not being capable of being proved or disapproved.

To understand the problem, it is necessary to assess the adequacy of modern penal system for which a probe into origin and evolution of the system of punishment is must.

The correlation between crime and punishment has been subject of perennial interest of criminologists and social scientists. No clear cut and precise approach has developed on the subject. Many competing theories, complicated ideas and even occasionally inconsistent approaches jostle together in the mind of a judge when he sentences the criminals convicted in his court. Though, there are several theories prevalent about punishment, retributive, deterrent, preventive and reformative; in actual practice no single theory holds the field.\(^\text{17}\)

\(^{17}\)Ratan Lal and Dhiraj Lal, Law of Crime, 25\(^{th}\) ed., p. 158
Presently, punishment has as its objective, the reforms of the offenders and is administered as therapy. Incidentally, then the type, scale and the system of punishment have to go a drastic change in our days.

II. The Concept and forms of punishment

Various forms of punishment have been evolved and applied in different societies through the ages. Tortures, sadistic forms of executing death sentences and all sorts of cruelties in prisons were some of the distinguishing features of the penal philosophy all over the world till relatively recent times.

The punishments provided in many parts of the world, including India, are death, imprisonment for life, rigorous and simple implement imprisonment, forfeiture of property and fine.

To understand the problem in order to assess the adequacy of modern penal system, it is necessary to probe into origin and evolution of the system of punishment.

A. Meaning of Punishment

The simple meaning of 'punishment' is the infliction of some kind of pain or loss upon a person for a misdeed.\(^\text{18}\) Punishment is the means of social control. H. L. A. Heart with Mr. Bean and Prof. Flew has defined punishment in terms of five elements:

\(^{18}\)The New Encyclopedia Britannica, Vol. 9 (Micropedia), p. 800.

(1) It must involve pain or other consequences normally considered unpleasant.
(2) It must be for an offence against legal rules

(3) It must be to an actual or supposed offender for his offence.

(4) It must be intentional, administered by human beings other than the offender.

(5) It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.¹⁹

Punishment, according to Westermarch, is limited to “such suffering as is inflicted upon the offender in a definite way by, or in the name of the society of which he is a permanent or temporary member.”²⁰ Dr. Walter Reckless in considering the meaning of punishment says, “it is the redress that the common wealth takes against an offending member.”²¹ Punishment’s dictionary meaning is 'pain inflicted by authority on a person for crime.”²²

The objective of punishment administered by the official organs of the state, have been the subject of debate among philosophers, lawyers and legislators for centuries. A variety of different theories or objectives of punishment have been proposed, some differing only in minor degrees, some fundamentally in conflict with one another.

B. Theories of Punishment

There are four generally accepted theories of punishment namely:

²¹Ibid.
²²Bhargava’s Standard Illustrated Dictionary of English Language, p. 680.
(a) Deterrent  
(b) Retributive  
(c) Preventive  
(d) Reformative  

We can further classify these theories in two parts or we can say there are two schools of thought i.e. classical (ancient/traditional concept) and positive (modern concept) 

The views are classified as:  

<table>
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<tr>
<th>Classical School</th>
<th>Positive School</th>
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<td>Legal definition of crime</td>
<td>Rejected legal definition</td>
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<td>Let the punishment fit the crime</td>
<td>Let the punishment fit the criminal</td>
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<td>Doctrine of free will</td>
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<td>Death penalty for some offences</td>
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<td>Anecdotal method— no empirical research</td>
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<td>Definite sentence</td>
<td>Indeterminate sentence(^23)</td>
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With the changing pattern of the society, the approach of the penologists towards punishment has also undergone radical changed approach. They shifted their view from ‘classical’ to ‘positive’ approach.  

Though, opinions have differed as regards punishment of offenders varying from age-old traditionalism to recent modernism, roughly speaking four types of views can be distinctly found to prevail. Modern penologists prefer to call them ‘Theories of Punishment’. There are as follows:

(a) Deterrent Theory

Earlier modes of punishment were by and large deterrent in nature. Dictionary meaning of deterrent is ‘discouraging’.\(^\text{24}\) The very purpose of selection of this type of punishment on offenders is to deter them from committing crime. The deterrent theory also seeks to create some kind of fear in the mind of others by providing adequate penalty and exemplary punishment to offenders which keeps them away from criminality. Thus, the rigor of penal discipline acts as a sufficient warning to offenders as also others.

According to this theory, the object of punishment is not only to prevent the wrongdoer from indulging in its the second time, but also to set an example to other persons who have similar criminal tendencies. Salmond considers deterrent aspect of criminal justice to be the most important for the control of crimes. Critics, however, feel that deterrent punishment is likely to harden the criminal instead of creating fear of the law in the mind, as they are not afraid of imprisonment.\(^\text{25}\) According to this theory, the object of punishment is not only to prevent the wrong-doer from doing a wrong a second time, but also to make him an example to other persons who have the criminal tendencies. Salmond considers deterrent aspects of criminal justice to be the most important for control of

\(^{24}\)Bhargava's Standard Illustrated Dictionary of English Language, p. 219.
\(^{25}\)Mahendra Kumar Sharma, Minimum Sentencing for Offence in India Law and Policy, p 20.
crime. The deterrent theory was the basis of punishment in England in the medieval period and consequently, severe and inhuman punishments were inflicted even for minor offences. For instance, for the ordinary crime of stealing, the culprits were subjected to the severe punishment of death by stoning and whipping. In India, the penalty of a death sentence or mutilation of the limbs was imposed even for the petty offences of forgery and stealing etc. during the Mughal period.

Most of the Muslim countries namely, Pakistan, Iran, Iraq and Saudi Arabia are adopting the deterrent theory as the basis of their penal jurisprudence.

There are two types of deterrence (i) individual and (ii) general.

(i) Individual Deterrence

Individual deterrence refers to the effect of punishment in preventing a particular individual from committing additional crime. In the past this form of deterrence often took the form of incapacitation, making it impossible for a particular offender to commit again the crime for which he or she had been convicted. For example, the hand of the thief would be amputated; rapist would be castrated; prostitutes would be disfigured in way that would repel potential customers; and so on. The justification of the punishment is that the criminal is to be punished simply because he has committed a crime.

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(ii) General Deterrence

The second type is general deterrence, is based on the assumption that punishing individuals who are convicted of crimes will set an example to potential violators who, being 'rational' beings, would wishing to avoid such pain, will not violate the law. Again, we can see the influence of the classical thinkers, with their emphasis on free will and rational choice. People will seek pleasure and avoid pain, thus, if the punishment is perceived as too painful, people will avoid the criminal activity that might result in that punishment. The punishment was to be a terror to evil-doers and an awful warning to all others who might be tempted to imitate them.29

(b) Retributive Theory

Retribution is a probably the oldest and most ancient justification for punishment, "you hurt me, I will hurt you" is its literal meaning. Retribution suggests that the severity of punishment should be proportionate to the gravity of the offence,30 while deterrent theory considered punishment as a means of attaining social security. The retributive theory treated it an end in itself. Supporters of this view maintain that punishment must not be justified by its intended or actual results. It may have positive benefits for the offender or for the larger society are large, or it may have harmful effects, but neither of these is relevant, instead punishment is viewed as a morally mandated response to offending behavior.

It aims at restoring the social balance disturbed by the offender. The offender should receive as much pain and suffering as inflicted by him on his victim to

29Ibid.
assuage the angry sentiments of the victim and the community,\textsuperscript{31} or in other words, the theory, therefore, underlined the idea of vengeance or revenge. Thus, the pain to be inflicted on the offender by way of punishment was to outweigh the pleasure derived by him from the crime.

Retributive theory is closely connected with the notion of expiation which means blotting out the guilty by suffering an appropriate punishment. It is this consideration which underlines the mathematical equation of crime, namely guilt plus punishment is equal to innocence.\textsuperscript{32}

It has, generally, been urged by the advocates of this theory and accepted by the general public that the criminal deserves to suffer. The suffering, imposed by the State in its corporate capacity, is considered the political counterpart of individual revenge. It is urged that unless the criminal receives the punishment he deserves, one or both of the following effects will result, namely, the victim will seek individual revenge, which may mean lynching (killing or punishing violently) if his friends co-operate with him, or the victim will refuse to make a complaint or offer testimony and the State will therefore, be handicapped in dealing with criminals Retributive punishment gratifies the instinct for revenge or retaliation which exists not merely in the individual who had been wronged, but also in society at large. In modern times, the idea of private revenge has been forsaken and the State has come forward to effect revenge in place of the private

\textsuperscript{31}Ahmed Siddique, {	extit{Criminology Problems and Perspective}, 4\textsuperscript{th} ed., (1997), P. - 111.}

\textsuperscript{32}N. V. Paranjape, {	extit{Criminology and Penology}, 9\textsuperscript{th} ed., P. - 145.}
individual. Punishment in itself is an evil and can be justified only on the ground that it yields better results. Revenge is justice gone wild.\textsuperscript{33}

Retribution, as a limiting principle, can be distinguished from retribution as an educational principle i.e. the educational principle is distinguished from the idea that the official organs of the state must punish offenders to satisfy the natural demands for punishment among members of the community, particularly among those who are the victims of the crime and who, in the absence of official punishment administered by the state, would seek revenge by direct violence.\textsuperscript{34}

It must be stated that the theory of retribution has its origin in the crude animal instinct of individual or group to retaliate when hurt. The modern view, however, does not favour this because it is neither wise nor desirable. On the contrary, it is generally condemned as vindictive approach to the offender.\textsuperscript{35}

(c) Preventive Theory

Preventive philosophy of punishment is based on the proposition ‘not to avenge crime but to prevent it,’\textsuperscript{36} pull out all the stops i.e. remove from somewhere i.e. from society. It is believed that the danger to the society is removed by placing the offender under imprisonment.

The preventive theory has the object of preventing or disabling the criminal from committing the offences. The offender is disabled from repeating the offence by punishment like death, exile or forfeiture of an office. By jailing a criminal, he is prevented from committing another crime. However, critics of this theory point

\textsuperscript{34}N. V. Paranjape, \textit{Criminology and Penology}, 9\textsuperscript{th} ed., p. 145.
\textsuperscript{35}Ibid.
\textsuperscript{36}Ibid.
out that this has the undesirable effect of hardening the first offender as they come into contract with hardened criminals in jail. Another object of punishment is prevention or disablement. Offenders are disabled from repeating the offence by awarding punishments, such as death, exile or forfeiture of an office. By putting the criminal in jail, he is prevented from committing another crime. Critics point out that preventive punishment has the undesirable effect of hardening first offenders, or juvenile offenders, when imprisonment is the punishment, by putting them in the association of hardened criminals.37

The preventive theory seeks to prevent the re-occurrence of crime by incapacitating the offenders. It suggests that prisonisation is the best and the effective mode of crime prevention as it seeks to eliminate offenders from the society, thus, disabling them from repeating the crime.

(d) Reformative Theory

With the passage of time, developments in the field of criminal science brought about a radical change in criminological thinking. According to reformationists, a criminal is to be studied like a patient in his entire socio-economic milieu, and not in isolation to understand causative factors leading to criminality and the attempt to be made to reform or treat and rehabilitate the offender.38

The reformative theory advocates that, the object of punishment is to reform criminals. Even a criminal is motivated to commit by circumstances; at the same time, he does not cease to be a human being. Therefore, the object of punishment should be to bring about moral reform in the offender. However, critics of this

theory state that, if criminals are sent to prison to be transformed into good citizens, then prisons will not remain prisons but dwelling houses. According to the reformatory theory, the object of punishment is the reformation of criminals. It is maintained that punishment tends to reform criminals and that it accomplishes this by instilling in them a fear of repetition of the punishment and a conviction that crime does not pay, or by breaking habits that the criminals have formed, especially if the penalty is a long period of imprisonment which gives the prisoner opportunity for improvement. Even if an offender commits a crime under certain circumstances, he does not cease to be a human being. The circumstances under which he committed the crime may not occur again. The object of the punishment should be to affect a moral reform of the offender. The criminal must be educated and taught some art or craft or industry during his term of imprisonment, so that he may be able to lead a good life and become a respectable citizen on being released from jail. While awarding punishment, the judge should study the character and age of the offender, his early breeding and family background, his education and environment, the circumstances under which he committed the crime, the motive which prompted him to indulge in criminal activities, etc. The object of doing so is to acquaint the judge with the circumstances under which as the offence was committed so that the punishment meted out will serve the ends of justice.  

As against deterrent, retributive and preventive justice the reformatory approach to punishment seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law-abiding member of society. The reformists advocate

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39K. D. Gaur, Commentary on The Indian Penal Code, p. 162.
humanly treatment inside the prison institutions, condemn all kinds of corporal punishments. The reformative view of penology suggests that punishment is only justifiable if it looks to the future and not the past. It should not be regarded as settling an old account but rather as opening a new one.\(^4\)

Punishment is, therefore, said to be justified because-

(i) It provides an opportunity for state to take steps to reform offender and control crime.

(ii) It is both a deterrent and an effective condemnation and as such it has reformative consequences.

(iii) The ultimate aim of the punishment is to ‘rationalize’ the offender, to ‘readjust’ him to society, to ‘rehabilitate’ him or to ‘change him deep inside’.

Criminals are to be ‘treated’ in order to cure them of their sickness and make them emotionally healthy, law abiding citizens just like the rest of us. The goal of rehabilitation is to re-socialize offender by building into them the motivation to obey the law.\(^4\)

III. Kinds of Punishment

Jurists from time to time analyzed their position about question of punishment or sentencing in their own way. Some well known and well thought position is to be assessed as, “given that ‘all punishment in itself is evil’ (since it inflicts suffering and pain) it follows “upon the principle of utility, it ought only to be admitted in as far as it promises to exclude some greater evil”.

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At the same time, the object which all laws have in common is to augment the total happiness of the community'. Punishment must therefore be ‘useful’ in achieving a greater aggregate of pleasure and happiness, and has no justification if its effect is simply to add still more units, or lots, of pain to the community. The principle of utility would clearly call for the elimination of pure ‘retribution’ which someone is made to suffer only because his act caused his victim pain, since no useful purpose is served by adding still more pain to the sum total society suffers. It is not that the institution of punishment is rejected, rather, accepting the principle of utility indicates a reappraisal of the question of why society should punish offenders, and a reclassification of cases that are ‘meet’ and ‘unmeet’ for punishment. Punishment should not be inflicted (i) where it is groundless, where, for example, the offence could be simply compensated and there is a virtual certainty that compensation is forthcoming; (ii) where it is inefficacious, in that it cannot prevent a mischievous act, for example, when a law made after the act is retroactive, or ex post facto, or where a law already exists but has not been announced. Punishment also would be inefficacious where an infant, an insane person, or a drunkard was involved, though Bentham admitted that neither infancy nor intoxication were sufficient grounds for ‘absolute impunity’. Nor should punishment be inflicted (iii) where it is unprofitable or too expensive, ‘where the mischief it would produce would be greater than what it prevented’; or (iv) where it is needless ‘where the mischief may be prevented, or cease of itself, without it ‘that is at a cheaper rate’, particularly in cases, ‘which consist in the disseminating pernicious principles in matters of duty, ‘since in these cases persuasion is more efficacious than force’. 42

Having considered offences as diseases of the body politic, we are led by analogy to regard as remedies the means of prevention or redress. These remedies may be arranged in four classes: (1) Preventive Remedies; (2) Suppressive Remedies; (3) Satisfactory Remedies and (4) Penal Remedies, or Punishment.

Preventive Remedies are means which tend to prevent offences. They are of two kinds: direct means, which have an immediate application to such or such an offence in particular; indirect means, which consist in general precautions against an entire class of offences. Suppressive Remedies are means which tend to put a stop to an offence already begun, an offence in progress, but not completed, and so prevent the evil, or at least a part of it. Satisfactory Remedies consist of reparation or indemnities, secured to those who have suffered from offences. Penal Remedies or punishments are also useful; for after a stop has been put to the evil, after the party injured has been indemnified, it still remains to prevent like offences, whether on the part of the same offender or of others. There are two ways of arriving at that end; one, to correct the will, the other, to take away the physical power. To take away the inclination to repeat the act, is reformation; to take away the power, is incapacitation. A remedy which operates by fear, is called a punishment; whether or not it produces a physical incapacity depends upon its nature.

The principle end of punishment is to prevent like offences. What is past is but one act; the future is infinite. The offence already committed concerns only a single individual; similar offences may affect all. In many cases, it is impossible to redress the evil that is done; but it is always possible to take away the will to
repeat it; for however great may be the advantage of the offence, the evil of the punishment may be always made to out-weigh it.”

The object of punishment and sentencing policy has been well defined by Manu, “punishment governs all mankind, punishment alone preserves them, punishment wakes while guards are asleep, and the wise consider the punishment (dand) as the perfection of justice.”

Manu has indicated that God provided that Raja should act as per Rajdharma and punish the guilty as punishment of guilty protects the other people. In fact, it is not Raja but the Dharma which rules a country. It is one’s Dharma only which accompanies one even after death whereas all other materialistic things are left over in the universe only although the present day concept of jurisprudence is based on one’s conduct in this universe only and does not speak of Dharma or salvation in the context of following the laws as following of the laws is must and their breach leads to punishment.

Once a crime has been established then the criminal has to be punished. In fact, it is to determine the punishment only then any criminal case is produced before the Raj Shakti (Royal power) which is there to execute the punishment awarded. The punishment or ‘dand’ has come from the word ‘stick’ (dand) by which the Raja beats the criminal. Therefore, ‘dand’ has become synonymous to the punishment. Further, the present day ‘polity’ is synonymous to the word ‘Raj Dharma’, ‘Raj Shastra’, ‘Dandniti’, ‘Rajniti’, etc. Manu has called it Raj Dharma. According to Kautily, ‘dand’ is the source of protection of people. ‘Dand’ or punishment is a

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part of law. According to ‘Shukra’, punishment converts a person from bad conduct to good conduct and it is by punishment only that the crime is eradicated. Manu has indicated that various people in the country follow their respective Dharma and it is by punishment, that the persons not following their Dharma are brought to the correct path. It is, therefore, punishment, which inspires a person to leave the path of wrong and adopt the path of righteousness. Kautilya too has stated that punishment is necessary for the well-being of the people and their protection from the criminals.46

The object of criminal trial is to determine whether the accused person is guilty of the offence. He is charged with and to prescribe suitable action if he is proved guilty on the basis of an elaborate system of substantive and procedural criminal law. The determination of the second issue, i.e. the choice of an appropriate section out of many permitted by law in a particular situation is of an enormous consequence to the individual offender as it is to the society at large.47

An enquiry into various forms of punishment which were in practice in different societies through ages, would reveal that forms of punishment were mainly based on deterrence and retribution which have lost all significance in modern penology.

Blood-feud was one of the common modes of punishment in early society which was regulated by customary rule of procedure which underlined the principle of Lex talionis meaning eye for an eye and tooth for a tooth.48 Sometime later, restitution for injury through payment of money-compensation was substituted for blood feud. With the advance of time, state assuming charge of administration of

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46 Id. at pp. 124-125.
criminal justice, the process of public control of private wrongs started which eventually culminated into modern penal system of the world. The institution of police as a law enforcement agency and the court as an impartial institution performing judicial functions developed only after crime and punishment become matters of public control.

The forms of punishment into two parts (i) Forms of punishment in ancient times and (ii) forms of punishment under existing law.

A. Kinds of Punishment in Ancient Times

Various forms of punishment have been evolved and applied in different societies through the ages. Tortures, sadistic forms of executing death sentences and all sorts of cruelties in prisons were some of distinguishing features of the penal philosophy all over the world till relatively recent times. The following forms of punishment prevailed during ancient times.

(a) Flogging

The dictionary meaning of flog is to bear very hard with a stick or a WHIP as a punishment of all the corporal punishment, flogging was one of the most common methods of punishing criminals. Flogging punishment is abolished in almost whole world, but it is still prevailing in most of middle-east countries even now these days.
In India, this mode of punishment was recognized under the Whipping Act 1864, which was repealed and replaced by similar Act in 1909 and finally abolished in 1955.\(^{50}\)

The instrument and methods of flogging, however, differed from country to country. Some of them used straps and whips with single hash while other used short pieces of rubber-hose as they left behind traces of flogging. In Russia, the instrument used for flogging was constructed of dried and hardened thongs of raw hide, interspersed with wires having hooks in their ends which could enter and tear the flesh of criminal. It has not been discontinued being barbarous and cruel form.

Penological researches have shown whipping as method of punishment has hardly proved effective. It may serve some useful purpose in case of minor offences such as drunkenness, vagrancy, shop-lifting etc. But it does not seem to have the derived effect on offenders charged with major crimes.

(b) Mutilation

Mutilation was yet another kind of corporal punishment commonly used in early times. The meaning of mutilation is ‘to separate a limb or organ, to maim to make imperfect.’\(^{51}\) This mode of punishment was known to have been in practice in ancient India during Hindu period. One or both hands of the person who committed theft were chopped off and if he indulged in sex crime his private parts were cut off. The system was in practice in England, Denmark and many other European countries as well.


\(^{51}\) Bhargava's *Standard Illustrated Dictionary of English Language*, p. 534.
Undoubtedly, amputation/mutilation was higher than the capital punishment. But when we dive deep we find amputation more painful to the offender than death. Potential offender may forget, with the lapse of time, the pangs of an offender tortured to death, but an offender punished with amputation living and breathing in society and heading the most wretched life, always keeps the memory of the punishment alive in the minds of the on lookers. His horrible appearance makes other shudder. Hence, amputation/mutilation is more deterrent than even capital punishment.\(^{52}\)

The system however, stands completely discarded in modern time because of its barbaric nature. It is believed that such punishments were due to inevitable tendency to indulge cruelty among people.

**c) Branding**

As a mode of punishment, branding of prisoners was commonly used in oriental and classical societies.\(^{53}\) Roman, England, American penal law supported this mode of punishment and criminals were branded with appropriate marks on the forehead so they could be identified and subjected to public ridicule.

In India, branding was practiced as a mode of punishment during the Mughal rule. This mode of corporal punishment now stands completely abolished with the advent of humanitarianism in the field of penology.

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(d) Stoning

Stoning the criminals to death is also known to have been in practice during the medieval period. This mode of sentencing the offender is still in practice in some of the Islamic countries like Pakistan, Saudi Arabia, etc. The offenders involved in sex-crimes are generally punished with this type of punishment.

The accused person is made to stand in a small trench dug in the ground and people surround him from all sides and pelt stone on him until he dies. Though, it is a punishment barbaric in nature, but due to deterrent effect, the sex crimes, especially crimes against women, are well under control in these countries.

(e) Pillory

This type of punishment was also called poetic punishment though it was more often used infliction than in poetry. This type of punishment was in practice till 19th century. The criminal was made to stand with his hands and head locked in iron frame so that he could not move his body. Pillory is wooden frame with holes for inserting the head and hands of a criminal. Restraining physical movements of the criminal had the most agonising effect on him and it was believed that the deterrence involved in this mode of punishment would surely bring the offender to book. Hanging condemned prisoner to death in public place was common mode of pillory punishment in most of the world until the middle of the twentieth century.
The system of pillory existed slightly in different forms during the Mughal rule in India. Hardened criminals and dangerous offenders were nailed in walls and shot or stoned to death.

This punishment undoubtedly was more cruel and brutal in form and therefore, it has no place in modern penal system.

B. Kinds of Punishment under existing laws

Section 53 of the Indian Penal Code prescribes the mode of punishments under the existing system in India.

(a) Fines

Fines, as an additional or alternative form of punishment, have been increasingly favoured by the law as well as judicial authorities. They are singularly more appropriate in offences related to traffic, employment of persons unauthorized by law and violation of laws regarding manufacture and distribution of goods. They are very frequently imposed in relation to property crimes, like embezzlement, fraud, theft, violations of lottery and gambling laws and minor offences, like loitering and disorderly conduct. In the Indian Penal Code, the provision for fines, as punishment, was justified by its framers thus, “fine is the most common punishment in every part of the world and it is a punishment at the advantages of which are so great and obvious that we propose to authorize the courts to inflict it in every case. . . Imprisonment, transportation, banishment, solitude and

57 Section 53 of the Indian Penal Code, 1860 reads as under: The punishments to which offenders are liable under the provisions of this Code are—First-Death; Secondly-Imprisonment for life; Fourthly-Imprisonment, which is of two descriptions, namely:— (1) Rigorous, that is, with hard labour; (2) Simple; Fifthly-Forfeiture of property; Sixthly-Fine.
compelled labour are not equally disagreeable to all men. With fine the case is
different. In imposing a fine, it is always necessary to have regard to the
pecuniary circumstances of the offender, as to the character and magnitude of the
offence. The mulct, which is ruinous to the labourer, is easily borne by the
tradesman and is absolutely unfelt by a rich zemindar.”

The imposition of fines may be made in four different ways as provided in the
Penal Code. It is the sole punishment for certain offences and the limit of
maximum fine has been laid down. In certain offences, it is an alternative
punishment but the amount is limited; in certain offences, it is imperative to
impose fine, in addition to, some other punishment; and in some offences, it is
obligatory to impose fine but no particular pecuniary limit is laid down.

The real problem, involved in the position of financial penalties, is the quantum of
fine and cost and enforcement of its payment. In India, however, in the matter of
recovery of fines, the provisions of section 421 of the Code of Criminal
Procedure, 1973 would apply.

59 Code of Criminal Procedure, 1973, Section 421 reads as under:

(1) When an offender has been sentenced to pay the court passing the sentence make action for
the recovery of the fine in either or both of the following ways, that is to say, it may —

(a) Issue a warrant for the levy of the amount by attachment and sale of any movable property
belonging to the offender

(b) Issue a warrant to the Collector of the district, authorizing him to realize the amount or
arrears of land revenue from the movable or immovable property, or both, of the defaulters;
that, if the sentence directs that in default of payment of the fine, the offender shall be
imprisoned, and if such offender has undergone the whole of such imprisonment in default,
the court shall issue such warrant unless, for special reasons to be recorded in writing, it considers
it necessary so to do, or unless it has made an order for the payment of expenses or
compensation out of the fine under section 357.

(1) The State Government may make rules regulating the manner in which warrants under
clause (a) of sub-section (1) are to be executed, and for the summary determination of any
claims made by any person other than the offender in respect of, any property attached in
execution of such warrant.

(2) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the
Imposing fine is the most prevailing punishment in minor offences in these days by the court. Either the fine goes to the state or to the victim as compensation for the wrong act of the accused.

In case of default in payment of fine, heading to imprisonment of the accused, the ideal policy is to convert unpaid fine into imprisonment not automatically but by a court-decision in each individual case.

(b) Imprisonment

Originally, imprisonment was a mode of custody of under trial persons. Under trial persons were locked up sometime for years together before they were put up for trial. The main purposes of imprisonment are:

(i) Disabling the offender, being danger to society, by locking him up.

(ii) Preventing prospective offenders by the threat of long term lock up.

(iii) Reforming the offender under healthy and transforming conditions.\(^{60}\)

So we can say that the goal of imprisonment is not only punitive but restorative to make an offender a non-offender. Rehabilitation is a prized purpose of prison hospitalization.\(^{61}\) Social justice and social defense the sanction behind prison deprivation ask for enlightened rehabilitative procedure.\(^{62}\) Imprisonment is still one of the most accepted forms of punishment throughout the world with modern correctional techniques, introduced in prison institutions; it serves as an efficient

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Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law. Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

\(^{60}\) J. M. J., Sethna, *Society and the Criminal*, 5th ed., p. 238

\(^{61}\) J. P. S. Sirohi, *Criminology and Criminal Administration*, p. 112

\(^{62}\) Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.
measure of reforming the criminal and at the same time protecting the society from antisocial elements. Thus, it serves the dual purpose of preventive and reformative justice at one and the same time.\footnote{N. V. Paranjape, \textit{Criminology and Penology}, 9th ed., p. 167.}

Giving the word imprisonment a wider meaning, it has been held that every confinement of the person is an imprisonment and every restraint of the liberty of a free man will be an imprisonment and the under-trial detention of a prisoner is undoubtedly an imprisonment. Imprisonment is of two kinds: rigorous and simple. In the case of rigorous imprisonment, the offender is put to hard labour, such as grinding corn, digging earth, drawing water, cutting fire-wood, bowing wool, etc. The prison authority has the duty to give effect to the Court sentence.\footnote{The Prisons Act, 1900, Sec. 16.} To give effect to the sentence means that it is illegal to exceed it and so it follows that prison official, who goes beyond doing of things not covered by the sentence acts in violation of Article 19 of the Constitution. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour and so a vindictive officer, victimizing a prisoner by forcing on him particularly harsh and degrading jobs violates the law's mandate. For example, a prisoner if forced to carry night soil, may seek a habeas writ. 'Hard labour' in Section 53 has to receive a humane meaning. A girl student or a male weakling, sentence to rigorous imprisonment, may not be forced to break stones for nine hours a day. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs. Sense and sympathy are not enemies of penal asylums.\footnote{Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.} In the case of simple imprisonment, the offender is confined to jail and is not put to any kind of work. Where the Code provides that an offender shall be punished with
imprisonment 'and shall also be liable to fine', the sentence should include some period of imprisonment and whatever it may be.

Circumstances which are properly and expressly recognized by the law as aggravations calling for increased severity of punishment are principally such as consist in the manner in which the offence is perpetrated; whether it be by forcible or fraudulent means, or by aid of accomplices, or in the malicious motive by which the offender was actuated, or the consequences to the public or to individual sufferers, or the special necessity which exists in particular cases for counteracting the temptation to offend, arising from the degree of expected gratification, or the facility of perpetration peculiar to the case. These considerations naturally include a number of particulars, as of time, place, persons and things, varying according to the nature of the case. Circumstances which are to be considered in alleviation of punishment are; (1) the minority of the offender; (2) the old age of the offender; (3) the condition of the offender, e.g., wife, apprentice; (4) the order of superior military officer; (5) provocation; (6) when offence was committed under a combination of circumstances and influence of motive which are not likely to recur either with respect to the offender or to any other & (7) the state of health and the sex of the delinquent. The imposition of sentence is always a matter of discretion and unless the Court finds that discretion has been exercised arbitrarily or capriciously or on unsound principles or that Sessions Court or the High Court has not taken into account any relevant factors in imposing the sentences, the Supreme Court would not be justified in reducing the sentence, merely because it feels that a lesser sentence might well have been
The age of the offender, signs of repentance, no criminal antecedents and the victim and her parents having for given the offender may be taken into consideration to recur the sentence.\textsuperscript{67} In \textit{Modi Ram Lal v. State of M. P.} \textsuperscript{68}, the Supreme Court observed that “the question of sentence is always a difficult and complex question. The accused persons found guilty may be hardened or professional criminals having taken to the life of crime since long, or they may have taken to crime only recently or may have committed the crime under the influence of bad company.... Keeping in view the broad object of punishment of criminals by Courts in all progressive civilized societies, true dictates of justice seem to us to demand that all the attending relevant circumstances should be taken into account for determining the proper and just sentence. The sentence should bring home to the guilty party the consciousness that the offence committed by him was against his own interest as also against the interests of the society of which he happens to be a member.” In \textit{Ram Narain v. State of U. P.} \textsuperscript{69}, the Supreme Court has observed that, “a sentence generally poses a complex problem which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishment. The broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of a crime does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs.” In \textit{Ramasharya v. Chakravarti v. State of Madhya Pradesh}, \textsuperscript{70} the Supreme Court observed that to adjust the duration of

\textsuperscript{67}Phul Singh v. State of Haryana, AIR 1980 SC249.
\textsuperscript{68}AIR 1972 SC 2438.
\textsuperscript{69}AIR 1973 SC 2200.
\textsuperscript{70}AIR 1976 SC 392.
imprisonment to the gravity of a particular offence, is not always an easy task. Sentencing involves an element of guessing but often is not always practice obtaining in a particular court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a matter of judicial discretion subject to any mandatory minimum punishment prescribed by law. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individual or to society, effect of punishment on the offender, scope to correction and reformation of the offender, are some, amongst many other factors, which would be ordinarily taken into consideration by Courts. Trial Courts in this country already over-burden with work, have a hardly any time to set apart for sentencing reflection. In a good system of administration of justice, pre-sentence investigation may be of great sociological value brought out the world humanitarianism, is permeating into penology and the courts are expected to discharge their appropriate roles. The Supreme Court in K. Duraiswamy v. State of Tamil Nadu\footnote{AIR 1982 SC 51.} observed that “where on account of his conviction, the accused had lost his job and was also likely to lose his pensionary benefits, and he had served three month imprisonment, it was held that taking such circumstances into account, his sentence could be reduced to the period of imprisonment already undergone by him.” In Nathu Singh v. State of M. P.\footnote{AIR 1973 SC 2783.}, where the appellant had been convicted under Section 25(1)(a) of the Arms Act, 1959 and sentenced to two years rigorous imprisonment for being found in unlicensed possession of catridges, the Supreme Court held that though, it did not ordinarily interfere on
sentence, yet as the courts below relied upon inadmissible evidence in awarding
two years rigorous imprisonment to the appellant, the ends of justice would be
met by reducing the sentence to one year's rigorous imprisonment only." It must
be remembered that "crime is a pathological aberration, the criminal can
ordinarily be redeemed and the State has to rehabilitate rather than avenge. The
sub-culture that leads to anti-social behaviour has to be countered not by undue
cruelty but by re-culturisation. Therefore, the focus of interest in penology is the
individual, and the goal is salvaging him for society was observed by the Supreme
Court in *Mohd. Giasuddin v. State of A. P.*\(^73\)

Imposition of hard labour on prisoner, undergoing rigorous imprisonment, does
not violate Art. 23(1) of the Constitution was held by the Supreme Court in *State
of Gujarat v. Hon'ble High Court of Gujarat*\(^74\) the court observed that "it is lawful
to employ the prisoner, sentenced to rigorous imprisonment, to do hard labour
whether he consents to do it or not."

The authors of the Code had, in many cases not heinous, fixed a minimum as well
as maximum punishment. The Committee were of the opinion that, considering
the general terms in which offences were defined, it would be inexpedient, in
most cases, not to fix a minimum punishment; and they had accordingly so altered
the Code has to leave the minimum punishment for all offence, except those of
the gravest nature, to the discretion of the judge who would have the means in
each case of forming an opinion as to the character of the offender, and the
circumstances, whether aggravating or mitigating, under which the offence had
been committed. But with respect to some heinous offence - such as offence

\(^73\)AIR 1977 SC 1926.
\(^74\)AIR 1998 SC 3164.
against the State, murder, attempt to commit murder and like they had thought it right to fix a minimum punishment.\textsuperscript{75}

The Indian Penal Code, 1860 has prescribed the maximum sentence. The lowest term for a given offence is twenty-four hours. \textsuperscript{76} The minimum term of imprisonment, however, has been fixed by the Code in the following cases:

(1) Use of deadly weapon or causing grievous hurt to any person at the time of committing robbery or dacoity: 7 year (Section 397)

(2) Attempt to commit robbery or dacoity, armed with deadly weapon: 7 yrs (Section 398)

(3) Dowry death: 7 yrs (Sec.304B)

(4) Rape unless the woman raped is his own wife and not under twelve years of age: 7 years (Section 376(1);

(5) Rape by a police officer, public servant, a person, being on the management or on the staff of jail, remand home or other place of custody or of a hospital in circumstances, mentioned in sub-section (2) of Section 376: 10 yr. (Section 376(2);

(6) Rape on a pregnant woman: 10 yr (Section 376(2)

(7) Rape on a woman below twelve yrs: 10 yrs. (Section 376(2)

(8) Gang rape: 10 yr. (Section 376(2)


\textsuperscript{76}Indian Penal Code, 1860, Section 510 which reads as under: Misconduct in public by a drunken person. Whoever, in a state of intoxication, appears in any public place, or in any place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.
(c) Imprisonment for Life

Imprisonment for life has been authorized as a form of punishment. There are in all 52 sections in Indian Penal Code, 1860 which provide for sentence of

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<td>46. Sec.472</td>
<td>Manufacturing seal with intent to commit forgery, etc.</td>
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<td>47. Sec.474</td>
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imprisonment for life. Imprisonment for life now substitutes for transportation, 'imprisonment for life'. Section 53 of the Indian Penal Code classifies it into two descriptions i.e. 'rigorous imprisonment for life' and 'simple imprisonment for life'.

The imprisonment for life must be read in the context of section 45 of the Indian Penal Code. Under that provision, the word 'life' denotes the life of human being unless the contrary appears from the context. Thus, imprisonment for life would ordinarily mean imprisonment for the full or complete span of life. A sentence for transportation of life must prima-facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

In Gopal Vinayak Godse v. State of Maharashtra, the Supreme Court stated "a sentence for transportation of life must prima-facie be treated as transportation or imprisonment for whole of the remaining period of the convicted person's natural life."

In State v. Ratan Singh, after referring to a number of leading cases on the point, the Supreme Court observed:

(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remission, because the administrative

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48. Sec. 475 Counterfeiting device or mark for forgery, etc.
49. Sec. 477 Fraudulent tampering of a will, etc.
50. Sec. 489b Counterfeiting currency-notes or bank notes.
51. Sec. 489d Possessing instruments or materials for forging or counterfeiting Currency-notes or bank notes.
52. Sec. 511 Certain attempts.

*Indian Penal Code, 1860, Section 45 reads as under: The word "life" denotes the life of a human being, unless the contrary appears from the context.
*AIR 1976 SC 1552.
rules, framed under the various Jail Manuals or under Prisons Act, cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under section 401 of the Code of Criminal Procedure.

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence, no writ can be issued directing the State Government to release the prisoner.

(3) that the appropriate Government which is empowered to grant remission under section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State the accused has completed a period of 20 years, it has merely to forward the request of the prisoner to the concerned State convicted and sentenced and even if the request is rejected by the State Government, the order of the Government cannot be interfered with by a High Court in writ jurisdiction.
(d) Capital Punishment

The word Capital means head, the etymology came from Latin Caput. Capital punishment or death penalty is execution of a person by judicial process as a punishment of an offence. Crimes that can result in a Capital Punishment are known as capital crimes or capital offences. The term capital originates from Latin capitalis, literally 'regarding the head'. Hence, a capital crime was originally one punished by the serving of the head. The natural meaning of the word 'sentence', therefore, would show that disqualification of suspension of the driving license which is a consequence upon the conclusion of the guilt and an order passed on conviction should amount to sentence.\(^1\) Sentencing means, relating to a judicial sentence; being or relating to the one who pronounces a judicial sentence: "Prosecutors and sentencing judges alike try to deal with individuals on an individual basis, without regard to social status" The act of pronouncing a judicial sentence on a defendant the sentence so pronounced.\(^2\)

The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.\(^3\) In most jurisdictions, criminal sentences (as opposed to verdicts) are imposed by judges and not by juries.\(^4\) An authoritative decision; a judicial judgment or decree especially the judicial determination of the punishment to be inflicted on a convicted criminal.\(^5\) Sentencing is a judgment on conviction for crime; the pronouncement by the judge of the penalty or punishment as the consequence to the defendant of the fact

\(^{5}\)Webster's Encyclopedla Unabridged Dictionary of the English Language, p.1300.
of his guilt.\textsuperscript{86} The passing of a sentence on an offender is probably the most public face of the criminal justice process. In the public's eyes, the sentence is the test as to whether justice has been done, both to the victim and to the defendant.\textsuperscript{87} Sentencing being the end result of all trials resulting in a conviction and sentence, being an indispensable phenomenon of criminal law as per our social conception, the sentencing process plays a crucial role in the gamut of the criminal justice system.\textsuperscript{88}

Death sentence has been used as an effective weapon of retributive justice for centuries. A person who kills another, must be eliminated from the society\textsuperscript{89}, the principle of combination of the theories i.e. deterrent and retributive as a rule punishability, by and large depends on the degree of culpability of criminal act and the danger posed by it to society as also the depravity of the offender. The fear of being condemned to death, is perhaps the greatest deterrent which keeps an offender away from criminality.

At present, the common mode of execution of death sentence, which are vogue in different parts of the world, are electrocution, guillotine, shooting, gas chamber, hanging, lethal injection.\textsuperscript{90}

Death penalty has been the subject of an age old debate between abolitionists and retentionists. There are arguments for and against the utility of this mode of sentence. Capital punishment is undoubtedly against the notions of modern rehabilitative process of treating the offenders.

\textsuperscript{89}N. V. Paranjape, \textit{Criminology and Penology}, 9\textsuperscript{th} ed., p. 172.
\textsuperscript{90}Id., at p. 173.