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Why does the same crime have such a wide range of punishments?

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Most people have heard the saying that punishment should be proportionate to the offense. It is founded on the retributive justice principle, which states that when an offender violates the law, justice requires that they suffer in return and that the reaction to a crime should be commensurate to the violation. In other words, the more serious the offense, the harsher the punishment. In a world that is witnessing an alarming increase in crime rates, the necessity to control the realm of criminal justice systems in every country is critical. Crime and punishment have evolved into a critical and delicate part of society; they can no longer be led by conventions and precedents. A set regime must be implemented, and the subjective element must be removed to the greatest extent feasible. However, it is unavoidable that no set penalties can be imposed on the accused due to them being excessively severe and unaware of the accused's rights. The accused has the right to exercise some fundamental human rights that the fixed-penalty regime infringes.

The essay is based on the idea of providing justice and uniformity to sentence distribution. An underlying logic may be established, which is a considerable advance over what is already in place. Before creating a sentencing policy, a balance between the rights of both the victim and the offender must be achieved. The Indian criminal court system lacks a clear sentencing strategy, as it does in the United States and the United Kingdom. The article also believes that certain concepts and policies should be implemented by the legislature to establish a certain amount of coercive authority to stand firm on its rights and international commitments.

Keywords: *crime, punishments, offense.*

INTRODUCTION

Law often punishes the perpetrators of the crime and judges are considered criminals from all angles and backgrounds. Sanctions also must try to prevent the offender from committing further crimes and not only reacting to the offense per se. Punishment is a sort of tradition that our society has followed in the fight against crime and is now the rule that everyone in our society has followed to prevent acts and preserve a calm and healthy environment. So, today's definition of crime is when "a person's misdemeanor was a punitive offense." So, what is a punishable offense? Numerous theories justify wrongdoers who undermine the social structure of society. However, it is not universally used to punish those who do wrong, for instance, murder, robbery, trafficking in children, and rape, towards the end of the previous century. The penalty should be criminal, and now the main aim is to protect society and to give the punishment aspects, which are justice, disruption, or reform, are basic punishments as well as preventative measures of crime, and this is known as the preventive theory of punishment. Andrew Von Hirsch defines 'just deserts' as a form of criminal punishment.

It must be dependent on the personality of the criminals. The punishments cannot be based just on the nature of the crime committed. The identical crime committed may be done through a completely different crime category. However, this punishment must be suitable for diverse crime categories.

TYPES OF PUNISHMENT

During ancient times

1. *Capital punishment*: A death penalty for a crime is the legal sanction of murdering a person as a punishment for a crime, a death penalty for a crime signifies death punishment. In short, it is a practice approved by the government in which a person is punished for a crime by the state. In ancient times, for every little crime, the death penalty was executed. It's the harshest way of punishment. The methods of carrying out the death punishment vary sometimes.
2. *Corporal punishment*: It implies a penalty that is designed to cause a person bodily suffering. It is sometimes called the physical penalty. This is a penalty for the infringement of the law which entails pain on the body. The purpose of corporal punishment is not only to punish the criminal but also to deter the offender or other person from again committing the crime.
3. *Social punishment*: It is a punishment when a person is restricted from contracting with another person or moving him to where he does not contract with others, or else he is responsible for punishing him.
4. *Financial punishment*: It's also called a fine. It was the typical method of punishment that was not important and was specifically given for violations of rules on traffic, income legislation, and small crime. It also involves the payment of compensation to the victims and the payment of prosecution costs.

In modern India

1. *Capital Punishment:* As we have discussed, the death penalty signifies a power to inflict death. In contemporary times, the death penalty is the toughest penalty of all for a grave crime. It is the subject most discussed by modern penologists. It is not given for petty crimes as it was early on. The case of a serious crime is admitted. The notion and producer of punishment have evolved as society evolves. It is only granted under the Indian Penal Code in 'rare instances.'
2. *Life imprisonment:* For the remainder of his life, life imprisonment indicates that a person is held in prison. For those offenses in which punishment is given, this is one of the finest alternatives to the death penalty. There is a permanent life sentence, however, in the event of a portion of the sentences, Section 57 of the Indian Penal Code¹ would require twenty years.
3. *Imprisonment:* A jail is an act that places someone in jail or incarceration as a legal penalty in terms of a dictionary. There are three forms of incarceration and they are:
 - Rigorous detention: it denotes 'hardship,' generally speaking. In this kind of prison, the criminal is forced to do hard work or hard jobs in the prison, such as maize mixing, soil grabbing, water pulling, etc.
 - Simple prison term: The criminal is held in this form of prison simply and is not obliged to do anything but can be requested to labor with wages at his discretion.
 - Solitary confinement: it implies keeping a person isolated from any outside interaction. It varies from the notion that a sense of love may affect the offender's thinking, thereby changing his mind. The Indian Penal Code stipulates Sections 73² and 74³ for isolation.
4. *Fine:* Fine is in general the imposition on an accused of monetary responsibility as a result of his offense. Some crimes have an arrest penalty. The fine varies according to the court's orders.

¹ Indian Penal Code 1860, s 57

² Indian Penal Code 1860, s 73

³ Indian Penal Code 1860, s 74

5. *Forfeiture of Property:* The term forfeiture implies a loss or a surrender of property due to a breach of legal obligations and the phrase forfeiture indicates loss of property or money.

SAME CRIME, DIFFERENT PUNISHMENT

The punishment must be dependent on the personality of the criminals. The punishments cannot be based just on the nature of the crime committed. The identical crime committed may be done through a completely different crime category. However, the punishment must be suitable for diverse crime categories.

CASE

Nirbhaya Rape Case (2012 Delhi gang rape and murder):

Four people were convicted of rape and assassination. A juvenile was sentenced, by the Juvenile Justice Act, to a maximum term of three years in the reform institution, which enables kids 16 and older to be tried as adults in connection with abominable crimes such as violation and killing. Horrible offenses are those punished by seven or more years' imprisonment. The Bill requires establishing Juvenile Justice Boards and Child Welfare Committees in each area and the rest were judged to be guilty and condemned to death one day after the event. In the present case, they are all the same offense, yet in a reform institution and another death punishment, the child is convicted of three years' imprisonment.

The Intention: The purpose is a mindset that must be associated with the crime itself. The general aim, particular intention, the constructive intention may be categorized into three categories. The purpose is a key factor in the punishment of crime. If someone performs an act that kills somebody but does not intend to kill that person and if the motivation of a person is just to kill a person. Only a difference of purpose exists in both conditions. Then, everyone's behavior but with distinct objectives should have differing punishments.

Background: The defendant's criminal history and the aggravating factors enable the court to decide how long each defendant is in jail. There are several elements in the sentencing process.

Everything is set up case by case. The facts of all crimes, including those with the same charge, with the same crimes, are different, every criminal is distinct. Although the accusations may be the same, circumstances might make one harsher than the other in each situation. In a situation that is lacking in others, there may also be mitigating conditions. Uncertainty and indeterminacy in judicial decisions

Justice Stewart distinguishes between every type of crime. It is unusual, in its complete irrevocability, and in its refusal to rehabilitate the convict that is the fundamental aim of criminal justice punishing death that is completely lawful in India. Punishment not in the degree, but in nature. Where the highest punishment is provided by as many central and State laws without providing how the punishment may be imposed following Section 354(3)⁴ of the code of criminal procedure, which emphasizes providing the Court with special motives while making an implicit death sentence as exceptional reasons that can be imputed in the case of the "rarest of rare" case.⁵

Bachan Singh vs the State of Punjab⁶

Facts: The appellant Bachan Singh was sentenced to life imprisonment for the murder of his wife. He and his cousin Hukum Singh and his family were detained by this Hukum Singh's wife and his kid after his release and objected to the appellant being in their home. After he had been sentenced to prison.⁷ Just a few days before this event, at midnight, Vidya Bai was alarmed and the appellant was struck with axis blows on the face of her sister. When the appellant Vidya Bai was attempted, she was struck in her face, ear, and axis injuries made her comatose in her face and ear. Diwan Singh who slept from a distance awoke and raised an alarm to rouse Gulab to sleep at a distance. When a Desa bai-axled appellant saw him, they both rushed to stop him. The appellant left the axis and rushed away to notice them approaching near him. He was given a pursuit by Diwan Singh and Gulab Singh, but could

⁴ Code of Criminal Procedure 1973, s 354(3)

⁵ *Ibid*

⁶ *Bachan Singh v State of Punjab* [1980] SC 898

⁷ *Ibid*

not seize him. Later, under Section 302,⁸ for killing Desa Singh, Durga Bai, and Veteran Bai by the judge, Bachan Singh was tried and convicted of death. The Supreme Court affirmed the judge's death sentence and rejected the appeal. The issue presented in the appeal was whether his facts were 'special grounds' for the granting of the death penalty to him, as required by Section 354(3) CRPC, 1973, Bachan Singh was submitted by Special Leave to the Supreme Court.

Issues:

1. The fact is that under Section 302, Indian Penal Code, 1860, a death sentence was imposed on the crime of murder?
2. Whether the facts of the lower courts would be regarded as a 'special cause' in the application of Section 354(3) CRPC to grant the death penalty?

Judgment: The Constitutionality Challenges of Sec 302 IPC and 354(3) CRPC have been decidedly rejected by the Supreme Court. In addition, the Court stated that under 19(1)⁹ there are no absolute rights to the six essential rights protected. The rights of one member of civil society to exercise his or her rights so as not to infringe or harm comparable rights of another member are inherently restricted (*sic uteri tuo ut alienum non-laedas*). It was also made extremely plain by the Court that the powers of the state to place reasonable restrictions on the exercise of citizens' rights are specifically covered by Article 19(2)¹⁰, 19(3)¹¹, 19(4)¹², 19(5)¹³ &(6)¹⁴. The Constitution also gives several additional pieces of evidence that the Constitution fully understands the presence of the death sentence for murder and certain other crimes inside the IPC of 1860.

⁸ Indian Penal Code 1860, s 302

⁹ Constitution of India, art 19(1)

¹⁰ Constitution of India, art 19(2)

¹¹ Constitution of India, art 19(3)

¹² Constitution of India, art 19(4)

¹³ Constitution of India, art 19(5)

¹⁴ Constitution of India, art 19(6)

In the extraordinarily severe circumstances, "specific reason" in section 354(3) of the CRPC indicates extraordinary grounds "which are based on the imposition of the death penalty or an alternative life sentence. In imposing the death penalty, the supreme court established the notion of a "very exceptional case." Those convicted of assassination and life imprisonment and the death penalty are an exception.

Machhi Singh vs the State of Punjab¹⁵

In and around 5 villages in Punjab, India a series of assaults were carried out during the night of 12 August 1977. Machhi Singh, a local guy in the feud of another man, Amar Singh, and his sister Piaro Bai, planned and carried out the attacks. The victims of these attacks were all members of the Amar and Piaro families, and Machhi Singh was the perpetrator of the atrocity. Seventeen persons were slain and Machhi Singh and some of his close friends were apprehended thereafter.¹⁶ He was put on trial for assassination, for violation of law and order following the arrest of Machhi Singh, together with several other individuals who participated in the assaults. There have been ongoing arrests and numerous offenses have been brought to trial by the 11 affiliates of Singh (several of them were close cousins). There have been five sessions of cases, all of them identified as the principal defendant with Machhi Singh. Nine individuals were convicted to life imprisonment by the end of the first round of judicial procedures in 1980, and Machhi Singh and three others were condemned to death. When the prisoners were condemned to death, the High Court of Punjab and Haryana lodged fourteen appeals. The Court dismissed these challenges and hence affirmed the death punishment. Singh and the three other convicts, Undeterred, requested special permission to hear an appeal from the Supreme Court of India. This was agreed, and in 1983 Machhi Singh versus. State of Punjab's appeal procedure started. The judgment of the Court stated that the death penalty must not have been reversed, as crimes are violent, destructive, and unbelievable enough to merit the death punishment even though crimes have been committed for settling the disagreement. In issuing this decision the law tested that "the rarest" situations where the offense or the reason behind it was exceptionally harsh should be subject to the death sentence.

¹⁵ *Machhi Singh v State of Punjab* [1983] SCR (3) 413

¹⁶ *Ibid*

The case's "rarest of rare" legal precedent became the basic guideline for Indian courts to issue the death punishment once the case was brought up.

Santosh Kumar Satish Bhushan Bariyar vs the State of Maharashtra¹⁷

Facts: This appeal was brought based on a Common Judgment and Conviction of Bombay High Court and three Connected Appeal Procedures¹⁸; one by the State and another by the accused, which reaffirmed and accepted his reference to Santosh Kumar Satish Bhushan Bariyar (Appellant in Criminal Case No., 1973, according to section 366¹⁹ of the Code of Criminal Procedure). The Court granted leave in the case.

Issue:

1. Whether the Judge behaved unlawfully to award forgiveness to the approver?
2. Is it possible to say if the situation at hand is an 'unusual case?'

Judgment: The Supreme Court of Hon'ble has noted in its first question that, after recording its reasons and searching for information on how forgiveness is obtained in Canada, the Magistrate can provide the approver for forgiveness. The condition referred to in Section 307²⁰ is that the person in whose favor the forgiveness is offered should, in his knowledge, provide complete and true disclosure of all the facts in sub-section (1) of section 306.²¹ The Ld. Judge's power is not conditional on anything else specified in the law. The powers of the Judge at the Ld. Sessions should be separate from the provisions of Article 306 of the Code.²² Only after the confessional declaration made by the approver the Ld. The Sessions Judge did not pass the order at once. However, before acting on the forgiveness of the investigating officer, he had

¹⁷ *Santosh Kumar Satish Bhushan Bariyar v State of Maharashtra* [2009] 6 SCC 498

¹⁸ *Ibid*

¹⁹ Code of Criminal Proecedure 1973, s 366

²⁰ Code of Criminal Proecedure 1973, s 307

²¹ Code of Criminal Proecedure 1973, s 306(1)

²² Code of Criminal Proecedure 1973, s 306

used his thinking by asking him the appropriate questions. The order was therefore considered legitimate and valid.²³

After registering adequate grounds, the Court decided that the power of the Judge is independent of the requirements in Article 306. Furthermore, the Court is obliged to take equal consideration of both aggravating and mitigating elements in the application of the unusual rare case concept and to conclude them thereafter.

A notion that be not an absolute norm for its unchanging applicability, *Bachan Singh v. Punjab State*. In this instance, three judges' bench who use 'balance sheet' to compare the 'aggravating' conditions and mitigating 'mortality,' i.e., the harm or wrong done, the pain or suffering inflicted, have discussed, and described the same in detail and concretely.²⁴ *Macchi Singh* disseminated the factors in the jurisprudence on the death sentence throughout the evolution of the balance sheet test. What might be the uncommon crime of rare crime, today society looks to be all normal, and yet stricter legislation established by the legislature hardly stops happening. The scandalous crime against women. This means that the solution is not 'hang the assassin and therapists and we will discourage any future crime.' In *Santosh Kumar Bariyar vs State of Maharashtra*,²⁵ the death penalty is irrevocable; from the ruling of the Supreme Tribunal according to incuriam, it is most obvious that provision is given for judges which have incurred in the case of *Bachan Singh*,²⁶ 13 death sentences confirmed by incursion.

ROLE OF ADEQUATE PUNISHMENT IN SOCIETY

Kalidas 1 highlighted punishment for offenses as part of his description of the characteristics of Raghuvanshi kings. All individuals are subject to punishment, and the penalty protects them alone. In the perspective of sages, penalties are Dharma when they are sleeping. It makes all people pleased if punishment is correctly imposed after adequate deliberation. The penalty of a crime must be based on the seriousness of the offense and the person of the offender. A good administration of criminal justice is a crucial part of awarding just punishment.

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Santosh* (n 17)

²⁶ *Bachan Singh* (n 6)

The five purposes of adequate punishment in society: -

1. **Specific and General deterrence:** Deterrence avoids future crimes by terrorizing the defendant or the public. The two forms of dissuasion are broad and specialized. The defendant is subject to specific deterrence. Theoretically, the government is less willing to conduct another crime if the individual defendant is punished for fearing another comparable or harsher penalty. The public is subject to general deterrence. The general population is less inclined to commit a crime when they learn about the penalty of the individual accused because they are afraid of the punishment the accused has suffered.
2. **Incapacitation:** Disability prevents future criminality by the removal from the society of the defendant. Examples of disability include imprisonment, domestic arrest, or death sentence execution.
3. **Rehabilitation:** Rehabilitation avoids future crime by changing the conduct of the defendant. Education and vocational programs, location of treatment centers, and counseling constitute examples of rehabilitation. Rehabilitation and imprisonment can be combined with probation or parole. For example, some countries need rehabilitation, along with probes, to include non-violent drug offenders instead of putting them in jail. This reduces the burden of incarceration and reoffending while reducing recurrence.
4. **Retribution:** Retribution prevents future crime via the abolition of a desire for personal vengeance against the defendant (such as assault, battery, and criminal murder). In discovering that the accused has been punished for a crime, victims or society are convinced that our criminal system works efficiently and builds confidence and confidence in law enforcement and our government.
5. **Restitution:** Restitution avoids future crime by financially penalizing the defendant. Restitution is when the Court commands the criminal accused to compensate the victim for any losses and resembles an award for damages to civil litigation. Repayment may be for bodily injury, property or money loss, and seldom emotional suffering. It can also cover some of the costs of the prosecution and penalty.

CONCLUSION

The punishment problem is mainly the conflicting claim of these various techniques. Infringements are committed because a conflict between the actual or obvious interests of the offender and the general public is nevertheless unrelated to punishment. There is no difference in punishment; a penalty may also apply for moral reasons, especially religious ones. For most offenses, the law normally allows for several penalties. The range enables the court to potentially apply a penalty that is proportionate to the circumstances of the crime, such as the offender's age, and criminal record, the presence of elements that aggravate and mitigate how the crime is regarded by society.