



SATHYABAMA

INSTITUTE OF SCIENCE AND TECHNOLOGY
(DEEMED TO BE UNIVERSITY)

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**SCHOOL OF LAW
DEPARTMENT OF LEGAL STUDIES**

PENOLOGY & VICTIMOLOGY-SAL1053



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UNIT 1 – PENOLOGY & THEORIES OF PUNISHMENT

Dimensions of Crime in India -Definition of penology-Theories of punishment-classical Hindu and Islamic approaches to punishment-Capital Punishment-Law reforms proposals- Criminal Justice System.

Introduction

Penology is a multi-disciplinary subject that aims for the study and evaluation of the application of penal laws onto the wrongdoers. It broadly explains the justification, characteristics, and effectiveness of punishment in its various forms. In other words, it is a systematic study of different facets of punishment and its impact on crimes, criminals, and society. As a matter of fact, penology owes its origin to Cesare Beccaria, the classical school of criminology. This Italian criminologist argued that justification of punishment must be to deter potential criminals, and not merely to punish the offender. Later, it was during the end of the 19th century that

different theories of punishment were propounded focusing on the aims and objectives of the punishment.

Scope

The scope of penology is vast and hence it becomes difficult to define the same. Penology is almost seen in every aspect and type of punishment for the crimes and offences. To limit the scope we have to study basically all the aspects of penology, where all the things are explained in their wider senses.

Modern penologists lay greater emphasis on the rationalism of punishment. The penal policy should be more reformation oriented rather than coercive penal sanctions. As Lewis Gillin (1871-1958) rightly observed:

“The criminal is the product of his biological inheritance conditioned in his development by the experiences of life to which he has been exposed from early infancy up to the commission of a crime. By studying the offender in every possible way, the modern penology promises to throw light on his conditioning and arrive at a diagnosis of the factors entering into each individual case. From the standpoint of penology, it attempts to adapt the treatment of each offender in accordance with the diagnosis obtained by the scientific study of the criminal.”

Adopting a similar approach to penology, the Supreme Court in *Santa Singh v. State of Punjab*, observed that “penology regards crime and criminal as equally material when the sentence has to be awarded. It turns the focus not only on the gravity or nature of the crime but also on the criminal and seeks to personalize the punishment so that the reformist component is also many operatives as the deterrent element. A proper sentence is an amalgam of many factors such as nature of the offence, circumstances, previous record of the offender, his age, education, employment and family background, the possibility of social adjustment and reformation, etc.”

Relationship between penology and victimology

It must retreat that criminology is one of the branches of criminal science which is concerned with the social study of crimes and criminal behaviour. It aims at discovering the causes of crimes and effective

measures to combat it. Penology deals with care, custody, treatment, prevention, and control of crimes as also the various modes of sentencing and rehabilitation of criminals. The primary concern of victimology is to seek justice for victims of crime who are faced with multiple problems. It deals with the rights and claims of victims of crime and their dependents. The focus is on mitigating the sufferings of crime victims and providing them with compensatory and other reliefs.

The policies which are postulated by these three branches i.e., criminology, penology, and victimology are implemented through the agency of criminal law. Broadly, all these taken together constitute the subject-matter of criminal science.

Approach of penology

Like in criminology, penology may also be approached from various points of views. These may be denoted as Administrative Penology, Scientific Penology, Academic Penology, and Analytical Penology.

Administrative Penology

The administrative personnel employed for custodial functions in prisons ought to be capable persons conscientious of their responsibility to the society. They must be well-educated and imparted entry-level training before taking the job. Services of psychologists, social workers, and media persons should be availed for assisting the prison authorities in carrying out their correctional programmes. Prison guards and jail supervisors owe a special duty to keep the inmates under control and special vigil on prisoners who have no loyalty to the prison.

Scientific Penology

Individualization of prisoners should be the object of privatization and the effectiveness of rehabilitative techniques is essentially dependent on relaxing the custodial and disciplinary conditions keeping in view the personality needs of each inmate. The services of therapeutic specialists may be used for scientific corrective treatment of inmates in prison. The prison environment should be corrective rather than punitive.

Academic Penology

Academic penology is basically descriptive in character, and its main purpose is being the dissemination of penological knowledge. It limits itself with the theoretical knowledge of penology.

Analytical Penology

It aims at ascertaining as objectively as possible, the adequacy of existing penal policies and methods and suggests measures for improving the system. Thus, it makes a critical analysis of penal measures and offers solutions for the efficient administration of penal justice.

The basic principle underlying the modern penology is that the sentences awarded ought to be proportionate to the gravity of the offence. In operating the sentencing system, the law should adopt the corrective machinery or deterrence based on the factual matrix of the case. The nature of the crime, the manner in which it was planned and committed, the motive of the commission of a crime, the conduct of the accused, the nature of the weapons used, and all other attending circumstances are relevant facts which should be taken into consideration before sentencing the accused. The court must not keep in view the rights of the victim to the crime but also the society at large while considering this imposition of an appropriate sentence. Awarding inadequate sentences out of uncalled for sympathy for the accused would do more harm to the justice system and undermine the public confidence in the efficacy of the penal system.

Caution against excessive reformation

Despite the fact that traditional methods of deterrent and retributive justice have fallen into disuse and they are now substituted by modern reformatory measures, it must be stated that excessive reformation is likely to defeat the very object of penology. If the difference between life inside and outside prison is narrowed down beyond a certain limit, it is bound to culminate into catastrophic results. The element of deterrence is as necessary for any penal program as reformation; otherwise, the very purpose of punishment will be defeated. It must be realized that the ultimate control and prevention of crime depends on the proper utilization of criminological knowledge to the needs of society.

This accounts for the emerging importance of applied criminology in recent years. The focus of attention should therefore not only be the offender or his criminal act but the interest of society in general and the rights of the victim, in particular, which must be protected at all costs. It

is only then that the real objective of penology would be accomplished. A balanced penal program justifying deterrence when it is absolutely necessary and reformation as a general model of treatment of offenders would perhaps be the best policy to achieve the desired ends of criminal justice administration.

Justice must be prompt, stern, and summary inspiring a wholesome fear in the criminal. It must not be forgotten that the protection of society against crime and criminals is far more important than the personal gain of the individual offender in committing a particular crime. Therefore, it is the offender who must suffer in the larger interests of the community. Then only the real ends of penal justice can be accomplished. It must be remembered that punishment presupposes an offence and the measure of punishment must not be lesser than the offender deserves. It must be recognized that there is a strong and wide-spread demand for retribution in the sense of reprobation.

It may have retreated that the faith and philosophy behind the administration of criminal justice is the attainment of social justice and not individual justice. Therefore, a blatant shift to reformation cannot be accepted as our constitutional creed. Commenting on this aspect of penal justice, Justice Gulab Gupta, a former judge of the High Court of Madhya Pradesh pointed out “if reformation, in fact, benefits the society, the conscience of social justice would be satisfied but if the reformation accrues to the benefits of the individual alone, social justice would remain suffocated. Let this not happen even unwillingly or unknowingly.”

The active participation of the people in the implementation of the correctional penal program may be helpful in exercising effective control and supervision over the offenders. Since the criminal is the product of the community is for the community to devise ways and means to solve this problem. The Nyaya Panchayat system representing community justice may perhaps play a significant role in this sphere. The Lok Adalats which are meant for quick and cheap justice may also go a long way in accomplishing the objective of social justice. The statutory recognition given to Lok Adalats by the Legal Services Authorities (Amendment) Act, 2002 is indeed a progressive step in this direction.

Above all the impact of information technology and its widening dimensions have to be recognized by the legal fraternity, particularly those who are concerned with the administration of criminal justice. The courts, advocates, academicians, law teachers, and even the litigants have to acquaint themselves with the use of the developed and developing tools and technologies to meet the demands thrown up by numerous statutes and litigation explosions.

The computerization of courts, offices, law-chambers, and libraries, a listing of cases, judgments, etc. has rendered it possible to make the necessary information instantaneously available. Thus, it will greatly help in plugging the loop-holes of the existing criminal justice system and expose and destroy inefficiency, unfairness, and injustice which have crept into the administration of criminal justice. The efforts that are being made in recent years to switch over to e-courts with e-governance for e-justice would certainly go a long way in restoring the confidence of the people in the criminal justice system which lost its credibility being too expensive and dilatory. The development of ADR mechanism Lok Adalat's plea-bargaining and setting up of the Fast-Track Courts are some of the measures which certainly help to strengthen the cause of the criminal justice system in India.

Recent development

According to the modern view, lawbreakers can be deterred by harsh penalties as a cost of breaking the law. It has been generally observed that developing countries like India focus more on penalties rather than their effective implementation. The weak implementation of laws and harsh punishments lead to a culture of public and private violence, lawlessness and impunity, as can be observed in India today.

The laws relating to social policies such as Article 377 on homosexuality or beef bans and prohibition laws, which are gaining popularity all over the country are accompanied by over-strict penalties. Even in non-prohibition states like Delhi, the possession of a few cases of beer, or a collection of more than nine bottles of single-malt whiskey, could land one to a jail term of three years. Added to the list in upholding criminal defamation under section 400/500 IPC. Defamation is essentially a civil wrong that was criminalized during the British period when duels aimed

at defending honour and reputation posed a threat to public order. The need of the hour is that India should improve the delivery of speedy justice in civil defamation cases, instead of retaining criminal defamation.

Conclusion

Some penologists have suggested that punitive reaction to crime varies and fluctuates in accordance with the phase through which a particular society or nation is passing. For instance, during the periods of revolution or war, the use of death sentence, banishment, solitary confinement, confiscation of property, etc. as punishment may be extensively used, but the same may not be justified in periods of peace and tranquillity. In the Indian context with the incidence of terrorist attacks rising unabated, the death penalty for terrorists may be fully justified though it has to be used in rarest of rare cases. Similarly, the widespread corruption at all levels, particularly, among the high placed bureaucrats, politicians, corporations', etc. fine to the tune of lakhs of rupees accompanied but the confiscation of ill-gotten wealth as a punishment would be more appropriate rather than incarceration, and perhaps, ostracization of such culprits would be more effective.

Commenting on the prevailing criminal justice system in the country, the Chief Justice of India, Justice P. Sthasivam, while speaking on the occasion of National Legal Services Day (on 6th November 2013) observed that "justice is still in a cynical phase for the common man despite efforts being made to make it accessible. Endorsing his views, Justice G.S. Singhvi in his address to the legal fraternity said that," it is time to ponder whether in 65 years we have been able to achieve the goal to provide justice for people and whether we have created an atmosphere where everybody has equality of opportunity and status for people. According to him, "Justice was still an illusion for millions of people in the county and it is not accessible to a majority of the population." The plight of the victims of crime needs to be on the priority list of courts and law adjudicators.

HINDU AND ISLAMIC APPROACHES OF PUNISHMENT

Introduction

Man has passed from the stages of being uncivilized to becoming a social being. There are many factors responsible for promoting man for this

change, one of which is common fear and reciprocity. Over time, man has become more and more social which resulted in the increase of moral restraints on his interaction with the society. Whenever a man acted in an unrestrained or unsocial manner, he came in conflict with others and in order to do away with such conflicts many rules and regulations enforcing various kinds of punishments came into being.

Earlier when there was no criminal law to govern the society, people were under a constant threat of being attacked at any time by one another. The weak, the young and the old were easily dominated and overpowered by the strong and the powerful. However as time advanced, societies became more integrated and various norms came into practice, whose violation resulted in punishments and penalties such as: compensation, death penalty, banishment, mutilation etc. With the rise of the humanitarian aspect in penal philosophy fines, forfeiture, confiscation of property and imprisonment to life became common forms of punishment meted out for almost all offences in many parts of the world.

Historical Perspective Of The Punishment System

“Punishment governs all mankind; punishment alone preserves them; punishment wakes while their guards are asleep; the wise considers punishment as the perfection of justice”

Proverb by Manu

From the earliest times, punishment of offenders was a private matter. Punishment was basically based upon the principle of ***Lex Talionis***. It is a principle that states that the victim or a member of the victim's family retaliates against the offending party as a remedy for personal wrongs, i.e. **an eye for an eye**. In many instances, personal revenge was not only a right but also a responsibility. Every tribe, family and kin in every kind of society were obligated to avenge the harm caused to them and their family.

The Sumerian code and the code of Hammurabi are the earliest written criminal codes. These codes carry the harsh translation of '***lex talionis***' but further specify the concept of '***equality on revenge***', meaning that the severity of retaliation must be equal to the severity of offence or amount of retaliation must fit the crime.

Mythological Perspective of Punishment

It is believed in many religions that an individual's ultimate punishment is being sent to hell by God who is the highest authority that upholds justice. Hell is considered to be a place which exists after the life of a person, corresponding to the sins committed during his/her life. In Plato's '*Myth of Er*' and Dante's '*Divine Comedy*' it is said that in hell, damned souls suffer for each of the sins that they committed. In many religious cultures including Christianity and Islam, hell is traditionally depicted as a fiery and painful place where souls are punished.

In Hinduism, Garuda Purana is considered to be a set of instructions given by lord Vishnu to his carrier, Garuda (king of birds). This version of Garuda Purana that survives into the modern era was written somewhere between 800 to 1000 CE. It deals with law, astronomy, medicine, grammar, gemstones, etc. It is also known as **Vaishnava Purana**. In this Purana, different offences were defined and their respective punishments prescribed. **Indian Jurisprudence Under Hindu Kings**

Under Ancient Hindu kings, there was an administration of civil and criminal justice which was done according to the rules of the Dharma Shastras. In ancient Hindu law, laws were discussed under 18 heads covering both modern civil and criminal branches of law which fell under heads such as gifts, sales, partition, bailment, non-payment of debt, breaches of contract, disputes between partners, assault, defamation, trespass of cattle, damage to goods and bodily injury in general.

A Hindu code was compiled by the Pandits of Banaras at the instance of Warren Hastings when he was governor general of India. It was known as the **Gentoo code** which was printed by the East India company in 1776 in London. It provided that the penalty for theft be divided into open theft and concealed theft and different punishments were prescribed for them according to Roman Law. The former was punished by fine and the latter by the cruellest form of punishment of cutting off the hand or foot, at the discretion of the judge. Death punishment was also given for crimes like housebreaking and highways robbery.

Unequal And Discriminatory Punishment System in Ancient India

During the ancient Indian period there was a clear distinction made between the people of higher and lower castes while imposing

punishments. Kautilya's Arthashastra prescribed lower punishment to higher caste offenders and more severe punishment to lower caste offenders. According to him, a brahmin is not to be tortured like other people even though he may have committed an offence; they were also exempted from death penalty.

For example: A Kshatriya who commits adultery with a woman would be punished with the highest punishment, while a Vaishya doing the same thing would be deprived of his entire property and a Shudra would be burnt alive.

During that time the powers of the judge were also very limited and kept in check. According to Kautilya a judge or a magistrate, who imposes an unjust fine shall be fined either double the amount or 8 times over the prescribed fine. If he imposes corporal punishment wrongly, he shall himself suffer the same.

Forms Of Punishments Under Hindu Code of Law

The history of the penal system states that in the past punishments were torturous, cruel and barbaric in nature. The objectives of such punishments were to create deterrence and retribution. Such punishments were classified under the following heads:

1. Capital Punishment
2. Corporal Punishment
3. Social Punishment
4. Financial Punishment

Capital Punishment

Capital punishment is an authorized killing of someone in a legal manner as a punishment for the crime committed, such as a death penalty. In other words, it means a government has itself sanctioned a practice where a person is put to death by the state as a punishment for a crime. In Ancient India, capital punishment was a very common practice. It was the most extreme form of punishment and the methods of meting out this punishment varied from time to time. Some of those methods were:

Stoning: 'Stoning' is that method of capital punishment in which a group of people throw stones at a person until he dies. In it, the guilty person is made to stand in a small trench dug in the ground and the people surround him from all sides and throw stones on him until his death. This mode of

punishment is still meted out in some of the Islamic countries, especially in Afghanistan, Saudi-Arabia etc.

- **Pillory:** In '**Pillory**', the offender was compelled to stand in a public place with his head and hands locked in an iron frame so that he couldn't move. Then he would be whipped, branded or stoned, or his ears would be nailed to the beams of the pillory. Sometimes, dangerous criminals were nailed to the walls and were then shot or stoned to death. It undoubtedly was a very cruel and brutal form of punishment which was in practice till the 19th century.
- **Immurement:** In it the offender was constructed into a wall. It was the most cruel, barbaric and the most painful form of execution of a death penalty.
- **Execution by elephant:** Under this punishment, the offender was thrown under the feet of an intoxicated elephant, to be painfully crushed to death.

Corporal Punishment

Corporal Punishment simply means a form of punishment which is intended to cause physical pain on a person. It is also known as physical punishment. This form of punishment is for the violation of a law which involves infliction of pain on or harm to the body of the offender. The objective behind corporal punishment is not only to punish the offender but also to prevent the repetition of the offence by the offender or by any other person. The following are the corporal punishment which were meted out in ancient times:

- **Flogging:** It simply means '**beating or whipping**' someone with a stick or whip as a punishment. It was the most common method of meting out corporal punishment to offenders. In India, it was recognized under the Whipping Act, 1864 which was repealed in 1909 but was finally abolished in 1955. The method of flogging differed from country to country. Some used straps and whips with a single lash while others used short pieces of rubber hose since they leave behind traces of flogging. It was one of the most barbaric and cruel forms of punishment. This method is being used in most of the Middle East countries even today.

- **Mutilation** : Generally it means ‘**to cause severe damage to the body of a person**’. In other words it means damaging a person severely, especially by removing a part of the body. This mode of punishment was in practice in ancient India. During that period one or both of the hands of the person were chopped off if the offender committed theft, if he indulged in sex offences, his private parts were cut off, if he told a lie or criticized God his tongue was cut off, and if he was deceitful or untrustworthy his ears were cut off. This system was also in practice in the European countries. But in modern times this method has been completely disregarded because of its barbaric nature.
- **Branding** : It means ‘**searing of flesh with a hot iron**’. In this method of punishment, the culprit was branded by hot iron on the forehead with the words describing his offence. This method was commonly used in classical societies. In Roman Penal Law, criminals were branded with appropriate marks on their forehead so that they could’ve been identified and subjected to public ridicule. In India it was in practice during the Moghul rule, which has been completely abolished.
- **Pressured by iron rods** : In this method of punishment the body of the offender was pressured by two iron rods in a very inhumane and cruel manner where he suffered a lot of pain.
- **Imprisonment** : The Punishment of imprisonment which is seen today is totally different from the kind of imprisonment which was awarded in the past. Many kingdoms awarded the punishment of imprisonment by shackling the hands and legs of the culprit and throwing them down a dry well or in a small dark room.

Social Punishment

Social punishment is a punishment in which a person is restrained from making any kind of contact with any other person, or is moved to a distant place, breaking all of his social connections. No person can extend any help of any sort and if anyone tries to do that, they are held liable for punishment. Social punishment wasn’t aimed at inflicting any bodily pain, but a psychological one. This form of punishment was divided into two parts :

- **Banishment** : Banishment means ‘**to expel a person**’. It is also known as ‘**transportation**’. In this form of punishment, undesirable criminals were transported to far off places with an aim to isolate them from the society. This type of punishment was also in practice during the British rule in India. It was popularly known as ‘**kalapani**’. At that time, people deemed as ‘dangerous criminals’ were transported to remote islands. This practice was abolished in 1955 and was replaced with “**Imprisonment for life**”.
- **Social Boycott** : Social Boycott means ‘an act of forcing a person to abstain from any kind of contact with other people of the society’. In ancient times, the nyaya panchayat in villages used to give the punishment of social boycott to offenders. Under this punishment, no person of the village was allowed to share any occasion of joy and happiness with the offender. In other words the offender was degraded from his caste and no caste member was allowed to come into contact with him. For example in those times smoking ‘**Hukkah**’ was considered as one of the means for social gatherings and acceptance by the society. But offenders were not allowed to participate in smoking ‘**Hukkah**’ with the rest of the people, thereby boycotting them. This was termed as stopping a person’s ‘Hukkah-Pani.’

Financial Punishment

It is also known as imposition of fine. It was the common mode of punishment which was not serious in nature and it was awarded specially for the breach of traffic rules, revenue laws and other minor offences. It also included the payment of compensation to the victims of the crime and also the payment of the costs of prosecution.

Ancient Mohammedan Jurisprudence

The criminal law practiced in northern and southern parts of India was the Mohammedan law, which was introduced by the Moghul conquerors whose power culminated under Akbar in the second half of the sixteenth century. The most authoritative written exposition version of the Mohammedan Jurisprudence in India was the Hidayah, which expresses the views of Aboo Huneefah and his disciples Aboo Yousuf and Imam Mohammed who were regarded by the Sunni sect of the Muslims as the

principal commentators on the Quran. The Mohammedan criminal law as stated in the Hidayah presents a curious mixture of great vagueness and extreme technicality. The Mohammedan criminal law was open to all objections. It was occasionally cruel. Thus, for instance, immoral intercourse between a woman and a married man was in all cases punishable by death.

The primary base of the Mohammedan criminal law was the Quran which was believed to be of Divine origin. But the laws of the Quran were found to be inadequate. Only eighty or ninety verses of the Quran talked about general rules which might come before a civil or criminal court of justice. Also under this system, the Sultan himself as a ruler exercised criminal jurisdiction over his subjects and accordingly sentenced the offenders to temporal punishments.

Forms Of Punishments Under Mohammedan Jurisprudence

The Mohammedan Jurisprudence had four broad principles of punishment. They were as follows:

1. Qisas or retaliation
2. Diyut or blood-money
3. Hadd or fixed punishment
4. Tazir and Siyasa or discretionary and exemplary punishment

Qisas or Retaliation

The principle of Qisas states, '**an eye for an eye, life for a life, and a limb for a limb**'. Under this principle, crimes called Jinayat were also included. The qisas crimes were murder, manslaughter and any physical injury to another individual, intentional or unintentional. However the punishment of retaliation was classified under two heads:

- **Life Qisas-** If the intentional injurious act of the criminal causes the death of the victim, the heirs of the victim may take revenge and ask the judge for Life Qisa (death penalty).
- **Limb Qisas-** When the intentional injurious act does not cause the death of the victim, but rather the loss of a limb or its proper function, the victim, herself/himself, may take revenge or ask for Diya.

Diyut or Blood Money

The second form of punishment was called Diyut which meant the fine or compensation for blood in cases of homicide. The amount of Diya received for a murdered person and injury of different parts of the body is determined in Fiqh books; the Islamic jurisprudence compiled in books by different Islamic jurists. The punishment of Qisas in all cases of willful homicide was exchangeable with that of Diyut, if the person having the right of retaliation wished so. He was given an alternate remedy either to take Diyut or Qisas as a form of compensation.

Hadd or Specific Penalty

The third principle of punishment under the Mohammedan law was called Hadd which is defined in the Hidayah, which comprises the specific penalties fixed to promote public justice. Under Hadd the quantity and quality of punishment was fixed for certain offences and this could not be altered or modified. If the offence was proved, the Qadi had no other alternative but to sentence the convict to the prescribed punishment. But Hadd could not be executed if there was any doubt, or legal defects and then the Sultan was directed to administer the law with moderation. The punishment of Hadd also extended to the crimes of adultery, of illicit sexual intercourse between married or unmarried individuals, on false accusations, drinking wine, theft and of highway robbery.

Types of Hadd Punishment Given for Different Crimes

- **Whipping** is the Hadd punishment for adultery, sapphism, procuring, sexual defamation and drinking alcohol. Maximum amount of Hadd lashes is 100 lashes. Some offences receive 80 lashes and the minimum amount is 75 lashes.
- **Amputation** form of punishment is given for burglary, rebelling and doing corruption on earth. The perpetrator of rebellion was punished either by maiming of his/her hand and foot, crucifixion for three days, banishment or death.
- **Death Penalty** is given for crimes such as sodomy, rape and incest. Death penalty is considered as the most cruel and sadistic form of punishment given in those times. There are still many Islamic countries which encourage the practice of death penalties.

- **Lapidation or Stoning** was the punishment for the offences of Zina, when legally established against a man of sound understanding and mature age, being a Musalman and free, and being married to a woman of the same description.

Tazir and Siyasa

Tazir and Siyasa were the discretionary and exemplary form of punishments, which rested completely on the discretion of the judge. Under Tazir, the punishment could be anything from imprisonment and banishment to public exposure. The Qadi was authorized to exercise discretion according to the nature of the offence, rank and situation of the offender in adjudging him to receive his punishment for the crimes he committed. At the discretion of Qadi, banishment was also allowed. Public exposure with a blackened face was expressly declared to be the punishment to be inflicted upon a false witness in addition to forty lashes. This general doctrine of discretionary punishment was clearly set forth in the preamble of Mohammedan law which states that “The Mohammedan law vests in the sovereign and his delegates the power of sentencing criminals to suffer discretionary punishment in the following three cases.

1. In the cases of offences for which no specific penalty of Hadd or Quisas has been provided by the law.
2. For crimes which are within the specific provisions of Hadd and Kisas and the proof of such crimes being committed may not be such as the law requires for a judgment of the specific penalties.
3. For repeated heinous crimes in high degree which causes injury to society at large and particularly other offences of this description that require exemplary punishment beyond the prescribed penalties.

Siyasa was also the same as Tazir which was meant to create an example by punishing dangerous criminals habitually committing atrocious crimes, and of whom there could be no hope of reformation. Therefore Tazir and Siyasa might in all cases be inflicted by the ruler upon strong presumption, whether arising from the credible testimony of such incompetent witnesses or from circumstances which raised a presumption of guilt or from any other reasonable cause.

Conclusion

From the above brief survey, it can be said that the punishment system during Ancient India was cruel and barbaric. The laws regarding punishment which existed both in Hindu and Muslim laws promoted harsh punishment following the principles of retaliation (Lex Talionis), deterrence and incapacitation giving less importance to restoration and rehabilitation theories. Also, punishment was discriminatory in the Hindu societies, handing out stringent punishment to lower castes. Most of the laws that existed in ancient times were a result of various religious interpretations ie, for the Hindus it was Manusmriti and Arthashastras and for Muslims it was Sharia and teachings of Mohammad. Due to following, the principles of religious offences were interpreted as evil incarnation, therefore harsh punishment were very common in those days.

There was no regard for human life and human rights, people believed that bodily pain and harm is the only way for rehabilitation. However, with the advent of British rule in India, new theories of law came into existence which evolved the definition and forms of punishment. Fines, compensation, confiscation of property became the most common form of punishment. Later on, an official criminal code of India was introduced which covered all substantive aspects of criminal law. The code was drafted on the recommendations of the First Law Commission of India established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay. This code came into force in British India during the early British Raj period in 1862, known as the **India Penal Code**. Since then many amendments have been made to it, bringing many significant changes into the theories and forms of punishment.

HISTORICAL PERSPECTIVE OF CAPITAL PUNISHMENT IN INDIA

Capital punishment or death penalty is the penalty of death for a person convicted of a serious crime. It is derived from the Latin word 'capitalis' which means 'of the head.' The penalty is so-called since centuries ago beheading was the most frequent form of punishment for serious crime. Among the current methods of implementing capital punishment are firing squad, electrocution, gas chamber and lethal injection, apart from

hanging by neck. From the study of history, we can see the prevalence of capital punishment since time immemorial. Right from ancient Indian period, thro' medieval period of India and as well as in modern India, capital punishment has been very much prevalent. The punishments are provided in order to deter crimes. The punishments are imposed to make the threat credible. Threats and imposition of punishments are obviously necessary to deter crimes. This material focus is on the extent of implementation of capital punishment in ancient India and medieval period and also examines trends and developments in India particularly in terms of the challenges in implementation of the Capital Punishment in modern India.

Capital punishment, often referred to as the death penalty, has been used as a method of crime deterrence since the earliest societies. Historical records show that even the most ancient primitive tribes utilized various methods of punishing wrongdoers, including taking their lives, to pay for the crimes they committed. Murder most often warrants this ultimate form of punishment. "A life for a life" has been one of the most basic concepts for dealing with crime since the start of recorded history. Early forms of capital punishment were designed to be slow, painful, and torturous. In some ancient cultures, law breakers were put to death by stoning, impaling, being burned at the stake, and even slowly being crushed by elephants. The prescription of punishment is a clear recognition of the principle that such offences are no longer a private affair between individual, but a matter between individual and state, a matter with which the whole society is concerned. Here we have the existence of the common principle to all ancient society that evil should be returned for evil. It is the dictum of an eye for an eye and a tooth for tooth.

ANCIENT PERIOD

In ancient India, punishments were generally sanctioned by the ruler. There were two main purposes for punishment in Hindu society. Incapacitation was the first purpose and was used to ensure that an offender would not be able to commit the same crime again. For example, the hands of a thief would be cut off. Deterrence was the second purpose of punishment. Criminals were punished to set an example to the public, in hopes of preventing future offenses. Although these were the two main

purposes of Hindu Law, other purposes such as rehabilitation were used as means of punishment and correction. Retribution is another theory of punishment; however, it does not have a prevalent role in Hindu punishment.

Types of punishment

In his digest, Manu cites four types of punishment: Vakdanda, admonition; Dhikdanda, censure; Dhanadanda, fine (penalty); Badhadanda, physical punishments. Later authors added two more types of punishment: confiscation of property and public humiliation.

Ancient India was not a safe place to live. Many groups of thieves existed already at the time of the Buddha (6th century BC). They were bandits from generation to generation, robbing and killing their victims like the thugs did later. These are professional bandit caste, but not only them, constituted an important problem: punishment of crimes and offences was then harsh.¹

Maurya Dynasty

The Mauryan administration is famous in history for its judicial system. The Mauryan legal system was based on idealism and not reformism. The king was the highest judicial officer. Penalties were imposed on those who break the law. Monetary fines were imposed for ordinary crimes. Capital punishment was practiced. During the rule of Chandragupta and his son Bindusara: the laws were harsh and the death penalty was applied to a myriad of offenses.

The Maurya Dynasty, which had extended to substantial parts of the central and eastern regions during the 4th Century B.C., had a rigorous penal system, which prescribed mutilation as well as death penalty for even trivial offences. Written in the 4th century BC by Kautilya, minister of the king Chandragupta Maurya, the “Arthashastra” is a treatise on the art of ruling and one of the main Indian books ever written. It recommends : cutting off the right hand for pick pocketing or theft; cutting off the nose

for theft; cutting off one hand for false dice player; cutting off the nose and ears for abetting in theft and adultery; chopping off one hand and leg for kicking preceptors and using royal coaches; blinding by poisonous ointments for sudras pretending to be Brahmins or for slandering the king; chopping off one hand or foot for freeing culprits, forgery or sale of human flesh; cutting off the tongue for slandering preceptors, parents and the king and for defiling a Brahmin's kitchen. There were also different forms of death: death with torture for murder in a quarrel; death by impaling for theft of royal animals; death by burning hands and skin for treason; death by drowning for breaching dams or reservoirs, for poisoning or for women who administered poison; death by tearing off the limbs of criminals, for women who administered poison or set fire to houses; death by burning for incendiarism.²

Guptha Dynasty:

Fa-hein (337 – 422) was the first of three great Chinese pilgrims who visited India from the fifth to the seventh centuries, in search of knowledge, manuscripts and relics. Fa-hein arrived during the reign of Chandragupta II and gave a general description of North India at that time. Among the other things, he reported about the absence of capital punishment, the lack of a poll-tax and land tax. The cruel punishments during the Mauryan Dynasty had been abolished. The government operated without the system of espionage often practiced by Mauryan rulers. Law breaking was punished without death sentences – mainly by fines. Punishments such as having one's hand cut off were applied only against obstinate, professional criminals. Gupta law was exceptionally generous.³

Vardhana dynasty:

The down fall of Gupta Empire formed into a number of small independent kingdoms in North India. One kingdom was at Thanesar

ruled by the Vardhana dynasty. Prabhakara Vardhana was the one who founded the Vardhana dynasty. He was the first king of the dynasty with his capital at Thanesar. After the death of the founder, his son Rajya Vardhana succeeded him. But, soon the enemies murdered him and then Harsha became the ruler of Thanesar in A.D. 606 and ruled up to A.D. 647. King Harsha left for the holy abode in the year 647 AD, after ruling over the Indian subcontinent for more than 41 years. The Vardhana Dynasty came to an end by the death of Harshavardhana. As he did not have any heirs, his empire rapidly collapsed into small states again. During his period, punishments were not so harsh and there was no death penalty.

MEDIEVAL PERIOD

The ancient law of crimes in India provided death sentence for quite a good number of offences. The great Indian epics, viz., the Mahabharata and the Ramayana also contain references about the offender being punished with vadhada (death penalty). During the medieval era, capital punishment was sentenced even for extremely trivial and inconsequential matter or in other words we can say that they were executed for minor crimes such as stealing, cheating or even trespassing. Also, the methods of administering death penalty were immensely harsh and gruesome. The punishment which was given to the accused can't be compared to the act which has been done by accused. Can you imagine someone getting executed for stealing a fruit from their landlord's tree? Or someone gets decapitated for shoplifting? Bizarre, it might sound, but such petty 'crimes' accounted for capital punishment during the medieval period. There were several hundred offenses which 'qualified' for death penalty. Once convicted of these ridiculous crimes, convicts were executed in the most heinous way possible. Some of these ways include, hanging, decapitation, burning at the stake, drowning, crucifixion, quartering by horses, stoning, strangulation, impalement etc. There are records of other violent and brutal execution methods being practiced in that era.

Capital punishments during various dynasties of Medieval Period:

The Medieval Period of Indian History comprises a long period, spanning from 6th century i.e. after the fall of the Gupta Empire to the 18th century i.e. the beginning of colonial domination.

Pallava Dynasty

Pallavas were a powerful Dynasties of Andhra Pradesh in Indian medieval history in the end of 500 AD.⁴ They ruled from its capital placed at Pallavapuri. For better administration, they moved it to Kanchipuram and established a more strong empire by the founder of pallavas Dynasty Simha Vishnu Pallava. The highest judicial organization was called Dharmasena. The king acted as its head. Punishments were not cruel and harsh. Fines were also imposed along with punishment.

Chola Dynasty

The Cholas dynasty was one of the earliest dynasties that ruled in South India. Vijayalaya (850-875) was the founder of the dynasty. The punishments for minor crimes were in the form of fines or a direction for the offender to donate to some charitable endowment. Even crimes such as manslaughter or murder were punished by fines. Capital punishment was uncommon even in the cases of first-degree murder. Only one solitary instance of capital punishment is found in all the records available so far. Crimes of the state such as treason were heard and decided by the king himself and the typical punishment in such cases was either execution or confiscation of property.⁵

The Chalukya Dynasty

The Chalukya Dynasties were in power of Indian medieval history from the reign of 600 to 1200 AD in the state of Deccan. There were separate

military and civil courts during the reign of Chalukyas. King was the highest judicial authority and gave his decision in accordance with conventions and on the advice of his ministers. All sorts of punishments such as imprisonment, exile, fines and sentence to death etc. were prevalent in his period.⁶

Pandya dynasty

The Pandyan Empire started around the 6th century and ended around the 15th century . The modern districts of Madurai ,Thirunelveli and parts of the Travancore State were parts of the Pandyan Kingdom . Punishments were severe unlike during Chola rule. Justice was administered free of charge, by special officers appointed as judges and magistrates, but the king was supreme and the final arbiter in all civil and criminal cases. The punishments were very severe and hence crimes were rare: one caught in the act of burglary, adultery or spying was given the death penalty and one giving false testimony would have his tongue cut off. If a debtor can't pay back his creditor and keeps making incomplete promises, and the creditor can draw a circle around the debtor, then the debtor cannot leave that circle until the debt is paid. If he does then he is punished with death. Corporal punishment was common and by modern standards barbarous. Instances of persons being tied to the leg of a buffalo bull and being dragged by the brute are not wanting as models of punishment. There was only tyrant king, GunaSundaraPandyanwho signaled his change of creed by outrages on the Jains. Tradition claims that eight thousand Jains were impaled.⁷

Delhi Sultanate Dynasty

A number of Delhi Sultanates were in power from 1210 AD to 1526 AD. During the Muslim period Islamic law or Shariat was followed by all Sultans and Mughal Emperors. The Shariat is based on the principles enunciated by Quran. Under the Muslim criminal law, which was mostly

based on their religion, any violation of public rights was an offence against the State. There were three types of punishments recognised by Muslim Law, Hadd, Tazir and Qisas. The penal code was severe in those days. Capital punishment and physical torture were frequently awarded as punishments like cutting of limbs driving nail into the body, pouring molten lead into the throat, beating with stones and such other inhuman punishments were common in those days. Death by elephant was most prevalent in those days. In 1305, the sultan of Delhi (Sunni Muslims) turned the deaths of Mongol prisoners into public entertainment by having them crushed by elephants. In the sultanate of Delhi, elephants were trained to slice prisoners to pieces “with pointed blades fitted to their tusks”. Such executions were often held in public as a warning to any who might transgress. The executions were intended to be gruesome and, by all accounts, they often were. They were sometimes preceded by torture publicly inflicted by the same elephant used for the execution.

Vijaynagara Dynasty

Vijaynagar Empire was established by two brothers Harihara and Bukka in the middle of 13th century. It continued for three centuries. Krishnadeva Raya was the best ruler of Vijaynagar Empire; He was always unbeaten in the wars throughout his reign. He always treated with the beaten enemy as a friend. During Krishnadevaraya period, crimes were less. Mild to severe punishments were awarded according to the crime. Death was the sentence for treason

Mughal Dynasty

Babur (1526 to 1530 AD), was the founder of the Mughal Empire in India. The judicial system of the Mughals was very similar to that of the sultanate. It became more systematic, particularly under Aurangzeb. Capital punishments and mutilations were frequent, and there are records of impaling, dismemberment and other cruel punishments. They were, however, limited in their incidence and were inflicted only under the royal orders. Furthermore, they were confined to those cases where an example

was to be made of the individual concerned. One famous punishment of the Mughal dynasty is crushing by elephants. Execution by elephant was a common method of capital punishment in India during later medieval period.⁸

MODERN INDIA

After the downfall of Mughal Empire, no empire was able to establish their rule in India. In the meantime, East India Company started their rule and started to occupy many regions forcibly. When once the British colonial rule was started, the British had taken control over the judicial system.

Making of Indian Penal Code- Historical Background:

The Charter Act of 1833, plausibly to achieve uniformity of laws and judicial systems in all the parts of British India, introduced a single legislature for the whole of British India. It made the Governor-General of India, for the first time, solely responsible for promulgating laws for all persons and the Presidency towns as well as for the mofussil. The Charter Act of 1833 also provided for the appointment of a 'Law Commission' for inquiring fully into, and reporting on, the state of laws in force in British India and the administration of justice. During 1834-36, the Law Commission, under TB Macaulay's supervision, prepared the Draft Penal Code. Thus, it is evident that the Indian Penal Code 1860, which is an outcome of vision, and laborious efforts of about three decades (1834 - 1860) of the law commissioners, particularly of Lord TB Macaulay, the main architect of the Code, emerged as a codified the then prevailing English criminal law.⁹

Provisions awarding Capital Punishment under Indian Penal Code:

The offences for which capital punishment is granted under IPC includes, waging War Against The Government Of India, (Sec. 121), aggravated Forms of The Offence Of Giving Or Fabricating False Evidence (Sec. 194), punishment for murder (Sec. 302), abetment of suicide of child or insane person (Sec. 305), aggravated form of Decoity (Sec. 396), kidnapping for ransom etc. (Sec. 364A). by the Criminal Law (Amendment) Act, 2013, capital punishment has been included for the offence of sexual assault also (Sec. 376).

Prior to 1955, under the old Code of Criminal Procedure 1898, Section 367(5) of the Code stipulated that the court had to give reason, if the sentence of death was not imposed in a case of murder. In 1955, sub-s 5 of Section 367 was deleted. The result of the deletion was that the discretion available to the court in the matter of the sentence to be imposed in a given case widened. The Code of the Criminal Procedure was further amended in 1973, making life imprisonment the normal rule. Section 354 of the new code, has now made imprisonment for life a rule and death sentence an exception, in the matter of awarding punishment for murder.

The constitutional validity of death penalty was considered by a Constitutional Bench of the Supreme Court in *Bachan Singh Versus State of Punjab*.¹⁰ Rarest of the rare doctrine was introduced in this case. The Supreme Court's ruling that death sentence ought to be imposed only in the 'rarest of rare cases' was expanded in *Machhi Singh Versus State of Punjab*¹¹ wherein it was held that life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime.

The recent executions broke with a trend of gradual abandonment of the death penalty. According to statistics, India had approximately 140 executions per year between 1954 and 1963. Between 1996 and 2000, this rate was roughly 1 execution per year. It is, however, interesting to note that despite the punishment being handed down by the courts, both the lower and appellate ones, not many have been carried out. According to official statistics, only one sentence, that of Dhananjoy Chatterji in 2004 was carried out since the execution of 'Auto' Shankar in 1995. After 8 years without executions, India carried out two executions in close succession in November 2012 (AjmalKasab) and February 2013 (Afzal Guru). Both prisoners had been convicted of taking part in terrorist attacks. In July 2015, Mumbai serial bomb blast convict YakoobMemon was hanged for his offence against the State. All other death sentences pronounced earlier have, in some cases, been reduced to life imprisonment and the in the other cases, are in Court for revision or before the President or Governor on the plea of mercy.

There are some main differences between the ancient and the modern Hindu law with respect to the death penalty. The first difference is that in classical India the death penalty was permissible in a very large number of cases. Second, the death penalty was not prescribed solely in cases in which death resulted or was likely to result. Instead, it was also used in cases such as adultery and theft. Third, there were numerous ways to inflict the death penalty, unlike modern India which uses hanging as their only means of imposing death. Fourth, in modern India the death penalty is an exception whereas in ancient India it was a rule. Fifth, today the underlying principle seems to be retributive while in classical India it was a means of deterrence. Lastly, today the law in relation to the death penalty is the same regardless of caste or colour. However, in ancient India Brahmins were never subject to the death penalty.

As of now, death penalty is good and serves a definite purpose of reducing crime as well as bringing justice to the criminals and innocent. In order to serve its purpose, it must be adjusted and made more effective and efficient.

THEORIES OF PUNISHMENT

The Critical Evaluation of the Different Theories of Punishment

Introduction

Punishment is a form of social control which helps the society to sustain its rules and regulations, not to mention the peacefulness of the lives of its inhabitants. Because of that reason if the wrongdoing is not controlled then it will create problem within the society and in the lives of people. In order to deal with the wrongdoing; and in this particular case, crimes, which can be said as the violations of law, we have the theories of punishment. The theories of punishments try to explain and justify punishment by their own viewpoints. There are mainly three theories of punishment which are the deterrent theory which tries to deter crimes by punishing the criminal, retributive theory which aims to attain retribution by punishing the criminal for his or her wrongdoing and finally reformative theory which hopes to reform the character of the criminal by inflicting punishment. Nevertheless, every one of these theories has their own merits and demerits.

Deterrent Theory of Punishment Deterrent theory of punishment is one of the theories of punishment. This aims at, according to Mackenzie “to deter others from committing similar offense” whereas Lillie describes it “when the judge makes example of some offender.” (Lillie, 1948, p. 253) Thus it is also preventive theory of punishment or exemplary theory of punishment. Similarly, it is thought that “Punishment is said to have a deterrent effect when the fear or actual imposition of punishment leads to conformity. Specifically, punishments have the greatest potential for deterring misconduct when they are severe, certain, and swift in their application.” So in general, the aim of punishment is to deter crimes. So, punishment is inflicted upon the criminal in order to deter or prevent similar offenses. It is done as a preventive measure towards crimes. It is exemplary so that the others do not commit similar crimes. It is forward-looking. It is focused on society. It is done as a preventive measure towards crimes. It is generally held that when a person commits a crime, he or she gets mental satisfaction by doing so. Pain and pleasure being natural feelings of human beings, the satisfaction of a crime leads to more crime. In order to prevent that pain is given to the offender so that he or she may have the dissatisfaction of

the act and thus deter from doing so. For example, if a person steals something and as a result of that, he is given a punishment in which his or her hand is cut off then the negative effect that is to say the pain will abstain him or her from stealing. It is done as a preventive measure towards crimes. It is exemplary so that the others do not commit either the identical or the similar crimes. For example, if a person takes drugs, this crime can influence other latent criminals to indulge in the same activity. And punishing the drug user can deter others from doing the same kind of heinous act. Crimes can influence more crime of the like, for example, taking drugs can influence others in selling drugs. So deterrent theory comes here to deter the similar offense by infliction of punishment upon the criminal, for example, if the criminal, in this case, the drug user is punished, then this act will be exemplary towards the latent criminals, reframing them from committing the similar crime; that is to sell drugs. And this is why it is exemplary so that the others do not commit either the identical or the similar crimes. It is forward-looking. This is because it tries to deter crimes in the future. For example, if a person is found guilty of fraud and is punished for it then this act of punishment will deter future offense like that. So it is “forward-looking.” It is focused on society. The aim of this theory is not towards the individual but towards the society. This is because by exercising punishment

it wants to deter or prevent crimes, not to mention set an example of what would happen if the crime is committed. Thus, it is focused on society. There are mainly four types of deterrent theory. They are specific deterrence, general deterrence marginal deterrence, and partial deterrence. “Specific deterrence involves the effectiveness of punishment on that particular individual’s future behavior.” For example, if a thief is punished, he will be deterred from future crimes as such. “General deterrence asks whether the punishment of particular offenders deters other people from committing deviance.” For example, if a thief is punished then this will deter other latent criminals from committing the same crime in the future. Marginal deterrence “focuses on the relative effectiveness of different types of punishments”. For example, if the punishment for a certain crime, being jail time has more effectiveness than

giving fine, then the former has higher marginal deterrent value. Partial deterrence involves the partial abstaining from a crime, or part of a crime. For example, a hijacker may threaten his or her victims by words or by weapons, and this threatening by weapon deserves severe punishment than threatening by words.

Critical Evaluation of Deterrent Theory of Punishment

The deterrent theory has the purpose to demonstrate a certain act as wrong, thus inflicting punishment on the criminals, and also to deter the criminal and the others from doing the same kind of act. Utilitarian's or consequentialists are the main advocate of this theory. "Utilitarian's want a system of punishments designed so that everyone can feel a maximum of security. This means that the system of criminal justice should prevent people from committing crimes by threatening them with those kinds of punishment that are best suited to the aim of preventing further crime. At the same time, those who do not commit crimes should feel reasonably certain that they will not be punished. The system is consistently looking forwards." This is because it wants to deter crimes in the future by inflicting punishment upon the criminal at the present. J. Bentham advocates this by saying that "people would be deterred from crime if the punishment was applied." The two versions of utilitarianism that is act utilitarianism and rule utilitarianism think deterrence as adequate. As act utilitarianism is a version of utilitarianism that holds that an act is good if it results in greatest utility. "It seems right, in general, to suppose that punishing people for breaking the law is useful." and as rule utilitarianism is a version of utilitarianism where the action is good if the resulted greatest utility is gained by following the rule.

A major limitation of the theory is that it promotes the treatment of a person as a means in order to benefit others. It is also criticized that as the aim is only to prevent crimes, it does not matter if the punished is actually guilty or not. Furthermore, at times, the punishment may exceed the level of the crime. The criminal is also treated as an outsider. It can also be criticized by saying that it fails to deter crime. Finally, it does not focus on reforming the criminal or retribution but only on the prevention of crimes. At first, the opponents of the theory argue that a person will be treated as a means. This is because the person having the punishment is being punished for the sake of deterring these types of crimes, not for his

own sake. For example, if a person is guilty of theft, he or she is punished so that others may not do it. Thus, Kant thinks that “it ignores the criminal’s dignity by sacrificing his interest for the public good.” Mackenzie also says “it would involve treating a man as a thing.” Similarly, Kant again says that it treats a person as a means in order to “achieve social ends.” Thus the theory is accused of treating a person as a means. Others think that the aim of this theory is only to prevent crimes, so it does not matter if the punished is actually guilty or not. This is because the focus is not on justice but on the prevention of crime. For example, a car is stolen and in order to prevent this from happening again, an innocent people are charged with the crime and thus punished. So as W. Lillie criticizes “it does not really matter whether the punished is innocent or guilty.” Some think that at times the punishment may exceed the level of the crime. This is because the punishment needs to be an exemplary one and thus crossing the line is not unnatural. But it would be punishing the person more than he deserves. For example, if a person is caught as a pickpocket and he is hanged for it then that will exceed the limit of his or her crime. Thus, William Lillie says that “punishment beyond a certain limit for a particular crime is unjust.” Another objection has emerged as the criminal is also treated as an outsider. This happens while a criminal is treated as a means for social progress he or she is also being treated as an outsider as an insider would not be treated as a mere means to an end. This is an objection recently raised by R. A. Duff where “we the” supposed “law-abiding people would punish the outsiders for their own safety.” Thus, it is contended that this theory treats criminals as an outsider. It can also be criticized by saying that it fails to deter crime. As moreover as “many criminologists say it does not stop crime” as white-collar criminals or the criminals that like punishment may be unshaken by this whether it is specific deterrence, or general deterrence, or

The Critical Evaluation of the Different Theories of Punishment marginal deterrence, or even partial deterrence. Thus, Nagin also states this objection that “it fails to deter crime.” It is also criticized for not aiming to reform the criminal or retribution. As the aim of the deterrent theory of punishment is to deter so it does not focus on reforming the criminal. And likewise, it does not focus on retribution of the crime. It only focuses on

the prevention of the crime. Retributive Theory of Punishment

Retributive theory of punishment is one of the theories of punishment. And the aim of this punishment is “allowing a man’s deed to return to himself” as Mackenzie says, and “make the offender suffer like his victim” as Lillie describes. And it is also said that “offenders under a retributive philosophy simply get what they deserve.” So, the aim of the punishment is to achieve retribution. It holds that when a criminal has done a crime then he or she has forfeited his or her rights of equal value. It also says that the punishment should fit the crime. As a result, the criminal should suffer just as the victim did. So, it has a backward-looking approach. By this theory, the criminal has forfeited his or her rights by committing the crime. As Boonin would say by this “a particular offender has forfeited a particular right.” This is because when a criminal commits a crime, he or she has done an act that dismisses their rights. For example, if a person kills a person, then he or she has forfeited his or her rights to live. And thus, the criminal has forfeited his or her rights by committing the crime. It also holds that “let the punishment should fit the crime.” The reason is that this theory tries to achieve retribution, not vengeance. Thus, for example, if a person steals then he or she must be punished according to the crime, he will not be punished at the degree of any severe or mild offense. That is why the punishment should fit the crime. The criminal should suffer just as the victim did. It is like “an eye for an eye a tooth for a tooth approach.” As punishment is given for retribution so the suffering of the criminal should be the same as the victim. For example, if a person bit another by his or her sick enjoyment then he or she should also be punished in the same way. So, the criminal should suffer just as the victim did. This theory is “backward looking.” Boonin explains that “committing an offense in the past is sufficient to justify punishment now”. For example, if someone harasses a person a month ago, he will be punished for his previous crimes, if found guilty, now. So, it is a backward-looking approach.

In the classical times, retributive punishment would follow only an eye for an eye rule. But at the present time, there are versions of retributive theories which punishes by the means which is mainly proportionate to the crime rather than an eye for an eye approach. Thus comes the desert-

based retributivism, forfeiture-based retributivism, and fairness-based retributivism. Desert based retributivism which holds “that punishing people for breaking the law is morally permissible because such people deserve to be punished.” So, it is our duty to punish them. Forfeiture-based retributivism states that the offender has forfeited his or her rights while hampering the rights of others. Fairness-based retributivism saying retribution is necessary because of fairness as it is unfair for a criminal not being punished, as the criminal is a “free rider”. Critical Evaluation of Retributive Theory of Punishment Retributive theory of punishment has the purpose of reattribute the unjust act, holding that the punishment should be proportionate to the crime. Deontologists are mainly the advocates of this theory. “The goal of the system of punishment is very different, according to deontological ethics. When a person commits a crime, this means, according to deontologists, that he or she becomes afflicted with guilt. And a guilty person deserves to be punished. So, this system is backward looking.” This is because here it tries to do retribution to the already committed crime. This punishment is given for the person as retribution towards his crime. This is how Kant writes that “Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime.” So, he supports this by arguing that “retribution is not just a necessary condition for punishment but also a sufficient one.” And it is also said that “the pointer of the scale of justice is made to incline no more to the one side than the other”. So, this is done the wrongdoing comes around towards the criminal himself. Thus, Hegel supports it by saying that “it is the reward of the crime.” This is said to be a theory of punishment which is according to Mackenzie “the most satisfactory of all the theories of punishment.” This is because neither deterrent nor reformative theories of punishment will do any good if the criminal does not understand that the punishment is the consequence of his wrongdoing. And both of them serve the retributive attitude. But like the other theories of punishment, this theory is not beyond criticism. Critics criticize this theory by saying that this uplifts revenge.

The Critical Evaluation of the Different Theories of Punishment others say that there is always a possibility of crossing the line while punishing the criminal. Opponents of this theory think that breaking the law must not always result in retribution by punishment. It is criticized against forfeiting the rights of the offender. The fairness-based retribution is criticized on the account of the “free rider”. This also disregards, as others claim, other moral considerations such as deterrence and reformation. Others criticized it by saying that it is not possible to have, and also, we should not have the same retributive punishment in all criminal cases. The theory is firstly criticized by the notion of uplifting revenge. It is assumed that this theory satisfies the need for vengeance. For example, if a criminal is beaten up as he has beaten an innocent person, it will uplift the notion of vengeance. So, the theory is firstly criticized by the notion of uplifting revenge. The critics also say that there is a chance to cross the limit of punishment in these cases. This is because as it is based on retribution the offender may be punished more several than the crime he has committed. For example, in the retribution of beaten up an innocent person the criminal might be beaten even more or he or she may be beaten to death. So, there is a chance to cross the limit of punishment in these cases. Opponents of this theory think that breaking the law must not always result in retribution by punishment. For example, if a person breaks a law, for say, giving someone water without buying it, so that the person receiving the water can recover himself from having a heat stroke, then though it is illegal as the person did not buy the water before giving it to the other person, but still it is not something that should be punished. And this goes against the desert-based retribution, so opponents of this theory contend that breaking the law must not always result in punishment. It is criticized against forfeiting the rights of the offender. This goes against the forfeiture-based retribution. This is because human rights are supreme and held as universal for all humans. Because of that the abolishing of rights due to the offender’s criminal activity is not accepted by some. Furthermore, even if rights are forfeited, the question arises about its length and duration. So, it is criticized against forfeiting the rights of the offender. The fairness-based retribution is criticized on the account of the “free rider”. It is held that though there can be criminals

who are free riders it is not necessarily true for every criminal, as for murder, rape, child abuse and so on the free riding concept does not work. And so, the fairness-based retribution is criticized on the account of the “free rider”. It is also criticized by disregarding other moral considerations such as deterrence and reformation. As the focus of this theory of punishment is to attain retribution, so it does not try to deter crimes in the future or it does not try to reform the character of the criminal. And as Lillie says this theory in the simplest form makes the criminal suffer. So, it disregards other moral considerations as it does not aim to reform the criminal and demonstrate the act as wrong to others. Finally, it is criticized that it is not possible to have, and also, we should not have the same retributive punishment in all criminal cases. This is because there are some cases where the criminal has done so much wrong that no punishment can make retribution of the act as classical retribution theory would hold as “an eye for an eye”. For example, if a person kills two people and he is also killed then it will be makeshift retribution but not the actual one as he or she cannot be killed twice. So, it is not possible to have retribution in all the criminal cases. Besides, we simply should not have the same act done to the criminal all the time as well. For example, a rapist should not be raped by the name of retribution, so lesser punishment can also serve as well but again it cannot be the same retribution, and then again if higher punishment is given then it simply wrong, so either way the punishment does not fit the crime. Thus, it is criticized that it is not possible to have, and also, we should not have the same retributive punishment in all criminal cases.

Reformative Theory of Punishment Reformative theory of punishment is one of the theories of punishment. As Lillie says “the aim of punishment is to reform the character of the offender himself.” Likewise, Mackenzie thinks that “the aim of this punishment is to educate or reform the offender himself”. Thom Brooks thinks “punishment should teach the offenders a lesson.” The goal is also referred to as “to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training.” Thus, it is also called the educational or rehabilitation theory of punishment. Where it aims to reform or educate or rehabilitate the offender. This theory of punishment reforms the

character of the criminal by punishing him or her. It also tries to educate the criminal by inflicting punishment. This theory subscribes to the prevalent norms of contemporary humanism. This theory tries to reform the character of the criminal by punishment. Thus, it punishes the criminal in order to reform him or her. For example, if a person has harassed another person, he or she will be punished so that he or she may be reformed. That is why Lillie says “the value of this suffering lies in the capacity to make the offender see the evil of his wrongdoing.” (Lillie, op.cit., p. 254) So by punishment, the character of the criminal is reformed.

It tries to educate the criminal or say the offender by punishment. It hopes that when a criminal is punished, he or she will have the education that it is wrong to do such a crime. For example, if a person steals something, then the criminal will be punished so that he or she may be educated. Thus, the theory punishes the criminal to educate him or her. This theory subscribes to the prevalent norms of contemporary humanism. AS Mackenzie states “it fits best in the humanitarian sentiments.” And if they have committed a crime then they can be reformed. They can be educated. There is still a chance that they can come back from the misleading path. There is still hope. Thus, it has a humanistic approach. So reformatory or say the educational theory of punishment is a theory of punishment which tries to reform a criminal by punishment, which educated a criminal by imposing punishment upon him or her and not to mention has a humanistic subscription. When this theory of punishment first arrived, it had a diametrically opposed view towards the deterrent theory of punishment and the retributive theory of punishment. It was especially enforced by the criminologists who did not want to treat the offenders as criminals but as patients. But gradually the theory developed and at the present time “there are two general ways of rehabilitation.” They are the deontological rehabilitation and the consequentialist rehabilitation. Deontological rehabilitation tries to rehabilitate criminals as it is the just thing to do. On the other hand, the consequentialist rehabilitation tries to rehabilitate criminals as everyone will get better off. Between these two prominent theories of rehabilitation, the majority of the advocates of rehabilitation are keen towards the latter one. In any

case, the rehabilitation is achieved when the criminal understands that what he or she has done was wrong and deliberately chooses to refrain from doing those things again. But still, there are some who think that crime should be treated as a mental illness. Critical Evaluation of Reformatory Theory of Punishment The reformatory theory has the purpose to reform or educate or rehabilitate the criminal. Thus, the punishment is aimed to reform the character of the offender. This is very popular in the realm of criminology as it has humanistic elements within it as this theory aims to reform the character of the offender. It is thought that by punishment the criminal will be educated and so he or she will be able to live and contribute to society in a positive way.

Its root is thought to be grounded by Plato as he thought that “we ought not to repay injustice with injustice or to do harm to any man, no matter what we may have suffered.” Thus, it is supported by criminologists as it holds that criminals have mental disorders. Thus, the crimes they commit are pathological in manner. As they think that criminals are victims of social, political, economic upheavals. So, they should have treatment and should be cured as well as educated. The critics of this theory state that all crimes cannot be attributed to mental disorder. Furthermore, this theory cannot reform the hardcore criminals. It is also criticized that the victim of the crime and his family are disregarded in this theory. Furthermore, punishment and education do not necessarily mean the same thing. It is contended that it deems human dignity. It is also held that both deontological rehabilitation and consequentialist rehabilitation are one-sided. Finally, this theory disregards deterrence and retribution. At first, all crimes cannot be attributed to mental disorder. This is because though there are some criminals who do crimes under the circumstance of being mentally ill, this is not the only cause of crime. There are ample instances where people commit crimes by being mentally sound and also knowing the consequences of the crime. So, critics say that every crime does not happen because of mental disorder. This theory cannot reform the hardcore criminals. The reformatory theory may work as wonders for the juvenile delinquents but in the case of hardcore criminals, it is a different case altogether. The hardcore criminals know that crime is and they do it anyways. So, critics think that hardcore criminals cannot be reformed by

this theory. Critics think that this theory disregards the victim of the crime and his or her family. This is because if the criminal is punished for reforming or educating him not for justice then the actual victim of the crime and his or her family members are being disregarded as justice has not prevailed. Thus, it disregards the victim and his or her family. It is also criticized that punishment and education are not necessarily the same thing. This is because punishment in some cases implies the implication of pain, but education does not imply pain but communication. Thus, some critics think that criminology misunderstands the reformation to be a benevolent treatment rather than a painful process of punishment. Besides this instead of punishment, Mackenzie thinks that in many instances kind of treatment would have a better effect. Lillie follows him by saying that “it is not always the best way to reform a man by inflicting pain.” Thus, critics object that punishment and education is not necessarily the same thing.

Besides these, it is contended that it deems human dignity. Because the offender is not treated as a moral agent but as a diseased person who needs to be cure thus, he needs to change his values, and that is why Hegel says that it is “much the same as when one raises a cane against a dog; a man is not treated in accordance with his dignity and honor, but as a dog.” So, it is criticized that it deems human dignity. It is also held that both deontological rehabilitation and consequentialist rehabilitation are one-sided. This is because deontological rehabilitation focuses on the account of the punishment is just, disregarding the utility, and consequentialist rehabilitation focuses on the account of the punishment on the basis of utility, disregarding whether it is just or not. So, it is also criticized that both deontological rehabilitation and consequentialist rehabilitation are one-sided. Finally, some criticize this theory disregards deterrence and retribution. This is because its aim is to reform the criminal by punishment and so it does not aim to demonstrate to others that the particular act is wrong or trying to attain retribution. Suggestions to Resolve the Basic Problems of the Theories of Punishment: In this day and age, we need the theories of punishment as they can help us to pursue justice, peace, and balance in both the cases of the individual and the society. Nevertheless, the deterrent, the

retributive and the reformatory theories of punishment are not without their flaws, thus I am suggesting some ways by which the basic problems of the deterrent theory, the retributive theory and the reformatory theory may be mitigated, and thus it will help us to ensure justice, peace, and balance in a better manner. That is why I would like to suggest that: in order to apply punishment, the offender should be actually guilty of the crime, the offender should be punished considering the external and internal situations, the punishment should not exceed or fall behind the level of the crime, punishment should be demonstrated and explained to that very person and others as much as necessary and possible. In Order to Apply Punishment, the Offender Should Be Actually Guilty of the Crime The offender should actually be guilty of the crime. This relieves the problem of a potentially guilty person from being punished. This will solve the problem of the deterrence theory where an innocent may be punished. Besides, it will also mitigate the problem of reformatory theory where the victim is neglected by not adequately punishing the criminal. So, the offender should actually be guilty of the crime. This relieves the problem of a potentially guilty person being punished. This is because a person must be guilty of the offense. But if the person is not actually guilty then giving him punishment becomes a mockery of the judicial system. For example, if a person looks at another person as he wants to destroy him, he may be potentially guilty of the upcoming crime but he is not actually guilty so he may be consulted but not punished for what he did not actually do, but if he is punished anyway then it will become a mockery of the judicial system. So, I disagree with William James thinks that "people we should blame are the ones whose punishment should benefit us." As I think that justification is more important than benefit or loss. Thus, the criminal should be the one who has taken part in the action either directly or indirectly to be deemed of guilt thus punishment, thus they must be guilty. For example, directly in the sense that he voluntarily does the act and indirectly in the sense that he voluntarily helps to do the act, so they must be actually guilty. So, this relieves the problem of a potentially guilty person being punished. This will solve the problem of the deterrence theory where an innocent may be punished. This is because like the actual criminal or says the guilty person will be punished so there

is no chance of an innocent person getting punished. So, a criminal will be punished after the crime has been proved. Which means his guilt has been proved as well? And by this no innocent person will be punished. It will also mitigate the problem of reformatory theory where the victim is neglected by not adequately punishing the criminal. This is because the guilty will be punished, so the victim and along with his or her family will not be neglected. For example, if a criminal rapes a person and he or she is proved to be actually guilty of the crime then the criminal will be punished. Thus, there will be no negligence towards the victim. Therefore, the victim will not be neglected. **The Offender should Be Punished Considering the External and the Internal Situations** The offender should be punished considering the external and internal situations. The external situation should be considered. The internal condition should be considered as well. Both internal and external condition's overlapping tendencies should also be considered. Thus, the offender must be punished considering the external and the internal situations.

At first the external situation must be considered. This is because external situation may entail involuntary actions such as being forced to do something, or doing it out of extreme necessity or doing something by mistake. For example, if a person is forced to do something such as committing a crime held at gunpoint, then it has to be considered as involuntary action. If a person does a crime because of some extreme necessity, for example, one steals because if he does not, he or she will die of starvation, that has to be considered as involuntary action. So, I agree with Mill as he says "to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. Besides this self-defense also falls under this extreme necessity where a person commits a crime. For example, one kills a person as he or she was about to get raped by that person. Then it has to be considered as an involuntary action well. If someone does something by mistake such as while walking step on a product and destroying it, it also has to be considered as an involuntary action. All of these are to be considered as involuntary action as the person did not deliberately do those things. What scopes did the criminal have and what elements influenced him or her

whether it was a person or the environment or was it as a whole should also to be considered. But we have to understand that making mistake in the sense of ignorance and deliberate ignorance in the sense of carelessness are two different things. The former is not doing something deliberately. For example, stepping on a product and destroying it. This is an involuntary action. So, this may not render punishment. And the latter is to deliberately choose to be ignorant, knowing the consequence of some sort. For example, not reading the manual before doing construction work though it is mandatory to do so. And as a consequence, having property damage to others. This is not involuntary action as it is done by deliberate negligence. So here punishment should be rendered. Normally one should voluntarily do something to be punishable for it but sometimes in the case of punishment involuntary acts are considered as punishable, it was mainly done for the greater good, according to necessity. For example, not paying taxes or bills in time irrespective of voluntary or involuntary action may get one punished. But that punishment may be less than the amount compared to if it is done voluntarily. On the other hand, some voluntary actions that can be regarded as crime may be exempt from punishment because of the greater good. For example, if one drives to save others life or his own life from fire though he or she do not have a driving license. Nevertheless, the external situation should be considered. The internal condition should be considered as well. Internal conditions should contain the criminal's age and the mental health of the criminal. The criminal's age should be considered. This is because whether he or she is a juvenile or an adult is important before giving punishment. The criminal's mental health should also be considered. Whether he is at the level of insanity and thus the offense is rendered as an involuntary action, and so whether he needs mental treatment is to be cleared before giving him punishment. So, I agree with Mackenzie as he says "in the case of definite insanity it would be dealt with best medical knowledge possible." If necessary, then medical assistance will be given to the mentally challenged criminals. But in the case of punishment, not all criminals are at the level of insanity so that they may be pardoned. For example, a person may be the victim of anxiety due to birth condition or later trauma in his life but this does not

mean that he should act however his body due to biochemical condition influences him unless it is a compulsion that he or she cannot control. He should think it through, and then act. Here acting on hormonal impulse without thinking is a matter of choice. And this type of deliberate loss of control over oneself is, in other words, becoming the slave of instinct. One needs to understand that controlling one's instinct is controlling the situation in the long run as our internalities also influence our externalities. Here that person is not definitely insane. And this goes against the criminologist's claim that every criminal should be rendered as a patient. Nevertheless, the internal condition should be considered as well.

Both internal and external condition's overlapping tendencies should also be considered. That is to say, the things the criminal was influenced with. The culture, the society, the creed, ideology the family he or she grew up with the economic, the social, the biological, the educational, and the religious factors should also be considered. Both internal and external conditions overlap on the point of the things the criminal was influenced with. So, both internal and external conditions overlapping tendencies should also be considered. Punishment should not Exceed or Fall behind the Level of the Crime The punishment should not exceed or fall behind the level of the crime. This will solve the problem of deterrent theory in the sense of punishing a criminal more than he or she deserves. It will mitigate the problem of revenge of the retributive theory. It will also solve the problem of retribution where the criminal is said to have forfeited his or her right in order to have punishment. It also solves the problem of treating a person as a means by deterrent theory. It also solves the problem of reformative theory, not punishing the criminal as he deserves. So, the punishment should not exceed the level of the crime. This will solve the problem of deterrent theory in the sense of punishing a criminal more than he or she deserves. This is because the punishment should be given by the extent of the crime no more, no less than that. So, for example, if a person steals something he or she will be punished for that

particular crime by the extent of that crime not to the extent of murdering someone or not of merely lying. At the same time whether the offender has directly volunteered in the crime or indirectly volunteered in the crime

or say the manner of involvement should also be concerned, and the extent of the punishment will follow. For example, one has voluntarily stolen a car and other has voluntarily helped him or her to steal the car, both of their punishment should be according to the extent of the manner of involvement in the crime. But there are some crimes that the voluntary involvement of any manner should render as identical punishment in all cases, for example, murder, rape and so on. All cases are not identical so we may not give identical punishment but we may give similar punishment considering the extent of the crime. So, this will solve the problem of deterrent theory in the sense of punishing a criminal more than he or she deserves. It will mitigate the problem of revenge of the retributive theory. Retributive theory is said to uplift revenge, so by this punishment may render more burden to the criminal that he or she deserves, for example, fining a man twice as much as he should be fined because of taking revenge. But it will not be done as punishment will not exceed its limits. And so, I agree with Bentham as he says that if the evil of punishment exceeds the evil of the offense, then the punishment will be unprofitable. Thus, it will mitigate the problem of revenge of the retributive theory. It will also solve the problem of retribution where the criminal is said to have forfeited his or her right in order to have punishment. It is said in the retributive theory that the criminal deserves punishment as he or she has forfeited his right by doing the crime. But instead of thinking of forfeiting the right of equal treatment it may be thought that the right is being substituted as the right to be treated unequally as a consequence of the crime. So, the criminal may be said that he or she has the right to have the intended burden. For example, by abusing a child the criminal has substituted the right to equal treatment with the right to unequal treatment because of the consequence of his crime, so the criminal has the right of intended burden. So, I agree with Mill as he says "all persons are deemed to have a right to equality of treatment, except when some recognized social expediency requires the reverse." Therefore, it will also solve the problem of retribution where the criminal is said to have forfeited his or her right in order to have punishment. It also solves the problem of treating a person as a means by deterrent theory. This is because by giving the punishment that the

criminal deserves, he or she is being treated as a person who is achieving the consequence of his or her doing. Where he or she did something and is a person enough to face the consequence. And even in the case of hardcore criminals where the punishment cannot deter them from doing the same crime, the punishment

should still be applied as it is a question of justice. So, it also solves the problem of treating a person as a means by deterrent theory. It also solves the problem of reformatory theory, not punishing the criminal as he deserves. This is because by this the criminal will be punished if he or she is actually guilty and proved to be mentally sane. Thus, he will be punished as he or she deserves. So, it also solves the problem of reformatory theory, not punishing the criminal as he deserves. Punishment should be Demonstrated and Explained to that Very Person and Others as much as Necessary and Possible Punishment should be demonstrated and explained to that very person and others as much as necessary and possible. At first, it should be demonstrated and explained to that very person and others. Then it should be demonstrated and explained to that very person and others as much as necessary and possible. Punishment should be demonstrated and explained to that very person and others. This is because people learn mostly from experience, so it is better if one is demonstrated and explained about what a crime is, why it is so, and the consequence that follows from it. The demonstration is important because seeing something affects a person more than just reading or hearing about it. So public appreciation and humiliation may help people understand more about the consequence of their action. Encouraging good act and discouraging bad act is a process of social control as well. Thus, I agree with Mill as he says "some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law." The explanation is important as the person has the right to know why he is convicted as a criminal and what may happen next. And within the explanation, there may be the scope of discussion. So, I also agree with Mill as he says "one is capable of rectifying his mistakes by discussion and experience. Not by experience alone." Thus punishment should be demonstrated and explained to that very person and others. It should be

demonstrated and explained to the very person and others as much as necessary and possible. It should be demonstrated and explained as much as necessary because everything is not needed to be demonstrated and explained to everyone as there may be things that are unimportant. For example, it is important to demonstrating and explaining to a person what will happen as he or she has committed a murder or if anyone would commit a murder, and also why will it be like that, but it is unimportant to say the history of the concept of murder. And it is also important to demonstrate and explain the wrongness of the crime to that very person and others as much as possible. Because here the ability of the perceiver's intelligence and understanding should be considered. For example, a person may not understand the technical terms or some technical terms of the crime but he or she may understand the wrongness of the act in general. So, he must be explained in a way that he or she understands. Here the demonstration of the punishment will not make the demonstrated person a mere means as he is getting the consequence of his action. On the contrary, by doing this people may realize the consequence crime and so that they may be encouraged to refrain from it too and to do the opposite. And by doing this people will be accustomed of abstaining from the criminal activity. And here my conception is similar to Aristotle as he says "character arises out of the like activity." So, if one refrains oneself from committing crimes, he will be less likely to commit crimes in the future. But in the case of juveniles, the demonstration may be excused for some crimes, taking his age into consideration. For example, the demonstration of the death sentence and such. So, punishment should be demonstrated and explained to that very person and others, as much as necessary and possible.

Conclusion: All the three theories of punishment; the deterrent theory of punishment, the reformatory theory of punishment, and the retributive theory of punishment try to theorize the aim of punishment in their own viewpoints which they think like the best. So, we see the deterrent theory of punishment aiming to deter future crimes, the reformatory theory of punishment aiming to reform the character of the criminal via punishment, and the retributive theory of punishment aiming to attain retribution that

the criminal has done by his or her wrongdoing. Nevertheless, all of them have their own merits and demerits. In order to solve the basic problems of the theories I think that to apply punishment the offender should be actually guilty of the crime. The offender should be punished considering the external and the internal situations. The punishment should not exceed or fall behind the level of the crime. Punishment should be demonstrated and explained to that very person and others, as much as necessary and possible.



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**SCHOOL OF LAW
DEPARTMENT OF LEGAL STUDIES**

UNIT 2 – APPROACHES TO SENTENCING

Alternatives to imprisonment-probation-corrective labor-fine: collectives fines-reparation by the offender/ by the court- Parole: Nature- Authority for Granting Parole -The Probation of Offenders Act, 1958.

The Probation of Offenders Act- An Analysis

Introduction:

Meaning Of Probation

“*Probo*” is a Latin word, the meaning of which is “I prove my worth” i.e. to see whether he can live in a free society without breaking the law. “*Probatio*” means “test on approval”. Webster dictionary meaning of Probation is the act of proving, proof, any proceeding designed to ascertain character. Thus, probation means a period of proving or trial. The offender has to prove that he is worthy of probation.

Probation is a socialized penal device, an extramural alternative of institutionalization and has come about as the result of modification over a period of time of doctrine of deterrence into the principle of reformation, a development that paved the way to the introduction of clinical approach and the principle of individualization in the handling of offenders. Probation means discharging a person subject to commitment by the suspension of sentence, during the regularity of conduct, and imposing conditions and on default thereof arresting and committing him until imprisonment is served or the judgment is satisfied. It is a substitute for imprisonment, a conditional suspension of sentence.

The term “Probation” is derived from the Latin word “*probare*”, which means to test or to prove. It is a treatment device, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good. Imprisonment decreases his capacity to readjust to the normal society after the release and association with professional delinquents often have undesired effects.

According to the United Nations, Department of Social Affairs, the release of the offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life

under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer.

The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality. Probation seeks to accomplish the rehabilitation of persons convicted of the crime by returning them to society during a period of supervision rather than by sending them into the unnatural and all too often especially unhealthful atmosphere of prisons and reformatories. Probation system is based on reformatory theory. It is a scientific approach. It is a rational approach towards the causation of crime of young offenders and thus they can be saved from becoming habitual offenders by dumping them into jails. The probation officer insists on the problem or need of the offender and tries to solve his problem and see that the offender becomes a useful citizen of the society. The object of Criminal Law is more inclined towards the reformation of the offender than to punish him. Instead of keeping an accused with hardened criminals in a prison, the court can order personal freedom on promise of good behaviour and can also order a period of supervision over an offender. This is the concept behind 'probation'. Black's law dictionary defines 'probation' as 'allowing a person convicted of some minor offence (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behaviour, and generally under the supervision or guardianship of a 'probation officer'.

It is believed that imprisonment decreases the capacity of an offender to readjust to the normal society after the release and association with professional delinquents often has undesired effects on him and his life thereafter. Probation is a socialized penal device which has come up as the result of modification, over a period of time, of the doctrine of deterrence into the principle of reformation; a development that paved the way to the introduction of clinical approach and the principle of individualization in the handling of offenders.

According to a report of the United Nations, Department of Social Affairs, 'Release of offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer'. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality.

The Probation of Offenders Act, 1958, is based on the concept that young offenders can be saved from becoming habitual offenders by treating them amicably and providing them with a chance to reform rather than dumping them into jails. The probation officer insists on the problem or need of the offender and tries to solve his problem and sees to it that the offender becomes a useful citizen of the society.

Statutory Provisions Dealing with Probation

The earliest provision to have dealt with probation was section S.562 of the Code of Criminal Procedure, 1898. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974. It reads as follows:- 'When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not

exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour’.

The Probation of Offenders Act, 1958 and S.360 of the Code of Criminal Procedure, 1973 exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted. The object of S.360 CrPC is to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of more mature years who for the first time may have committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens. It is not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences.

The Hon’ble Supreme Court in Jugal Kishore Prasad v. State of Bihar, explained the rationale of the provision:

“The object of the provision is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.” While dealing with this Act, the three most important provisions that need to be highlighted are sections 3, 4 and 6. We will now see each of these sections one by one.

Section 3

Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for

the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Section 4

Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Section 6

Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

Important Case Laws on Sections 3, 4 & 6 of The Probation of Offenders Act

In Keshav Sitaram Sali v. State of Maharashtra it was held by the Supreme Court that in a case of petty theft the High Court should have extended

the benefit of either section 360 of the Code of Criminal Procedure or sections 3 and 4 of the Probation of Offenders Act to the appellant instead of imposing a sentence of fine on him.

In *Basikesan v. State of Orissa*, a youth of 20 years was found guilty of an offence punishable under section 380 of Indian Penal Code, 1860 and no previous conviction was proved against him. It was held by the court that the offence committed by the accused was not out of deliberate preparation or design but it was a fit case for application of section 3 and he be released after due admonition.

In *Daulat Ram v. State of Haryana*, it was held that the object of section 6 is to ensure that juvenile offenders are not sent to jail for offences which are not so serious as to warrant imprisonment for life, with a view to prevent them from contamination due to contact with hardened criminals of the jail. Therefore, the provision should be liberally construed keeping in view the spirit embodied therein.

The question of age of the person is relevant not for the purpose of determining his guilt but only for the purpose of punishment which he should suffer for the offence of which he is found guilty. Therefore, where a court found that offender was not under the age of 21 years on the date when court found him guilty, sub-section (1) of section 6 will not apply.

Salient Features of The Probation of Offenders Act, 1958

The Probation of Offenders Act (Act No. 28 of 1958) contains elaborate provisions relating to probation of offenders, which are made applicable throughout the country. We will now observe the salient features of the Act:

The Probation of Offenders Act, 1958 is intended to reform the amateur offenders by providing rehabilitation in society and to prevent the conversion of youthful offenders into obdurate criminals under environmental influence by keeping them in jails along with hardened criminals.

- It aims to release first offenders, after due admonition or warning with advice, who are alleged to have committed an offence punishable under Sections 379, 380, 381, 404 or Section 420 of the Indian Penal Code and also in case of any offence punishable with imprisonment for not more than two years, or with fine, or with both.

This Act empowers the Court to release certain offenders on probation of good conduct if the offence alleged to have been committed is not punishable with death or life imprisonment. However, he/she should be kept under supervision. The Act insists that the Court may order for payment by the offender such compensation and a cost of the proceedings as it thinks reasonable for loss or injury caused to the victim. The Act provides special protection to persons under twenty-one years of age by not sentencing them to imprisonment. However, this provision is not available to a person found guilty of an offence punishable with life imprisonment. The Act provides freedom to the Court to vary the conditions of bond when an offender is released on probation of good conduct and to extend the period of probation not to exceed three years from the date of original order.

The Act empowers the Court to issue a warrant of arrest or summons to the offender and his sureties requiring them to attend the Court on the date and time specified in the summons if an offender released on probation of good conduct fails to observe the conditions of bond. The Act empowers the Court to try and sentence the offender to imprisonment under the provisions of this Act. Such order may also be made by the High Court or any other Court when the case comes before it on appeal or in revision.

The Act provides an important role to the probation officers to help the Court and to supervise the probationers put under him and to advise and assist them to get suitable employment.

The Act extends to the whole of India except the State of Jammu and Kashmir. This Act comes into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint. It also

provides liberty to State Governments to bring the Act into force on different dates in different parts of that State.

Duties of A Probation Officer

Sec 14 of the Act deals with the duties of a probation officer. It states:
A probation officer shall, subject to such conditions and restrictions, as may be prescribed -

- (a) enquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
- (b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;
- (c) advise and assist offenders in the payment of compensation or costs ordered by the Court;
- (d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4;
- (e) perform such other duties as may be prescribed.

Offences In Which Probation Cannot Be Granted

We will now deal with those cases where probation cannot be granted:

1) In Ahmed v. State of Rajasthan, it was held that the benefit of this Act cannot be extended to a person who has indulged in an act which has resulted into an explosive situation leading to possibilities of communal tension.

2) In State of Maharashtra v. Natverlal, the Supreme Court declined to accord to the accused found guilty, the benefit of Probation of Offenders

Act because smuggling of gold not only affects public revenue and public economy, but often escapes detection.

3) Again in *Smt. Devki v. State of Haryana*, it was held that the benefit of Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forced her to sexual submission with commercial motive.

4) In 2015, a Supreme Court bench consisting of Justices Pinaki Chandra Ghose and Uday Umesh Lalit has ruled that the benefit of Probation of Offenders Act cannot be extended to accused involved in crimes against women. The accused, Sri Chand was alleged to have lured a 12 year old girl, who was grazing buffaloes in the jungle, and taking her into a room wherein she was forcibly undressed and the offense of rape was committed on her. The court while giving the judgment relied on cases like *Azhar Ali v. State of West Bengal* and *State of Himachal Pradesh v. Dharam Pal*.

It is a settled law that nobody can claim benefit under the Act as a matter of right. It was observed in *State of Sikkim v. Dorjee Sherpa And Ors* that the Court should not take technical views in certain cases and should take into consideration some other aspects such as possibility of losing the job, for invoking the provisions of Probation of Offenders Act even in serious offences. It has further been contended that the Court should also take into consideration that the convicts belonging to middle class families without any criminal antecedent often become victim of circumstances because of undesirable company and other evil influences available to such young generation.

The provisions of Probation of Offenders Act, 1958 normally cannot be applied to:

- ACB cases
- Section 304 of the Indian Penal Code,
- NDPS Cases
- Section 304-A of the Indian Penal Code

- Section 325 of the Indian Penal Code
- Sections 409, 467, 471 of the Indian Penal Code
- Kidnap and abduction
- Habitual offenders

Conclusion

To conclude, it can be said that the measure of alternative punishment i.e., probation and the objective of theory of reformatory punishment would be achieved only if the judiciary and the administration work together. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Probation is an affirmation of the human inside every being and it must be given importance. The reform and rehabilitation process have to be worked out in context of existing social conditions to achieve the ultimate objective to reclaim back those offenders to orderly society.

Object Of Probation

- i) The object of probation is to bring lawbreakers and anti-social persons into willing cooperation with the community of which he is a member, thus giving him security which he needs and social protection against his attacks on person or property.
- ii) The function of probation is to effect improvement in the character of the offender and permanent rehabilitation and reformation of the offender.
- iii) Probation involves molding of the individual's habits in a more constructive way.
- iv) It's a substitute for imprisonment. Punishment will not serve the purpose in all cases of offenders.
- v) The object is that an accused person who is convicted of a crime should be given a chance of reformation which he would lose by being incarcerated by prison.

Analysis Of Section 4 Of Probation of Offenders Act 1958

Release on Probation

Section 4 of the act deals with the power of the court to release certain offenders on probation of good conduct.

As per **Section 4**, if any person is found guilty of having committed an offense not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep the peace and be of good behaviour.

The section further requires that the offender or his surety has a fixed place of residence or regular occupation in a place where the court exercises jurisdiction. Also, before making any such order, the court shall take into consideration the report, if any, of the probation officer, concerned in relation to the case. However, it is not necessary that the court has to act on the probation officers report. It can also gather information from other source and on its own analysis.

The court may also require the offender to remain under the supervision of a probation officer during a certain period if it thinks that it is in the interests of the offender and of the public. It can also impose appropriate conditions which might be required for such supervision. In case the court does specify such conditional release, it must require the offender has to enter into a bond, with or without sureties, enumerating the conditions. The conditions may relate to the place of residence, abstention from intoxicants, or any other matter as the court thinks appropriate to ensure that the crime is not repeated.

The non-obstante clause in **Section 4 of the Act** is a clear manifestation of the intention of the legislatures that the provisions of the Act would have affected notwithstanding any other law for the time being in force. It is a general section under which the benefit is extended to the offenders under 21 years of age and also offenders who are above 21 years of

age. Discretion is exercised by the court while giving the benefit of probation to the offenders above 21 years of age. No reasons are to be recorded when the benefit of probation is granted to the offenders above 21 years of age. Section 4 laid down that the court shall consider the report of the P.O if any. It is not obligatory on the court to call for and consider the report of the P.O. in terms of Section 4(2).

An order of release on probation came into existence only after the accused is found guilty and is convicted of the offense. Thus, the conviction of the accused or the finding of the court that he is guilty cannot be washed out at all because that is the *sine quo non* for the order of release on probation of the offender. The order of release on probation of the offender is merely in substitution of the sentence to be imposed by the court. This has been made permissible by the c statute with a humanist point of view in order to reform youthful offenders' ad to prevent them from becoming hardened criminals.

Meaning of the “character” of the accused

The word character is not defined in the Act. Hence it must be given the ordinary meaning. The provision of Section 4 vests in the court a discretion to release a person found guilty of having committed an offense not punishable with death or imprisonment for life. It is really for the court, by which the person is found guilty, to determine, having regard to the circumstances of the case including the nature of the offense and the character of the offender, whether or not it will be expedient to release him on probation of good conduct. It is only when the court forms an opinion that in a given case the offender should be released on probation of good conduct that the court acts as provided in Section 4.

Power is discretionary:

While granting the benefit under the Act the court shall take into consideration the nature of the offense. If the offense is not trivial in nature, the court should not be lenient in granting such a benefit. Power to release on probation is discretionary and has to be exercised in appropriate cases.

Conditions:

Conditions to be satisfied for application of Section 4:

- (1) the offense committed must not be one punishable with death or imprisonment for life.
- (2) the court must opine that it is expedient to release him on probation of good conduct instead of sentencing him to any punishment and
- (3) the offender or surety must have a fixed place of abode and regular occupation in a place situated within the jurisdiction of the court.

Relevant factors to be taken into consideration. The convicts have no indefeasible right to be released. The right is only to be considered for release on license in terms of the Act and the rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict.

Scope

The provision of Section 4 vests in the court a discretion to release a person found guilty of having committed an offense not punishable with death or imprisonment for life. It is really for the court, by which the person is found guilty, to determine to have regard to the circumstances of the case including the nature of the offense and the character of the offender, whether or not it will be expedient to release him on probation of good conduct. It is only when the court forms an opinion that in a given case the offender should be released on probation of good conduct the court acts as provided in Section 4.

A wide discretionary jurisdiction has been conferred on the courts to release the convicts not involved in very heinous offenses, on probation instead of incarcerating them to prison. The main object of awarding punishment is the prevention of crime and reformation of the offender.

The policy of the law is that where an offense is an overly heinous one grant of probation is ruled out as a matter of law. The heinousness of the offense and its deleterious effect on the body politic, is in the eye of the law, “if not fundamental, a very relevant factor for the grant or refusal of probation.”

In *Dasappa v. State of Mysore*, it is laid down as follows :

“It is only when the court forms an opinion that the offender in a given case should be released on probation of good conduct that it has to act as

provided by **Section 4** of the Act. It was for the accused to have placed all the necessary material before the court which could have enabled it to consider that the first accused was an offender to whom the benefit of Section 4 would be extended “.

For What Offences, Section 4 Cannot Be Applied?

It was settled law that nobody can claim benefit under PO Act as a matter of right. This was clearly held in AIR 2001 SC 2058. It was observed in *State Of Sikkim vs Dorjee Sherpa And Ors*, [xii] that decisions reported in AIR 1983 SC 654 : 1983 Cri LJ 1043 (**Masarullah v. 1State of Tamilnadu**) and 1981 (Supp) SCC 17 (**Aitah Chander v. State of A.P.**) have also been referred to contend that the Court should not take technical views in such cases and should take into consideration some other aspects such as possibility of losing the job, for invoking the provisions of Probation of Offenders Act even in serious offenses.

It has further been contended that the Court should also take into consideration that the convicts belonging to middle-class families without any criminal antecedent often become the victim of circumstances because of an undesirable company and other evil influences available to such young generation. Provisions of Probation of Offenders Act, 1958 normally cannot be applied to the following offenses:

1. ACB cases (AIR 1983 SCC 359),
2. Section 304 part-II of IPC,
3. NDPS Cases ((2002) 9 SCC 620),
4. Section 304-A (AIR 2000 SC 1677),
5. Section 325 IPC,
6. Sections 409, 467, 471 IPC (AIR 2001 SC 2058;),
7. Kidnap and, abduction (AIR 1979 SC 1948), and
8. Habitual offenders, (**Kamroonissa v. State of Maharashtra**, AIR 1974 SC 2117), etc.

Analogous Law:

Section 4 is similar to subsections (1) and (7) of **Section 360 of the Code of Criminal Procedure, 1973** which are stated as follows:

(1) When any person not under twenty-one years of age is convicted of an offence punishable fine, or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not Punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it, appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing, him at once to any Punishment, direct that he be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace find be of good behaviour :

Provided that where the first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect. and submit the proceedings to a Magistrate of the first class forwarding the accuses to or taking, bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

The court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts or in which the offender is likely to live during the period named for the observance of the conditions.

CASE LAWS

LANDMARK CASES

I. Uttam Singh vs The State (Delhi Administration) 21 March, 1974

The appellant was convicted under s. 292 I.P.C. and sentenced to rigorous imprisonment and fine for selling a packet of playing cards portraying on the reverse luridly obscene naked pictures of men and women in pornographic sexual postures. The conviction and sentence was affirmed by the High Court.

It was contended that the sentence was very severe on the ground that only one single offense had been established and secondly that he might be released under the Probation of Offenders Act, 1958.

Facts: The accused has a shop at Kishan Ganj, Delhi. It is no more in controversy that on 1st February 1972, the accused sold a packet of playing cards portraying on the reverse luridly obscene naked pictures of men and women in pornographic sexual postures to P.W. 1. This sale was arranged by the police Sub-Inspector (P.W. 4) on receipt of secret information about the accused uttering these obscene pictures.

On getting a signal from the purchaser a raid was made in the accused's shop when two more packets of such obscene cards were also recovered in addition to the packet already sold to P.W. 1. The ten-rupee note, which was the price of the said set of playing cards and which had been earlier given by the Sub-Inspector to P.W. 1, was also recovered from the person of the accused.

At the trial, the accused was convicted under Section 292, Indian Penal Code and sentenced to six months' rigorous imprisonment and to a fine of Rs. 500/-, in default further rigorous imprisonment for three months. The High Court affirmed the conviction as well as the sentence.

The learned counsel for the appellant submitted that the sentence is very severe on the ground that only one single sale has been established in this case and also only three packets of cards were recovered from the accused. He further submitted that the accused is entitled to be released on probation under Section 4 of the Probation of Offenders Act, 1958.

Held – The accused is married and is said to be 36 years of age. Having regard to the circumstances of the case and the nature of the offense and the potential danger of the accused's activity in this nefarious trade

affecting the morals of society particularly of the young, we are not prepared to release him under section 4 of the Probation of Offenders Act. These offenses of corrupting the internal fabric of the mind have got to be treated on the same footing as the cases of food adulterators and we are not prepared to show any leniency. The appeal was, therefore, rejected.

II. Ishar Das vs State Of Punjab on

The appellant, who was less than 20 years was convicted for an offense under s. 7(1) of the Prevention of Food Adulteration Act, 1954, and was ordered to furnish a bond under s. 4 of the Probation of Offenders Act, 1958. The High Court revised the sentence, because of Section 16 of the Prevention of Food Adulteration Act Prescribed a minimum sentence of imprisonment for 6 months and a fine of Rs. 1000.

It is Manifest from plain reading of sub-section (1) of section 4 of the Act that it makes no distinction between persons of the age of more than 21 years and those of the age of less than 21 years. On the contrary, the said subsection is applicable to persons of all ages subject to certain conditions which have been specified therein. Once those conditions are fulfilled and the other formalities which are mentioned in section 4 are complied with, power is given to the court to release the accused on probation of good conduct.

The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offense under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act.

In this respect sub-section (1) of Section 4 of the Probation of Offenders Act contains the words “notwithstanding anything contained in any other law for the time being in force”. The above non-obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have an overriding effect and shall prevail if the other conditions prescribed are fulfilled.

Those conditions are:

(1) the accused is found guilty of having committed an offense not punishable with death or imprisonment for life,

(2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offense and the character of the offender, it is expedient to release him on probation of good conduct, and,

(3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behavior.

HELD: Section 4(1) of the Probation of Offenders Act contains the non-obstante clause notwithstanding anything contained in any other law for the time being in force, and hence the section would have overridden effect and shall prevail if its other conditions are fulfilled; especially when the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act.

As the object of Probation of offender's act 1958 is to avoid imprisonment of the person covered by the provisions of that act, the said object cannot be set at naught by imposing a sentence of the fine which would necessarily entail imprisonment in case there is a default in the payment of fine.

The Supreme Court held that the Probation of Offenders Act was applicable to the offenses under the Prevention of Food Adulteration Act, 1954.

III. *Public Prosecutor v. N.S. Murthy*

The accused was tried for committing murder of his wife but he was convicted under Section 323 of IPC as the injury caused by him was simple in nature. He was released on Probation by the trial court but the High Court sentenced him to six months R.I. It was held that the conduct of the accused immediately after the occurrence as well as the trial was one of the relevant and material factors to be taken into account before exercising powers under Section 4(1) of the Probation of Offenders Act 1958. In regard to the conduct of accused the court made the following observation:

“In the present case, the accused did not admit his guilt at any stage. The conduct of the accused is not that of a man of good character. Admittedly he ran away after the incident. He was kept in custody of P.W 3 and was

handed over to the police on the day following the date of offense at the inquest. He never repented for what had happened to his wife either immediately after the occurrence or at any time subsequent thereto. His statement under Section 342 CrPC makes it abundantly clear that he is not entitled to have the benefit of Section 4(1) of the Act.

RECENT CASES

I. Sukhnandan v. State of M.P

The High Court while dealing with a question as to whether the benefits of the provisions of the Act may be granted to the accused, for outraging the modesty of woman it has been held after considering the provisions of Section 4 as well as Section 12 of the Act , it would be just and proper that the applicant, who is in service and his service record is found not to be good and also he is having five children and is the sole bread earner, the sentence of fine even imposed on him may attach disqualification, be given the benefit of the provisions of the Act

Facts – On 31-10-1990 at 12 o'clock while Parbatia Bai (P.W. 1) was returning from the well, accused met her and followed her. He asked where her husband has gone. Parbatia told that her husband has gone for earning wages. He demanded liquor from Parbatia, but Parbatia refused. He tried to drag Parbatia and took her near the Jack-Fruit Tree (Kathal Ped) and slapped Parbatia.

Parbatia cried, her bangles were broken and her Saree had torn, then the accused ran away from the spot. Parbatia complained about the matter to Muniram, her husband. Both of them then went to the police station on 2-11-1990 at 11:00 a.m. and lodged the F.I.R. Offence under Sections 354 and 323 was registered. She was sent for medical examination. Ex. P-5 is a medical report. The applicant was arrested and the challan was filed.

The accused was serving as Peon in the Education Department. His service record is said to be good. He is having five children, three daughters, and two sons, and the conviction awarded to him may result in removal from service. Therefore, the benefits of the provisions of the Probation of Offenders Act, 1958 may be granted to him.

Held : Having thus considered the provisions of Section 4 as well as Section 12 of the Probation of Offenders Act, in the opinion of this Court, it would be just and proper that the applicant, who is in service and his

service record is found to be good and also he is having five children and is the sole bread earner, the sentence of fine even imposed on him may attach disqualification, be given the benefit of provisions of the Probation of Offenders Act. The State counsel was specifically asked, who stated that he has no objection to this effect.

II. Ashok Kumar Dogra vs The State (N.C.T. Of Delhi) on 29 September 2008

Facts : On 26.6.1995, while driving a red line bus bearing registration No. DL- 1P-2315 at Peera Garhi Chowk, Delhi, the petitioner hit a scooter bearing No. DL-1S-1132. The scooter rider, who was injured succumbed to his injuries later on. PW-8, Ct. Randhir Kumar was an eye witness to the accident.

Before the Metropolitan Magistrate, Ct. Randhir Kumar deposed that the accident was a result of rash and negligent driving of the petitioner. Considering the entire evidence produced by the prosecution the petitioner was convicted by the Metropolitan Magistrate. The appeal preferred by the petitioner was also dismissed by the Sessions Court, holding that there is no infirmity in the order passed by the Trial Court.

On 28th March 2008, counsel for the petitioner confined his plea in this matter to the reduction of sentence and/or the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958.

The counsel for the petitioner contends that the petitioner has faced the rigors of trial for nearly twelve years and has already served more than five months of his sentence. Furthermore, the petitioner is the only earning member of the family and has to support his wife and four minor children. It is also contended that the petitioner has no history of ever being involved in any criminal proceedings. Counsel of the petitioner submitted that keeping in mind these factors, either the sentence of the petitioner may be reduced or the petitioner may be released on probation of good conduct as contemplated by Sections 3 and 4 of the Probation of Offenders Act, 1958.

Counsel for the State, on the other hand, opposed the contention of the petitioner and relies on the decision of the Supreme Court in *Dalbir Singh Vs. State of Haryana* 2000 Cri.L.J. 2283. In that case, whilst dealing with the question of benefit of probation being granted to offenders under

Section 304-A of the IPC, the Supreme Court categorically stated that the benefit of any such probation should not be extended to persons convicted under Section 304-A for rash and negligent driving.

Held – While considering the quantum of sentence, to be imposed for the offense of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence.

The punishment sentencing the petitioner to undergo rigorous imprisonment for three months under Section 279 IPC, with a fine of Rs.500/-; and rigorous imprisonment for one year with fine of Rs.5,000/- under Section 304-A IPC awarded by the Court of the Metropolitan Magistrate and confirmed by the Court of Sessions was held to be quite reasonable. The revision petition was accordingly dismissed.

III. Mukhtiar Singh vs State Of Punjab on 16 March 2010

The trial Court convicted the petitioner for the offense and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- and in default of payment of fine, he was ordered to further undergo rigorous imprisonment for three months. Aggrieved against the same, petitioner had filed an appeal. The Appellate Court dismissed the same, upheld the conviction and maintained the sentence.

Facts – On 9th November, 1995, ASI Jagsir Singh was present along with his companion officials at Sirsa Kainchian in connection with patrol duty. At that time, secret information was received that the present petitioner is engaged in the distilling of illicit liquor and is operating a working Still in the fields of Jit Singh son of Harnam Singh at Ghaggar drain.

On the receipt of secret information, ruqa was sent to the Police Station for registration of the case and a raiding party was constituted. When the raiding party reached the spot, it found the accused feeding fire below the hearth. The working still was dismantled. The equipment and raw material was cooled down and was taken into possession. A separate recovery memo was prepared, vide which the equipment of the working Still and 175 kg of Lahan (raw material used for preparing the illicit liquor) were taken into possession.

From the testimony of the witnesses, it has held that the petitioner was operating a working Still and was engaged in distilling illicit liquor. It was submitted that the occurrence had taken place on 9th November, 1995. A

period of more than 14 years has elapsed and during this period, the petitioner has not committed any other offense.

It was further submitted that at the time of occurrence, the petitioner was aged about 33 years. He has a large family to support and is the sole breadwinner of his family. It has been submitted that petitioner be granted an opportunity to reform himself and rehabilitate in the society.

In *Isher Dass v. State of Punjab*, AIR 1972 SC 1295, Hon'ble Supreme Court held that subsection (1) of Section 4 of the Probation of Offenders Act containing the non-obstante clause, would have an over-riding effect and shall prevail if the other conditions prescribed were fulfilled.

The Full Bench held as follows:- “To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under Section 61 (1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.”

Taking into consideration that in the last 14 years, petitioner has committed no other offense, the age and antecedents of the petitioner, the Court was of the view that ends of justice will be fully met in case petitioner is released on probation under Probation of Offenders Act, 1958 for a period of one year. He shall furnish personal/surety bonds to the satisfaction of the trial Court with an undertaking that he shall maintain peace, good conduct, and behavior during the period of probation.

Conclusion

To conclude, it can be said that the measure of alternative punishment i.e., probation and the objective of the theory of reformatory punishment would be achieved only if the judiciary and the administration work together. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person.

Probation is an affirmation of the human inside every being and it must be given importance.

The reform and rehabilitation process have to be worked out in the context of existing social conditions to achieve the ultimate objective to reclaim back those offenders to an orderly society.

The provision of Section 4 vests in the court a discretion to release a person found guilty of having committed an offense not punishable with death or imprisonment) for life. It is really for the court, by which the person is found guilty, to determine, having regard to the circumstances of the case including the nature of the offense and the character of the offender, whether or not it will be expedient to release him on probation of good conduct. It is only when the court forms an opinion that in a given case the offender should be released on probation of good conduct that the court acts as provided in the Section.

Where, however, the court is not satisfied with the justification of a release on probation of good conduct, it will certainly impose upon the offender penalty as provided by the Indian Penal Code. In case of offenders under twenty-one years of age, special provision has been made in Section 6. Section 4 is general. It applies to all kinds of offenses, whether under or above twenty-one years of age. Section 4 empowers the court in appropriate cases to release an offender on probation of good conduct “instead of sentencing him at once to any punishment”.

Section 4 speaks of punishment and not of imprisonment. The court will not punish him in any manner if on the facts it is satisfied that a particular person guilty of the offense of the nature enumerated in Section 4 should be released on his entering into a bond. The word ‘punishment’, therefore, is wide enough to comprehend both the punishment of imprisonment and the punishment of a fine. Therefore, Section 4 empowers a court to remit the fine also and on the plain wording of the section, it will be unreasonable to contend that remission of the fine was not within the competency of the court.

Probation: A Study in The Indian Context - Probation of Offenders Act

The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological

approach has ushered in new forms of sentencing whereby the needs of the community are balanced with the best interests of the accused: compensation, release on admonition, probation, imposition of fines, community service is few such techniques used. In this material, the advantages of probation are highlighted along with how it could be made more effective in India. The term Probation is derived from the Latin word probare, which means to test or to prove. It is a treatment device, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing of a prison sentence would do no good. Imprisonment decreases his capacity to readjust to the normal society after the release and association with professional delinquents often has undesired effects.

According to the United Nations, Department of Social Affairs, the release of the offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality. The United Nations recommends the adoption and extension of the probation system by all the countries as a major instrument of policy in the field of prevention of crime and the treatment of the offenders. This part of the material focus is on the legislative and administrative aspects of probation, and means by which probation may be made more effective in India.

Law of Probation in India

Section S.562 of the Code of Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974. It reads as follows: When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment from a term of

seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

S.361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation. The object of probation has been laid down in the judgment of S. 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

In 1958 the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be responsible to give a pre-sentence report to the magistrate and also supervise the accused during the period of his probation. Both the Act and S.360 of the Code exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

Section 4 of the Act provides for probation.

S.4 Power of Court to release certain offenders on probation of good conduct

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

S. 6 of the same Act lays special onus on the judge to give reasons as to why probation is not awarded for a person below 21 years of age. The Court is also to call for a report from the probation officer before deciding to not grant probation.

The provision under the Code and the Act are similar, as they share a common intent, that, punishment ought not to be merely the prevention of offences but also the reformation of the offender. Punishment would indeed be a greater evil if its effect in a given case is likely to result in hardening the offender into repetition of the crime with the possibility of irreparable injury to the complainant instead of improving the offender.

Yet there are a few differences, which have been enumerated below.
S.4 of Probation of Offenders Act S.360 of The Cr.P.C.

Any person may be released on probation, if he has not committed an offence punishable with death or imprisonment for life. (No distinction is made on ground of sex or age) Any person not under 21 years of age, if convicted of an offence punishable with imprisonment for not more than 7 years or when any person under 21 years of age or any woman is

convicted of an offence not punishable with death or imprisonment for life may be released on probation. It is not necessary that the person must be a first offender. This section applies only when no previous conviction is proved against the offender.

Any magistrate may pass an order under this section. Magistrate of the third class or of the second class not specifically empowered by the state government had to submit the proceeding to Magistrates of the first class or Sub-Divisional magistrates. Supervision order may be passed directing that the offender shall remain under the supervision of a Probation Officer. No such provision.

Besides these two enactments, the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.

Procedure For Probation Service

S. 4(2) and S. 6(2) of the Probation of Offenders Act provide that the judge would consider the report of the probation officer before deciding on whether to grant probation. S. 14 of the said Act lays down the duties of the Probation Officers.

The pre-sentence report of the Probation Officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedents and throw light on the background which prompted him to commit the offence and give information about the offenders conduct in general and chances of his rehabilitation on being released on probation.

The judge may also pass a supervision order under section 4(3) of the Act, whereby the offender is placed under the supervision of a probation officer and certain conditions are imposed upon him. This is mostly in the form of regular visits to the supervising officer. Some of the conditions which must be followed have been laid down in S. 4(4). On the application of the probation officer such conditions may be varied- S. 8(2) and also the offender may be discharged- S. 8(3). If the offender fails to follow the conditions laid down by the Court, the original sentence against him may be revived S. 9.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the report of a probation officer or a recognized voluntary organization to be considered before passing a sentence. The Magistrate appointed as a member of the Board constituted under this Act must know something of child psychology. The Board would pass orders against a juvenile. The Act provides for the setting up of Observation and Special Homes by the State Government where the juvenile could be placed. Here the rehabilitation and social integration of the child would take place. It also provides for an Aftercare programme which would take care of the delinquent child after he has been discharged from these homes, based on the report of the Probation Officer. The Probation officers appointed under the probation of Offenders Act would also function under the Juvenile Justice (Care and Protection of Children) Act.

Probation in India is mostly dependent on the policies of the State rather than a uniform Central Policy. In Karnataka a State level Probation Advisory Committee has been constituted with High Court Judge as Chairman with official and non-officials as members. A District level Probation Advisory Committee has been constituted in each district consisting of the District and Sessions Judge as Chairman with official and non-officials as members. After Care Programmes have been set up to improve the lives of those released on probation.

The After Care Programme, in Kerala, is intended to rehabilitate released prisoners and probationers coming under the supervision of District Probation Officers. By utilizing this amount, they can engage in small scale income generating activities. The amount of assistance is Rs.10,000/- per head. If the amount is insufficient for meeting the expenses this can be attached with some bank loan. Department of Juvenile Welfare and Correctional Services was set up in Andhra Pradesh in 1990. It gives the following probation services taking care of probationers released by the courts and ex-convicts, released juveniles, after-care work, counselling and guidance to reform themselves and not to revert to crime and for their rehabilitation through Govt. Welfare Agencies.

Benefits of Probation Service

Probation keeps the offender away from the criminal world. Further, the fear of punishment in case of violation of probation law has a psychological effect on the offender. It deters him from law breaking during the period of probation. Thus, probation indirectly prevents an offender from adopting a revengeful attitude towards the society. Moreover, sentencing an offender to a term of imprisonment carries with it a stigma, which makes his rehabilitation in society difficult. The release of the offender on probation saves him from stigmatization and thus prepares him for an upright living. The shame of going through a trial process would have sufficiently chastised him. According to the labelling theory, a stigmatizing label once applied, is very likely to cause further deviance or create the deviance. People tend to conform to the label even when they didn't set out that way.

Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies.

Before the implementation of probation law, the courts were often confronted with the problem of disposing of the cases of persons who were charged with neglect of their family. In such cases there was no alternative but to send them to prison, which was an unnecessary burden on the State exchequer. With the introduction of probation as a method of reformatory justice, the courts can now admit such offenders to probation where they are handled by the competent probation officers who impress upon them the need to work industriously and avoid shirking their family responsibilities.

An analysis of crime statistics would show that a large segment of offenders consists of the poor, the illiterate and the unskilled. Such offenders are seen to be victimized twice: once, when they are denied of their basic human needs in open society and forced to live in a sub-culture of social marginality, and, again, when they are grinded in the mill of criminal justice for having infringed the law. Probation would thus be an effective means to deliver justice to them, they would not be incarcerated and also, they would be trained which would improve their life later.

The society is also served. The object of society that all its members playing a positive role by seeking their self-rehabilitation is achieved by the probation system, it is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control. Also, during the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him in securing a livelihood for himself after he is finally released and thus lead an absolutely upright life. And whatever work an offender is doing as a probationer, he is contributing to the national economy. Thus, he no longer remains a burden on the society.

Further, correctional task of probation staff requires closer contact with inmates during his period of probation. This helps the probation supervisor to get a deeper insight into the real causes of crime and suggests remedies for their eradication.

Criticisms Against the Concept of Probation and Their Counter

There are some critics who look at probation as a form of leniency towards the offenders. To quote Dr. Walter Reckless, probation like parole, seems to the average laymen a sap thrown to the criminal and a slap at society. Probation is still generally perceived as a lenient approach rather than a selective device for the treatment of offenders who are no threat to public safety. Probation system lays greater emphasis on the offender and in the zeal of reformation the interests of the victim of the delinquents are completely lost sight of. This obviously is against the basic norms of justice. Keeping in view the increasing crime rate and its frightening dimensions, it is assumed that undue emphasis on individual offender at the cost of societal insecurity can hardly be appreciated as a sound penal policy. Some criticize probation because it involves undue interference of non-legal agencies in the judicial work which hampers the cause of justice.

Further, when non-custodial correctional measures are used arbitrarily, without being resorted to on objective grounds, there is danger of men of means taking undue advantage and abusing the system as against those who would really deserve but have no advocacy or support, and of the whole approach becoming counter-productive and coming into public disrepute.

The answers to these criticisms would lie in the fact that the aim of the criminal justice system is to correct the offender and for some offences this would be best done outside the prison. Further, laying down strict guidelines to determine when probation should be awarded would defeat the very purpose of the concept. The broad parameters laid down age of the offender, surrounding circumstances, nature of the offence, etc. provide a broad framework for the judge to apply his discretion. It would also defeat the purpose if probation has to be granted when certain conditions are satisfied, if for example the facts on record show clear pre-meditation to do a wrongful act.

Responding to the other criticism, it is essential that non-legal agencies, namely probation officers, interference is only meant for smooth functioning, and also it is not mandatory for the judge to consider using the probation officer always. He may not ask for a pre-sentence report, may not put the offender under supervision.

Problems in the Practical Implementation of Probation in India

S. 6 of the Probation of Offenders Act, which makes it easier for a person below 21 years of age to benefit from probation. This is regardless of their antecedents, personality and mental attitude. It might lead to recidivism because many of them may not respond favourably to this reformative mode of treatment. Also, in many cases it is difficult to ascertain whether the delinquent is a first offender or a recidivist.

The Probation of Offenders Act, in sections 4(2) and 6(2), lays down that report of the probation officer is considered before awarding probation. But, the Courts generally have shown scant regard for the pre-sentence report of the probation officer because of lack of faith in integrity and trustworthiness of the Probation Officers. In their view calling for the pre-sentence report would mean unnecessary delay, wastage of time, undue exploitation of the accused by the probation officer and likelihood of biased report being submitted by him, which would jeopardize the interest of the accused and would be contrary to the object envisaged by the correctional penal policy.

On personal interview with some judicial officers and probation officers, conducted by Abdul Hamid, it has come to light that neither judicial officers feel it desirable to get report from the probation officers, nor the probation officers feel it obligatory on their part to submit their reports in the courts unwarranted. Section 4 of the Probation of Offenders Act does not make supervision of a person released on probation mandatory when the court orders release of a person on probation on his entering into a bond with or without sureties. This is not in accordance with the probation philosophy, which considers supervision essential in the interests of the offender, against corrective justice.

The lower judiciary in India has not at all taken into consideration the objects and reasons of this act, while applying its discretion in regard to grant of probation. In an umpteen number of cases the accused had to move the High Court and even the Supreme Court to get the relief of probation. If an accused gets relief of probation only in the High Court or the Supreme Court after passing through the turmoil of a long and cumbersome judicial process, he would, psychologically, be diverted towards hardened ness and the whole purpose of the Act would be forfeited.

Variation or discharge of the probationer is based solely on the report of the probation officer; this leaves the probationer at the mercy of the Probation Officer.

The after-probation services are not very effective. Thus, even considering that a sentence of probation has been passed and the offender is placed under supervision it is nothing more than a regular visit to the officer. There is no scientific process of rehabilitation and the Probation Officers aren't adequately trained. They are recruited between 20 and 26 years of age. They are grouped into districts and supervised by a state/provincial chief. There is no in-service training and occasional refresher courses, and thus they are not adequately trained.

Further, often there is a lack of interest for social service among the probation personnel. Lack of properly qualified personnel, want of adequate supervision and excessive burden of casework are attributed as the three major causes of inefficiency of the probation-staff.

Suggestions To Make Probation Service fulfil Its Purpose

A few suggestions have been given in the paper which may be implemented at the legislative and the administrative level, which would make probation effective in India.

Changes that could be brought about in the law are enumerated below. These changes are mostly applicable to the Probation of Offenders Act as it is more widely applicable than S.360 of the Code.

Due importance must be given to the reports of the probation officers by making necessary amendments in section 4(2) and section 6(2) of the Act. Probation must be based on thorough investigation into the case history of the offender and the circumstances associated with his crime. United Nations Standard Minimum Rules for Non-Custodial Measures also provides that the judicial authority must avail of such a report.

Recidivists have often proved a failure in the process of probation. It has, therefore, been generally accepted that probation should only be confined to the cases of juveniles, first offenders and women offenders. Though S.360 of CrPC lays down that only first offenders will be granted this benefit, if they are not below 21 years of age, no such condition has been laid down in the Act. Necessary amendment may be done to incorporate the same.

It must be made mandatory for offenders to be placed under supervision of a probation officer, by amendment under S.4(3) of the Act, as that would best serve the philosophy of probation. If the officer feels that the offender would not commit a crime, he could then submit to the court an application for the offender's discharge. Also, it has been left to the discretion of the Probation officer to decide and inform the Court about necessity to vary an order of probation or to discharge the probationer, so there must be a complaint mechanism provided is a probationer wants to complain against a decision concerning the implementation made by the implementing authority, or the failure to take such a decision.

The proviso to Section (4) of the Act lays down that probation would be granted only after the offender or his surety, have fixed place of abode or regular occupation. A large segment of offenders consists of the poor, the illiterate and the unskilled. It would not be possible for them to fulfil the conditions in all cases; hence the proviso should be amended to not make

it mandatory, and leave it at the jurisdiction of the Court. Amendment could be made to The Code of Criminal Procedure to include the provisions for pre-sentence report and supervision.

To make the judiciary more responsive, an amendment could be brought about in The Probation of Offenders Act which would make it mandatory for the judiciary to lay down the grounds as to why the benefit of probation must not be given, on the lines of S.361 of the Code.

The provisions under the Probation of Offenders Act and the Code of Criminal Procedure could be amended to be similar to the Juvenile Justice (Care and Protection of Children) Act, where more detailed procedures are laid down, like for the setting up of observation homes, report of the probation officer. Changes could be brought about in the way administration deals with probation. Some of them are enumerated below.

India, being a developing country can't spend heavily on correctional measures, as its emphasis would be more on economic improvement. Due to lack of economic resources most developing countries violate the UN Standard Minimum Rules. It wouldn't be possible for India to adopt all of the measures prescribed by the UN, but India could adopt a few of the measures.

The first among them must be to have trained probation personnel. This isn't there today because the task of the probation officers is not given much importance in India. It is considered to be a mere formality, but if utilized well they would be most effective. The quality of probation service must be improved by making the service conditions of the probation staff more lucrative. This will attract well-qualified and competent persons to the profession. The probation personnel ought to be specially trained so that they can discharge their duty as probation officer competently.

A nation-wide uniform scheme of training for probation personnel with emphasis on social-work and rehabilitative techniques would serve a

useful purpose to improve the efficacy of probation service in India. Guidelines for the training of Probation officers as have been laid down in the United Nations Standard Minimum Rules for Non-Custodial Measures, may be followed to the extent possible.

South Africa, though a developing country makes it necessary that desired entrants have degrees in criminology, psychology, or social work. There are also monitoring staff who work parallel to probation officers. Loans are offered for full and part-time study and short courses. Thus, it is no excuse that probation may be implemented only in the developed and rich countries.

Further an increased investment on correctional services for the poor, illiterate and unskilled would be most productive not only in reducing crime but also in improving the quality of life among the strata they come from and are ultimately to return to. The Kerala Government has provided for an After Care Programme to rehabilitate probationers. They are given an assistance up to Rs.10,000/- per head. By utilizing this amount, they can engage in small scale income generating activities. The amount of assistance is. If the amount is insufficient for meeting the expenses this can be attached with some bank loan. Such services could be extended to the rest of India.

Further, this system must be extended to rural courts where there is general lack of social agencies to undertake the task of rehabilitation of offenders. Rural delinquents may be more responsive to this correctional method of treatment than the urban offenders because of their relatively simple life-style. In developing probation and aftercare services it should be ensured that women and children are specially assisted.

In U.S., Prediction Tables are compiled to plan probation strategies. Such tables may help in anticipating the probable result of correctional treatment on different offenders. There, they have proved immensely helpful in estimation of offender's personality for individualized treatment. For example, a juvenile delinquent from a broken home would

be less responsive to treatment than a person from a good family background.

The present system in parts of the country, where the offender only has to present himself before the probation officer on a regular basis would not suffice. At present the work of probation is assigned to different departments in different States. In some states probation service is placed under the Social Welfare Department while in others in functions under the Panchayat Department or the Home Department. It is advisable to have an independent Department of correctional Services on the pattern of the state of Gujarat at the national level to exclusively deal with rehabilitation of offenders, of which probation is one of the techniques. An attitudinal change, must be sought and brought about among the judicial officers towards the significance of the probation system, this would make the concept more workable and beneficial. Probation in India as of today is mostly at the States initiative. Instead, a central policy towards probation must be formulated.

Conclusion

The object of the criminal justice system is to reform the offender, and to ensure the society its security, and the security of its people by taking steps against the offender. It is thus a correctional measure. This purpose is not fulfilled only by incarceration, other alternative measures like parole, admonition with fine and probation fulfill the purpose equally well. The benefit of Probation can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relatives, or other causes of like nature, attempt to put an end to their own lives.

Its aim is to reform the offender and to make him see the right path. This can be achieved as has been said previously, not only by legislative action but also by sincerity on the part of the administration. In some parts of the country, it is being implemented in the right spirit. The example of Kerala and Andhra Pradesh have been described in the project.

The success of probation is entirely in the hands of the State Government and the resources it allots to the programmes. Resources are needed to

employ trained probation officers, to set up homes for those on probation and also for their training besides others. Thus while concluding it can be said that the concept of Probation would be effective only where the judiciary and the administration work together there must be a common understanding between the Magistrate (or) Judge and the Probation Officer. Probation would be effective only when there is a sincere attempt made to implement it. It would be of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Probation is an affirmation of the human inside every being and it must be given due importance.

Parole in India – Current state and the Need for Reforms- I

Introduction

Crime is a matter of public importance in the society. The way a society responds to crime is what shapes its future. If such way of responding is harsh or arbitrary in its impact, it works a gross injustice on those caught within its toils. Ways of administration of criminal justice play a significant role in understanding a society's ways of dealing with crime. Criminal Justice Administration in this era is different from the past. With changing times, the focus on correction, reformation and rehabilitation has increased and harsh, retributive forms of punishments are now losing value. Time and again, multiple reports across the world have focused on this aspect. To some extent, the Indian mentality is not far behind other countries in following this liberal trend and the same is evident from the fact that numerous petitions have been filed in this regard. Several judgements of the recent times have focused on the need for prison administration to become more criminal friendly. Increasing significance coupled with decreasing recidivism and the need for reintegrative and reformatory forms of punishment is shifting the paradigm of criminal justice to a new and more liberal level.

Re-socialisation and assimilation of prisoners is the primary goal of prisons. The concept of prison administration is grounded on rehabilitation and individual growth of the offenders along with ensuring social security. In order to attain them, it is important that forms of

punishment become more reformatory in nature. On this premise, the prison administration and legislature have designed several therapeutic programs. One of these programs is the conditional release of prisoners. Such release could be labelled as parole or furlough depending on its nature. Both of these, with an aim of reformation of prisoners and humanisation of the prison framework form fundamental part of the prison administration system. Furlough is a leave of absence that is usually granted to a member of a missionary or some service. Parole means a conditional or time bound temporary release of a prisoner during his sentence with a specific purpose. It is granted on the promise of good behaviour.

The current situation of the Covid-19 Pandemic has led to the filing of multiple parole requests and due to the absence of a uniform code in India dealing with parole, different states have expressed different opinion on the same, hence resulting in a compromise of equality with regards to criminal justice advancement. This part of the material is divided into two parts. The present part seeks to deal with parole in India as laid down by certain statutes and judicial pronouncements. Alongside, it takes into light the ongoing COVID- 19 pandemic and the need for grant of parole. The second part in this series will discuss on the requirement of reforms and suggestions. Further, it will also elaborate on the possible misuse of the law on parole and how to tackle the same.

Parole in India

Parole as a concept finds its origin in military law. Prisoners of war were granted interim release so that they could return to their homes and live as part of the society for some time on a promise of returning when such time ends. With passing time, Parole became part of the criminal justice administration of India to provide prisoners with an opportunity to spend some time being part of the society. However, it could only be granted to a prisoner if such prisoner had served some part of his sentence already. As established in the case of *Budhi v. State of Rajasthan*, the concept of Parole serves a threefold purpose:

1. As a motivating factor for prisoners' reformation.

2. Ensure as much intactness in the family relations of the prisoners as possible, as they may be prone to breakage due to continued incarceration of the prisoner for a long time.
3. Help the misled offenders to gradually become part of the society and adapt to its folds.

It is a device ensuring temporary release of prisoners grounded on good behaviour so that they can escape the penal custody for some time and maintain their family and societal links. This helps in facilitation of rehabilitation and social re-assimilation. It helps in giving a situational solace to the parolee to fulfil certain needs and such parolee is mandated to report to the supervisory officer regularly for the time he is out. In simple words, a prisoner can seek parole and stay out of custody for a temporary period of time while he is yet to complete his sentence.

Now, the question arises as to whether the period on which a prisoner is out on parole counts as part of the sentence or not? There have been different opinions of the Supreme Court at different points of time on this. In the case of *Smt. Poonam Lata vs M.L. Wadhawan & Ors.*, the Supreme Court of India said that “*it must accordingly be held that the period of parole has to be excluded in reckoning the period of detention.*” However, a few years later the Supreme Court in the case of *Sunil Fulchand Shah v. Union of India*, said that “*A temporary release of the person detained does not change his status as his freedom and liberty are not fully restored. Therefore, the period of temporary release on parole cannot be excluded from the maximum period of detention.*” thereby overruling the judgement delivered in the Poonam Lata case.

The Bombay High Court, in the cases of *Kantilal Nandlal Jaiswal v. Divisional Commissioner, Nagpur* and *Hariom Vijay Pande v. State of Maharashtra, through Divisional Commissioner* held that parole is a limited legal right available to a convict. However, the Supreme Court in the case of *The Home Secretary (Prison) v. H. Nilofer Nisha* clearly stated that, “*the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions.*”

Moving forward, while considering the rehabilitation of the offenders, it is also important to keep in mind the rights of victim and the security angle

attached to the release on parole. There have been instances of convicts resorting to committing crimes while they are released on parole. A very landmark case of *Saibanna v. State of Karnataka* pertains to the killing of a woman by her husband which resulted in him being served with life imprisonment. While this person was out on Parole, he suspected his second wife to be cheating on him and killed her and his daughter too. With regards to safety of the society and rights of the victims, there cannot be two opinions. The rights of an accused cannot hold preference over rights of victim and the society. Had it been so, they would have only resulted in misplaced sympathy being placed on the accused.

Now, in order to strike a balance between the need for providing prisoners with the opportunity to connect to the society and maintain their family links by way of getting parole and at the same time, avoid such incidents from happening, there existed a provision in the Delhi guidelines on Parole. According to it, those prisoners accused of heinous crimes such as murder, rape, dacoity, etc would get prohibited from getting temporary release. However, this was struck down in the case of *Dinesh Kumar v. Govt. of NCT of Delhi* for being violative of Article 14 of the Constitution of India.

Despite holding recognition as administrative value, parole is not recognised as a Right in India. A prisoner's claim to parole is not absolute and the discretion with regards to granting to parole to the said prisoner rests with prison authorities to some extent.

A recent Supreme Court judgement in the case of *Asfaq v. State of Rajasthan* shreds some light on the parole law in India. The major takeaways from the judgement are:

Parole is the conditional release of a prisoner grounded on good behaviour on the condition that the said prisoner will keep reporting to the authority regularly. It is merely a suspension of his sentence for some time, while the quantum of the said punishment remains unchanged.

Situations in which parole could be granted are:

“(i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or

- (ii) the marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or
- (iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or
- (iv) it is desirable to do so for any other sufficient cause;
- (v) parole can be granted only after a portion of sentence is already served;
- (vi) if conditions of parole are not abided by the parolee, he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and
- (vii) parole may also be granted on the basis of aspects related to health of convict himself."

However, different states have different guidelines with regards to parole and a decision as to whether parole has to be granted in some case or not depends on the guidelines of the state concerned.

Some state guidelines mention two categories of parole:

Custody Parole – Usually granted in situations of emergency including death of a family member, marriage of a family member, and some family member undergoing serious illness.

Regular Parole – Granted in the other cases such as critical family conditions including accident or death of a family member, child delivery by the convict's wife in case of absence of any other family member to take care, serious damage to life or property, maintaining social and family ties, or to file special leave petition.

Since no provisions of the Code of Criminal Procedure, 1973 talks about parole and there is no uniform legislation in India dealing with parole, different states have their own different Acts governing this. As a result, there is some grey area with regards to matters pertaining to parole. Unlike the United States of America or the United Kingdom, India does not have a codified legislation on Parole and the authority to decide matters pertaining to parole is only derived from these statutes and judgements.

Plea Bargaining and Criminal Justice in India

Crime, criminals and criminality have always been serious concern for society, state and individuals. Individuals formed society to have protection for his life, property and liberty. Society to bear such liabilities created state which ultimately developed criminal justice system. Hereby, criminal justice system is developed for providing protection to life, liberty and property of individual but in developmental process individual for whose protection criminal justice system was developed, became neglected. Traditionally criminal justice system attempts to protect accused and his interests. Recently demands are made for justice to individual victim who is actual sufferer of crime commission. Recently some measures are created for providing justice to individual victim. Such measures are in process of development, and thereby, for effective justice measure development to provide justice to victim there is a need to make continuous review. Plea bargaining is one such measure recently included in Indian criminal justice system to provide justice to victim. This paper analyses plea bargaining in reference to providing of justice to victim in India.

Introduction

Recently in Indian criminal justice system plight and injustice to individual victims has been emphasized and demands are made for providing actual, effective and sufficient justice to them. In recent years many provisions have been added to the Criminal Procedure Code (hereinafter CrPC) in order enable victims of crime to raise their grievances at appropriate forum, and further in justice imparting their sufferings should be taken care and accordingly decisions should be given. One of them is plea bargaining. In India the concept of plea bargaining has been accepted and included in the CrPC but it is not completely transplanted from other legal systems, like the American one, but adopted with some modifications. Provisions relating to plea bargaining in Indian criminal justice system are provided in Chapter XXI-A of CrPC which was added by Criminal Law (Amendment) Act 2005 (2 of 2006) which came into force on 5.7.2006. Plea bargaining is based on concept of restorative justice and in this regard many provisions have been added in the CrPCedure Code by some recent criminal law amendments.

Previously, usually allegations were made that criminal justice system is favourable to the accused and in criminal procedures attempts are made to protect the interest of accused with complete neglect of victim and his problems. Restorative justice talks about justice to victim who is actually suffered of the criminal acts. Responsibility has been imposed on the state for compensating victims, for proper treatment of physical and psychological injury in cases of sexual or acid attacks. Cases amount of fine are determined according to the need of medical expenses to cover the full amount the victim had to spend. An appeal against the court's decision may be brought before the Supreme Court. Criminal justice now is emphasising the effective justice to victim and it is considered as one of the important objectives. In *National Human Rights Commission v. State of Gujarat*¹ Supreme Court observed:

“It needs to be emphasised that the rights of the accused have to be protected. At the same time the rights of the victim have to be protected and the rights of the victim cannot be marginalised. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the victims' perception the perpetrator of a crime should be punished. They stand poised equally in the scale of justice.”

Principles of Justice for Victims of Crimes and Abuse of Power

Criminal justice system makes all the attempts to tackle problem of crime and criminality and to protect society from the impacts of crime. Traditionally criminal justice system considers victim of crime is society and society is represented through State, thereby, traditionally concept crime even when widened, society and state are considered as victim of crime. Individual victim against whom crime is committed has always been neglected and traditionally been treated as mere informant and witness in criminal case. That is why real victim of crime who has suffered injuries of crime commission has always been a neglected and need of justice. Article 4 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, directs member states of United Nations for treating victims of crime with compassion and respect their dignity:

“Victim should be treated with compassion and respect for their dignity. They are entitled to access to the mechanism of justice and to prompt

redress, as provided for by national legislation, for the harm that they have suffered.”

For achieving these objectives, the United Nations directed in Article 5 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, to member nations to develop judicial and administrative mechanisms for victim redressal, and further, to provide effective communication with victim to inform him about the rights available to him:

“Judicial and administrative mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victim should be informed of their rights in seeking redress through such mechanisms.”

Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, puts emphasis on restitution of victims and for this purpose direction is given for imposition of responsibility on offenders. Offender has caused suffering to victim, thereby, for restitution also responsibility must be imposed on offender. This measure also reminds offenders that what they have done and the problems they caused. Imposition of responsibility on offender for restitution of victim functions in two parallel ways. It provides effective remedy to the victims who are restituted, and at the same time it teaches the offenders that their wrongful acts are completely unacceptable and proscribed which have caused a serious hardship to other member of society. The later aspect compels offenders for introspection and they may be reformed. Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985, directs member states to enact and develop measures for restitution and compensation to victim of wrongful acts and for this purpose responsibility has to be imposed on offender and when it is not sufficient then the State itself should compensate.² Article 8 of the Declaration directs implicitly for development of measure like plea bargaining through which responsibility is imposed on offender to compensate and retribute the victim. Article 8 of Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power 1985 provides:

“Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents, such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as result of the victimization, the provision of services and the restoration of rights.”

Crimes are committed against individual victim but traditionally the victim has always been neglected. Criminal law evolved for providing protection to life, property and liberty of members of society but when acts are committed offending such protected subjected then in that situation the criminal traditionally does not care of such member of society. Criminal law in adversarial system tilted towards accused person and all cares and protections are provided to him, when justice concepts are developed in criminal law it is keeping in focus criminal not the

Three ways to compensate victim of crime are prescribed in Indian criminal justice system – 1. Fine is imposed on offender as punishment and from fine amount some amount is provided by court to victim as compensation. In India section 357 CrPC provides provisions in this reference. In this case compensation is directly not paid by offender, he is punished by imposition of fine. Now from fine amount court awards compensation. Fine goes in state fund, therefore here it means compensation is paid by state indirectly. 2. State has responsibility to protect persons from crime, criminals and criminality; on crime commission state has failed in bearing its responsibility, thereby state has to substantiate the injury caused to person due to crime commission. In Section 357-A CrPC liability is imposed on state to pay compensation to accused. Generally, such compensation is paid, when fine imposed is not sufficient to compensate the victim or offender is not identified or accused is acquitted or immediate relief is needed to victim. 3. Traditionally, compensation to victim of crime is paid by state; compensation to victim is not directly paid by offender. Recently a new development has taken place in criminal justice by prescribing measure for payment of compensation directly by offender to victim of crime. For this purpose, measure of plea bargaining is introduced in Chapter XXI-A of Criminal Procedure Code. In plea bargaining offender under mutual satisfactory

disposition which a kind of agreement directly pays compensation to victim of crime and in return he is subjected to reduced punishment. victim. Victim is usually misconstrued as only society and state completely forgetting the person who in reality suffered offending act and incurred resultant injury. Criminal law has traditionally neglected the person individual victim for whose protection criminal law originated, developing and existing. Recently demands are made for shifting attention criminal law towards actual victim of crime. In India recently criminal justice system is continuously providing new and new measures for providing justice to victim of crime. It is claimed that one such measure is plea bargaining. Plea bargaining is American measure used for disposal of case and providing speedy and restorative justice to victim. Law is always society specific, therefore, in India plea bargaining measure is adopted but it is included in criminal justice with modifications. In India accused after plea bargaining is not completely exonerated from his penal liability under criminal law but only his penal liability is reduced on payment of compensation amount agreed between accused and victim in pursuance of plea-bargaining procedure but at the same time concept of plea bargaining appears to be misfit in our criminal justice system.

Meaning and Concept of Plea Bargaining:

In plea bargaining the accused admits commission of crime and takes responsibility to compensate the victim for injury caused and in return to penal liability of accused is reduced. Plea bargaining has some references to confession, plea of guilt and compounding of offences. Plea bargaining is a kind of agreement between the accused and the prosecution regarding disposition of criminal allegations. It is a sort of compounding of case, in compounding of case parties to case settle the allegation of crime commission, similarly here in case of plea bargaining in compounding is made between parties to case making consequence of reduced punishment. Plea bargaining procedure initiates with plea of guilt and on this basis compromise (compounding) is made between parties to case. In plea bargaining disposition is prepared under supervision of Court and it becomes final only on acceptance and accordingly passing of order by court. Plea bargaining is a sort of contractual agreement and it becomes

absolute only on accepting by court. Black's Law dictionary defines plea bargaining:

"The process whereby the accused and the prosecutor in a criminal case work out mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the grave charge."

Plea bargaining is a process of preparation of mutually satisfactory disposition of the case subject to acceptance by court. Plea bargaining is made at pretrial stage and with successful plea bargaining by which mutually satisfactory disposition is prepared and accepted by court, first stage of trial which is used for identifying criminal concludes; with acceptance of guilt by accused himself, there is no need of proceeding in the said regards. Now proceeding is directly takes place for

determination of sentence and sentence is also decided in accordance with disposition prepared by accused and other parties to case. Hereby, plea bargaining is measure used at pre-trial stage at which by agreement between prosecution, accused and victim, accused pleads guilty for lenient and reduced sentence. Section 265-A of the CrPC mentions stage for plea bargaining and it shows that it is made before trial; in case investigated by police officer, on the submission of police report, and in complaint case, on issuance of process u/s 204 CrPC. Hereby, plea bargaining stage initiates at cognizance stage in case instituted on police report and in case instituted on complaint, after taking of cognizance. It indicates that plea bargaining has to make before initiation of trial, but it cannot make absolute limitation and even after initiation of trial, plea bargaining may made. „Bargaining“ word used is self-explanatory that plea of guilt is bargained, accused bargains that he may accept guilt when lesser punishment is inflicted and prosecution and victim in case based police report, and victim in complaint case, bargains for compensation amount. Further prosecution is relieved from heavier responsibility of proving case beyond reasonable doubts (burden of proof). On successful bargain when disposition is prepared between parties to case under supervision of court, it takes form of agreement which indicated by expression „mutually satisfactory disposition of the case“ used in Section

265-B (4) (a) CrPC. On acceptance by court agreement arrived between party becomes absolute. Plea bargaining excludes need of trial and proving case by prosecution and case directly enters in sentencing stage which is also decided according to disposition prepared by parties to plea bargaining.

In reference to plea bargaining in various criminal justice systems, various measures of plea bargain are used. In plea bargaining any one of three bargaining is used, charge bargain, count bargain and sentence bargain. In charge bargain accused pleads guilty for lesser charge than originally framed charge. Count bargain measure is used when accused is originally charged for many charges and in plea bargaining accused pleads guilty for some charges and remaining charges are withdrawn. One another measure; sentence bargain is used in which accused pleads guilty for charges alleged against him but in mutual disposition agreement is made for reduced punishment. In India sentence bargain measure of plea bargaining is used and, in this regard, provisions are provided in Chapter XXI-A of CrPC.

Plea bargaining is an agreement by which prosecution and accused bargain and voluntarily settle case against accused through which accused agree to plead guilty in exchange of concession in penal liabilities.

Before 2006 Plea Bargaining was not permitted in India:

Plea bargaining is American concept and there it is much developed but in Indian Criminal Justice System it has never be considered as appropriate measure to tackle crime challenge. Plea bargaining is considered as challenging our whole concepts of criminal justice system. For the first time in India by Criminal Law (Amendment) Act 2005 provisions relating to plea bargaining has been added.

Law Commission in its 142nd report in 1991, 154th report in 1996 and 177th report in 2001 recommended for inclusion of measure of plea bargaining in Cr.P.C. Law Commission recommended inclusion of plea bargaining for speedy disposal of case, thereby, as a measure to provide speedy justice to victim. Law Commission in 142nd Report observed:

“The need for introducing the scheme has become compulsive in a situation where trial of a criminal case culminating in an acquittal can take as many as 33 years in a relatively petty case (involving alleged

misappropriation of Rs. 12000, Rs. 4000 and Rs. 2000) and result in expenditure of as much as a crore of rupees to the State exchequer, with no corresponding benefit to the community. And in a situation, as reported on 16.8.1989 in Indian Express, where the Courts in a city like Bombay in 1988 recorded 124 rape cases but could dispose of only one and in first six months in 1989 recorded 67 cases but could dispose of not a single case”.

There is more than ample justification for introducing the scheme in as much as:

(1) It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to community.

(2) It is desirable to infuse life in the reformatory provisions embodied in Section 360 of the CrPC and in the Probation of Offenders Act which remain practically unutilized as of now.

(3) It will help the accused who have to remain as under-trial prisoner awaiting the trial as also other accused on whom the sword of Damocles of an impending trial remains hanging for years to obtain speedy trial with attendant benefits such as

(a) end of uncertainty,

(b) saving the litigation cost,

(c) saving the anxiety-cost,

(d) being able to know his or her fate and to start a fresh life without fear of having to undergo a possible prison sentence at a future date disrupting his life or career,

(e) saving avoidable visits to lawyer's office and to court on every date of adjournment.

(4) It will, without detriment to public interest, reduce the back-breaking burden of the court cases which have already assumed menacing proportions.

(5) It will reduce congestion in jails...”

Further, Malimath Committee (2001-2003) recommended for prescribing of plea bargaining as measure for disposal of criminal cases. Malimath Committee recommended that offences which do not affect the society, it is desirable to encourage settlement of case without trial. Plea bargaining was included in Criminal Procedure Code by addition of new Chapter XXI-A of Code But considering difference of our societal considerations and crime problem, the concept of plea bargaining has been completely modified as it is not applicable for serious crimes, crimes against women and children, crimes affecting socio-economic condition of country and habitual criminals, and further, criminal is not exonerated from his penal liability but he will have reduced penal liability. Usually plea bargaining is rationalised on the basis of speedy justice; it is usually observed that delayed justice is denial of justice. Day by day piling of cases is increasing causing great hardships before victims, ultimately before the society. it is considered that disposal of cases by use of plea bargaining may be helpful for disposal of cases and thereby in providing speedy justice to common mass. In case plea bargaining, need for trial of case does not arise, only on the basis of mutually agreeable disposition case enters in Second phase of proceeding that is sentencing stage, at which court takes evidences for determination of punishment decided on the basis of disposition prepared during plea bargaining, plea bargaining is preferred on the basis that it is less time and money consuming. Further, appeal under statutory provision is not permitted, only it is permissible under Constitutional provisions. Plea bargaining is beneficial for accused also that on the basis of his pleading of guilt and payment of compensation, he may be liable for lesser punishment. Whenever accused offered for accepting guilt but ultimately negotiations between accuse, prosecution officer and victim fails, then protection is available to accused u/s 265-K of Code that his statement cannot be used for any purpose except the purpose mentioned in Chapter XXI-A CrPC; such protection is necessary otherwise accuse will never offer for plea bargaining, thereby provision relating to plea bargain may become ineffective. Section 265-K CrPC is given with non-obstant clause which prevails over all other related provisions, it is major protection provided to accused who offers plea bargaining. Section 265-K CrPC provides:

“Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under Section 265 B shall not be used for any other purpose except for the purpose of this Chapter.”

Pleading of guilt and plea bargaining are related but different aspects in criminal trial. Pleading of guilt has always been permitted and further, it is necessary stage in criminal trial. Pleading of guilt is acceptance of guilt without any excuse or justification. After framing charge, reading and explaining the charge trial court ask for pleading of guilt, and when court finds that pleading of guilt was voluntary, only on this basis accused may be convicted and then after evidences are taken for sentence infliction. Such pleading of guilt is generally made because of penitence and remorse felt by accused due to crime commission. Plea bargaining is bargain of pleading of guilt. In plea bargaining accused makes pleading of guilt but it is bargained for no punishment or lesser punishment. In India it is later situation means accused makes pleading of guilt and offer compensation to victim and bargains it for reduced sentence. Thereby, in plea bargaining pleading of guilt is made subject to reduction of punishment. Pleading of guilt is very important and inclusive part of plea bargaining but plea bargaining and pleading of guilt are two different things.

The whole concept of plea bargaining is exception to general and basic rules of criminal justice. In confession and pleading of guilt accused accepts crime commission and in it is implicit that accused has accepted the penal liability but on this basis never concept is advanced in criminal justice to reduce the penal liability but concept is well laid down that only on the basis of acceptance of guilt accused may be convicted and he has to bear his liability as provided by law. When plea bargaining is seen at its face, it appears it is selling of conviction and some compensation by the criminal to the prosecution for reduced sentence. In *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat*⁴ SLP was filed under Article 136 of Constitution before Supreme Court against the decision of Gujarat High Court passed in suo moto revision of order passed by the Judicial Magistrate first class, Balasinor convicting appellant for offence u/s 16 (1) (a) (i) r/w 7 Prevention of Food adulteration Act 1954 and

sentencing with much minimal punishment that is with simple imprisonment till rising of court and fine of Rs. 125/= or in default of payment of fine to undergo imprisonment for 30 days. Accused committed adulteration in turmeric powder, thereby, he was liable u/s 16 (1) (a) (i) r/w 7 PFA Act 1954. In this case after taking some prosecution evidences, plea bargaining took place between accused, prosecutor and Magistrate. Magistrate on this basis convicted and sentenced. High Court made revision suo moto and enhanced punishment to three months imprisonment and fine Rs. 500 and in case of default of fine imprisonment of 30 days. Decision of High Court was challenged before Supreme Court through filing of SLP. At that time plea bargaining was not incorporated in Indian law but from the decision it was appearing that assurance was given to accused person that on plea of guilt negligible punishment may be inflicted. The Supreme Court observed that food adulteration dangerous acts which affect the common mass and in such kind of cases there should not be any lenient punishment. Supreme Court set aside the order of High Court and remanded case to Judicial Magistrate to proceed from stage of plea of guilt. Justice P N Bhagwati thought that plea bargaining might act as allurement and it might not do justice imparting and violative to norms settled in Maneka Gandhi case. Plea bargaining may cause corruption and collusion and ultimately lower the standard of justice. Justice P N Bhagwati observed in this case:

“[...] It is obvious that such conviction based on the plea of guilt entered by the appellant as a result of plea bargaining cannot be sustained. It is our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurement being held out to him that if he enters a plea of guilt, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of art. 21 of the Constitution unfolded in Maneka Gandhi's Case. it would have effect of polluting pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial...or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of anti-adulteration

statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the magistrate must be held to be unconstitutional and illegal...”

In *Kasambhai Ardul Rehmanbhai Shaikh v. State of Gujarat* case Supreme Court observed that plea bargaining was violative rule laid down in *Maneka Gandhi* case dictum, thereby it was observed that plea bargaining was unconstitutional. Court further observed that plea bargaining was unreasonable, unjust and unfair thereby violative to Article 21 of Constitution. Crime is not only committed against individual victim but committed against the whole society. Crime and criminals pose a serious problem before the society at large. In such situation private bargain between criminal and victim with participation of instrumentality, having heavier responsibility to tackle problem of crime and protect individuals from fear of victimisation and save the society from crime, criminal and criminality, does not seem to be just and proper. In *State of UP v. Chandrika*⁵ Supreme Court observed that plea bargaining is against the public policy. In this case appellant state filed SLP under Article 136 of Constitution against judgment of Allahabad High Court. In this case accused was alleged for commission of homicide; in Session Trial he was convicted under first part of section 304 IPC and sentenced for imprisonment for eight years. Appeal was filed before Allahabad High Court where plea bargaining was made regarding not challenging of conviction order and on this basis High Court reduced sentence for imprisonment which convict has already undergone as under-trial prisoner and as convict after conviction by the trial Court. Decision of High Court was challenged by State of UP before the Supreme Court. Supreme Court decided that case cannot be decided on the basis of plea bargaining but it should be decided on the basis of merit. Sentence should commensurate to crime committed and there should not be lenient imposing of sentence for crime commission; order of High Court was set aside. Supreme Court observed in this case:

“Hence, it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the Court in appeal or revision should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court’s conscious must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence is reduced.”

From 2006 Plea Bargaining is Permitted Procedure of Criminal Justice in India

Recommendations of Law Commission and Malimath Committee were accepted by legislature and by Criminal Law (Amendment) Act 2005 provisions relating to plea bargaining were included in Criminal Procedure Code by adding one new Chapter XXI-A in which Sections 265 A to 265 L deal with this aspect of criminal justice administration. Section 265-A CrPC clearly specifies that plea bargaining shall not be applicable in case of offences affecting socio-economic conditions of country. Central Government by issuance of notification on 11th July 2006 declared offences punishable under nineteen Acts as offences affecting socio-economic conditions of country and in case of such offences plea bargaining is not applicable. Such aforesaid Acts are Dowry Prohibition Act 1961, The Commission of Sati Act 1987, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act 1956, Protection of Women from Domestic Violence Act 2005, SC-ST (Prevention of Atrocities) Act 1989, Cinematograph Act 1952 etc. Protection of socio-economic condition of country is necessary responsibilities imposed on state, it can never be jeopardised by act committed by any person. Now days many offences are committed which

challenge well-being of society which can never be permitted and in such case no lenient reaction can be permitted, therefore explicitly it is provided in Section 265-A CrPC for non-applicability of plea bargaining in case of socio-economic offences to be specifically notified in this regard. The list of Acts forming this category is inclusive and from time to time other Acts may be added in this category.

Furthermore, Section 265-A CrPC declares for non-applicability of plea bargaining in respect of offences against women. In list of Acts notified by Central Government as penalizing offences affecting socio-economic conditions of country many Acts deal solely with offences against women. In addition to that general provision is given declaring inapplicability of plea bargaining in reference to any offence against women. Security and protection of women are considered prime responsibility of society, thereby, stern punishments are prescribed for offences against women because of that deterrence may be created and potential criminals shall not dare to commit crime against women. In recent years crimes against women are posing a serious challenge before society at large due to commission of such offences in brutal manner and further nature and rate of such crime commission is becoming more and more serious and alarming. Thereby, in case of offences against women, it is explicitly declared for inapplicability of plea bargaining for such offences. Furthermore, Section 265-A CrPC declares that plea bargaining is not applicable for commission of offences against children below the age of fourteen years. Children are future of society needed to be protected. They are in constructive phase, thereby, wrongful acts may badly affect their socialisation, personality building and ultimately whole perception about society; children are always needed to be protected. In this regard never lenient punishment can be inflicted on offender endangering well-being of children; such offender cannot be given any benefit of plea bargaining. In Section 265-L CrPC protects children one another very important aspect. For reformation and rehabilitation of children a very enlightened enactment has been made. When any offence is committed by child, he cannot be deprived from reformatory and rehabilitative procedures provided in Juvenile Justice (Care and Protection of Children) Act in the name of plea bargaining. But confusion arises after amendment in

Juvenile Justice (Care and Protection of Children) Act 2000 in 2015 and a new Act was passed Juvenile Justice (Care and Protection of Children) Act 2015 by which some children for commission of some offences are treated as adult criminals and penalised, and in such case whether provisions relating to plea bargaining will be applicable for such children or not. Such children are not reformed by reformatory and rehabilitative measures given in Juvenile Act but tried and punished like adult, therefore they should not be deprived of benefit of plea bargaining in same manner as it is available to adult criminals. Section 265-L CrPC provides:

“Nothing in this Chapter shall apply to any Juvenile or Child as defined in sub-clause (k) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000).”

Plea bargaining is not permitted for habitual criminals. Habitual criminals by repeated commission of crime particularly same or similar kind of crime clearly shows that that accused has developed criminal mentality and maturity in criminal culture, such person is hardened criminal difficult to be reformed and always he may pose problem for society at large by his repeated crime commission. With such hardened criminal measure is provided in criminal law that he may be liable for more stern punishment in comparison to first offender. Recidivist person cannot be subjected to reformatory action for which he is never amenable and lenient punishment which he may be indicative to him as the criminal justice is favourable is for crime commission. In case of habitual criminal, always need is felt to give stern message that whenever he will manifest his criminal mentality in the form of crime commission he shall be subjected to severe punishment. Plea bargaining can never be suitable measure for dealing with habitual criminal. Section 265-B (4) (b) CrPC explicitly provides that when court finds that the accused offering for plea bargaining has previously convicted by court for same offence for which now he is charged then plea bargaining shall not be permitted and he shall be tried in the case.

Serious crime create grave impact over the society at large, usually such crimes create fear of victimisation in members of society. Generally, for effective tackling of serious crimes criminal law prescribes stern, severe and longer extent of punishment. Malimath Committee recommended that

for serious crimes plea bargaining has not to be permitted. In case of serious crime need is felt to create deterrence in criminal elements to prevent commission of such crimes. Lenient reaction to serious crime and criminals committing such crime cannot be effective measure to deal with crime and criminality in the society. Thereby, Section 265 A CrPC clears that plea bargaining is not permitted in case of serious crimes. Section 265 A permits plea bargaining only for offences which are not punishable by death penalty, life imprisonment or imprisonment exceeding seven years. The provisions contained in Section 265-A CrPC clearly specifies that for serious crimes plea bargaining cannot be permitted; it is permitted only for offences punishable with fine or imprisonment for a term extending up to seven years or both. Section 265-A (1) CrPC provides:

“This Chapter shall apply in respect of an accused against whom-

(a) the report has been forwarded by the officer in charge of the police station under Section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognisance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under Section 200, issued the process under Section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.”

Hereby, plea bargaining is not permissible in cases when:

1. Age of offender is below 18 years of age.⁶
2. Accused is previous convict for the same kind of offence for which person is accused and have applied for plea bargaining.
3. Offence for which person is accused affects socio-economic conditions of country.
4. Offence is committed against woman or child below 14 years of age.

5. Offence comes in category of serious crime. Generally, such offences are identified by prescription of severe punishments. When offence is punishable by death penalty, life imprisonment, or imprisonment exceeding seven years.

6. Application for plea bargaining moved by accused is not voluntary.

7. Parties participating in meeting for working out mutual satisfactory disposition failed to make such disposition.

Plea bargaining is made at pre-trial stage generally before the framing of charge. Section 265-A CrPC mentions stages in the case for moving of application for plea bargaining:

6Section 265-L CrPC provides that Chapter XXI A is not applicable for juvenile or child defined in Section 2 Juvenile Justice Act 2000. JJ Act 2000 has been repealed and substituted by JJ Act 2015. Though Section 265 L has not been amended to mention JJ Act 2015 but it will be applicable as the objective of Act of 2000 and Act 2015 are same. Section 2 of JJ Act 2015 defines similarly that child or juvenile is person below 18 years age.

1. In case in which police lodged FIR and investigation is made; in such case plea bargaining is permissible only after submission of police report. On conclusion of trial u/s 173 CrPC police officer submits police report on which Magistrate takes cognizance u/s 190 CrPC. Section 265-A (1) (a) CrPC directs that after submission of police report, at any stage accused may voluntarily give proposal for plea bargaining. Thereby, in case based on police report application for plea bargaining may be moved at any time during cognizance and afterward.

2. In case based on complaint, accused may voluntarily move application for plea bargaining after completion of examination of complainant and witness u/s 200 CrPC and issuance of process u/s 204 CrPC. Thereby, in complaint case accused may give offer for plea bargaining at any time after completion of cognizance.

For plea bargaining establishing of case is also a necessary requisite; when case is investigated by police officer through detailed investigation with submission of police report case is prima facie established while in complaint case the complainant directly files case before the Magistrate, thereby, case is prima facie established only after examination of

complainant and witness's u/s 200 CrPC and such establishing of case is indicated by issuance of process. Because of it, in police case accused may offer for plea bargaining after submission of police report means during cognizance and afterwards while in complaint case such offer may be given after taking of cognizance and afterwards.

Main provision relating to plea bargaining is given in Section 265-B CrPC, it clears that proposal for plea bargaining is moved by accused by filing of application before the trial court. Accused person does not give proposal for bargain directly to prosecution or victim but it is given to court. Court after receiving application from the accused for plea bargaining, issues notice to Public Prosecutor in case instituted on police report or complainant in case instituted on complaint and accused to appear in the court on fixed date. First most responsibility imposed on court is to find out whether such proposal for plea bargaining moved by accused is voluntary, for this purpose court on fixed date examines accused in camera, in absence of other party to case. On examination of accused person court may have any one of the three situations:

1. Court is satisfied that accused voluntarily offering for plea bargaining. In this situation plea bargaining is permitted and court provides time and opportunity to accused and public prosecutor or complainant, as the case may be, to work out mutually satisfactory disposition. Or
2. Court finds that accused involuntarily applied for plea bargaining. Accused may be pressurised or due to some other reason he has no willingness for plea bargaining. On identifying this type of situation court shall not permit plea bargaining; court shall initiate trial proceeding. Or
3. Court finds that accused is previous convict for same kind of offence, in this situation plea bargaining shall not be permitted and court initiates trial proceeding.

In second and third situations plea bargaining is not permissible; as soon as Court identifies these situations proposal for plea bargaining is rejected by court and proceeding for trial is continued again. In first situation, it means when accused person is not a habitual criminal committing same kind of offence and offer for plea bargaining is moved voluntarily, court permits and facilitates for proceedings relating to plea bargaining. Further for plea bargaining due to provisions contained in Section 265-A CrPC it

is necessary that offence for which accused is charged should be punishable with fine or imprisonment for term not exceeding seven years or with both. Hereby, plea bargaining is permissible when offer for it is moved by accused voluntarily, accused is not a habitual criminal and offence for which accused is charged is not punishable with death punishment, life imprisonment or imprisonment exceeding seven years.

When court finds out that the accused was not previously convicted for same kind of offence, offence for which the accused is charged does not come in prohibited category and the accused has offered for plea bargaining voluntarily, court may direct for the conduct of proceeding for plea bargaining. In case instituted on police report for proceeding of plea-bargaining court issues notice to Public Prosecutor, investigating officer who made investigation of the case and the victim of the case or when case is instituted on complaint court issues notice to the accused and the victim of the case, these persons make meetings to work out mutually satisfactory disposition of case. Court has responsibility to supervise and control the meeting to ensure that the entire process is completed voluntarily by parties participating in the meeting to prepare mutually satisfactory disposition of case. If they desire, accused and victim are permitted to participate in meeting along with their respective pleaders. In disposition prepared during proceeding main component is amount of compensation to be paid by accused to the victim.

Plea bargaining as claimed is based on restorative justice there by attempt is made to provide speedy justice and further, his injury suffered is taken care of and attempted to satisfy by providing compensation to him. In plea bargaining victim gets compensation and response to that accused becomes liable for reduced punishment. In criminal law compensation providing is not new thing; it has been traditionally available in criminal proceeding in India. But always in criminal justice system in India compensation is awarded out of fine collected from the criminal. Traditionally criminal is punished by imposition of fine or other punishments or both; when fine is imposed as punishment, either whole amount of fine or some part of realised amount of fine is given as compensation to victim. Such traditional measure to compensate victim is provided in Section 357 CrPC. One more development has taken in recent

past that compensation may be given by state to victim of crime commission. In this regard now provisions are given in section 357-A CrPC. State has responsibility to protect citizenry against crime commission and State has failed, thereby it has to compensate aggrieved person. State has failed in tackling crime problem, thereby, responsibility to compensate victim. Under Section 357-A CrPC compensation is given by State. In Section 357 CrPC compensation is given from fine amount collected from criminal; fine forms part of public exchequer, thereby, from another perspective this compensation may also be taken as paid by state. In criminal justice system in India traditionally criminal is punished but never compensation is directly paid by the criminal to victim. In civil law such compensation payments are made which is paid by wrongdoer to injured person. Plea bargaining is exception to aforesaid well established rule of criminal law and in pursuance of it compensation is directly paid by offender to victim of offence. Further, compensation amount is decided by offender and victim by mutual bargain. This aspect of proceeding of plea bargaining brings the criminal proceeding similar to contract making. In Law of Tort also such sort of proceeding is not permitted; in Law of Tort amount of compensation is always determined by court and never parties to dispute are permitted to decide the remedy themselves.

Section 265-E (a) CrPC specifically clears that main purpose of plea bargaining is determination of compensation amount payable by offender to victim of crime. For payment of compensation and determination of compensation amount voluntary bargains are made amongst offender, Prosecution officer, investigating officer and victim in case based on police report and between offender and victim in case based on complaint. Court during bargain keeps vigil on whole bargain and settling of matter which is called disposition should take place voluntarily, in this regard specific duty is imposed on court u/s 265-C CrPC. When in persons participating in the meeting for plea bargaining failed to work out mutually satisfactory disposition, Court has to record its observation and proceed in trial from the stage the application under Section 265-A (1) CrPC was filed in the case. When in bargain parties have succeeded in arriving at mutually satisfactory disposition, the Court has now the

responsibility to prepare report of such disposition which is signed by presiding officer of court and all the persons participating in the meeting. Section 265-D CrPC provides:

“Where in a meeting under section 265 C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265-B has been filed in such case.”

On successfully working out mutually satisfactory disposition, it is accepted by court through preparation of report on it which is signed by presiding officer of the court and persons participating in meeting. Now after it there is no need of trial; on the basis of pleading of guilt in disposition of case accused is convicted. Now case enters in sentencing stage; court passes compensation order in accordance with disposition prepared u/s 265-D CrPC. further court takes evidences and Court considers whether convict has prospect of reformation; on identifying such situation with him, he may be released after due admonition or probation of good conduct u/s 360 CrPC or Probation of Offenders Act 1958, as the case may be. When court identifies that accused has no prospect of reformation but he has to be sentenced then court takes evidences for determination of nature and extent of punishment. In plea bargaining offender is not completely exonerated from his liability, he is still liable for punishment but on the basis of payment of compensation and acceptance of crime commission (pleading of guilt) he is treated leniently and his penal liability is reduced. When offence is punishable with maximum imposable punishment, Section 265-E (d) CrPC prescribes that court may sentence the accused to one fourth of the punishment provided for the offence or extendable punishment. In some cases, minimum sentence is also provided for the offence particularly offences under special penal statute are punishable by minimum and maximum punishment. In case of maximum punishment court has discretion, no doubt it is judicial discretion but court is empowered to determine any

extent of punishment extending up to maximum prescribed punishment. In some cases, minimum punishment is also prescribed; minimum sentence is mandatory sentence court has no discretion for minimum imposed sentence, court is bound to impose minimum sentence and then court has discretion to extend it up to maximum sentence. But in case of plea-bargaining minimum sentence is also reduced and in Section 265-E (c) CrPC provides that when for offence minimum punishment is provided in penal statute, court in case of plea bargaining may sentence the accused to half of minimum sentence provided for offence. In case of plea-bargaining sentence to be imposed on accused is determined that when offence is punishable by maximum sentence only, sentence to be imposed on accused shall be one-fourth of maximum sentence, and when offence is punishable by minimum and maximum sentence both, sentence to be imposed shall be half of minimum sentence provided for the offence. Minimum and maximum sentence may be imprisonment or fine or both, and hereby, accordingly one half and one fourth of punishments may be calculated. Court passes judgment in open court. In beginning when proposal for plea bargaining was moved by accused, court examines accused in camera to find out whether such offer was made voluntary. At the stage of pronouncement of judgment, Section 265-F CrPC declares that judgment shall be pronounced in open court.

Section 265-G CrPC declares that judgment passed by court on plea bargaining is final and it cannot be challenged by any party to case except under Constitutional provisions. In plea bargaining every party to case voluntary prepare mutually satisfactory disposition, therefore later on they cannot be permitted to challenge disposition prepared and accepted by them and accordingly judgment passed by court. Due to it Section 265-G CrPC declares orders passed by Court as unappeasable order under provisions of Criminal Procedure Code but it shall remain subject for challenge under Constitutional provisions contained in Article 136, 226 and 227 of Constitution. Section 265-G CrPC provides:

“The judgment delivered by the Court under Section 265 G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such Judgment.”

Only pendency of cases against accused does not debar the accused from getting benefit of plea bargaining. In Chapter XXI-A some prohibitions are given like offence with which accused is charged affects socio-economic conditions, offence is against woman or child under fourteen years age, or accused is previous convict; in these case accused is prohibited from making plea bargaining. Further, court may reject application for plea bargaining when such application is not voluntary moved. But court cannot reject the application for plea bargaining on any other ground which is not mentioned in Chapter XXI-A of Criminal Procedure Code. When aforesaid situations are not present then court will not deny to facilitate the plea bargaining. Now it is only for prosecution or victim to reject the offer for plea bargaining. In *Rahul Kumpawat v. Union of India Through CBI*⁷ Rajasthan High Court decided this case on 4th November 2016 and observed that trial court can reject the application for plea bargaining only on those grounds which are mentioned in Chapter XXI-A of Code. In this case application for plea bargaining was moved accused but it was rejected by court on the ground that many cases were pending against the accused. Appeal was made before the High Court u/s 482 CrPC. High Court observed that plea bargaining is American concept developed since 19th Century. In India it has been included in Criminal Procedure Code from Section 265-A to 265-L, and now any issue relating to it should be decided according to these provisions. Court can reject application for plea bargaining only on those grounds mentioned in the provisions; rejection on any other ground, which is not mentioned in the provisions, is not proper. For this case High Court found that ground of rejection of plea-bargaining application is not mentioned in the provisions, therefore, set aside order of rejection order and case was remanded to trial court for reconsider according to legal provisions. *Rahul Kumpawat v. Union of India Through CBI* High Court observed:

“A bare perusal of Section 265-A CrPC makes it explicitly clear that mere pendency of criminal cases against an accused cannot be cited as an embargo for entertaining plea bargaining under Chapter XXI A CrPC. Moreover, in the instant case, accused-petitioner as volunteer to enter into plea bargaining and therefore, it was expected of the learned trial Court to consider the same as per mandate of Chapter XXI A CrPC. While it is true

that plea bargaining in Indian Legal System is infancy but its recognition is clearly discernible in CrPC after introduction of Chapter XXI A w.e.f. 05.07.2006. Broadly in the system of pre-trial negotiations where the accused pleads guilty in return, he can fructify concessional treatment from the prosecution. The underline object is to shorten the litigation and, therefore, in adherence of legislative intent, the Courts are also expected to accede to the prayer of the accused person in appropriate cases to ensure speedy disposal.”

Rajinder Kumar Sharma v. The State⁸ case was decided by Delhi High Court on 26 February 2007. In this case petitioner accused opened a fake account in Bank in the name of complainant and got encashed a cheque worth Rs 17640/- belonging to complainant sent by Unit Trust of India. Complainant filed FIR, case was investigated by police officer and on completion of investigation, and he submitted charge-sheet. Complainant and petitioner accused were close relatives, some relatives mediated and accused returned the amount of cheque and they made settlement out of court. Now petitioner accused filed petition u/s 482 requesting for quashing of FIR. High Court refused and petition was dismissed. Court decided

that offences which affect society compromise cannot be permitted. Those offences which are of trivial nature, compounding may be permitted but offences which are graver and serious are not against individual but against society, in such case compounding cannot be permitted. Plea bargaining and compounding of case has some difference. Court observed plea bargaining is permitted and lenient punishment is inflicted in such case as criminal is repenting for crime commission and he is prepared for some punishment. Criminal mentality may not create problem in future in case of plea bargaining as the person is repenting. Further he is going to suffer some punishment. In case of compounding repent is not shown and further any punishment even lesser extent is not going to be inflicted. Delhi High Court observed:

“A Crime under IPC or any other penal law is not a crime against an individual, it is crime against the society and the State and that is the reason that State or any of its agencies is the prosecutor in criminal cases. The suppression of crime is the most important function of State. The

maintenance of law and order and compliance of laws by the citizen is the responsibility of the State. Criminal law has been mainly concerned with protection of elementary social interest in the integrity of life, liberty and property. The legislature in its wisdom considered some offence as trivial offence and some offence more serious and of graver nature. Those offences which did not affect the society at large have been made compoundable under Section 320 CrPC. However, all offence under IPC or under other Acts have not been made compoundable because the legislature considered that some offence cannot be compoundable and the perpetuator of such offence must be punished according to the law, so that the criminal tendency is curbed. Recently, the legislature has introduced plea bargaining under law so as to benefit such accused persons who repent upon their criminal act and are prepared to suffer some punishment for the act. The purpose of plea bargaining is also to see that the criminals who admit their guilt and repent upon, a lenient view should be taken while awarding punishment to them”

Conclusion:

In Indian Criminal Justice System plea bargaining is a new measure for providing justice to victim of crime. Plea bargaining is prescribed to compensate victim for loss caused to him due to crime commission; it is based on consideration that monetary amount may help in restitution of victim. Traditionally, in Indian society emphasis is given for retribution and deterrence for victim satisfaction whether it is individual victim or society at large, and further, for protection of society by tackling crime, criminal and criminality. Compensation by criminal to victim of crime and payment under mutual satisfactory disposition which is a kind of agreement arrived between criminal and victim of crime and in return criminal becoming liable for reduced punishment is considered in Indian society completely different concept in Indian criminal justice system and Indian societal considerations. Plea bargaining is always much criticised in India. Crime problem day by becoming more and more serious even the existence of society is challenged by increased rate of crime commission, need is to cope problem effectively and for this purpose need is to reform the criminal or deter the criminal from crime commission. Whenever any act is declared as crime, certainly act may be serious

otherwise it would have not been declared as a crime but declared as a civil wrong. Only due to certain reasons for some crimes, procedure applicable may have been changed, thereby, it should not be taken as crime is only against individual, but it should be taken that the crime is always serious, only due to some rational reasons different procedure may have been provided. Differentiation that particular crime is against the individual and particular crime is against society, may not be appropriate way of application of criminal justice. Whenever any act is declared as crime always it should be taken that act is dangerous one and only because of it act may have been declared as crime. Crime problem can be tackled by infliction of effective and appropriate punishment or reformative measures. It may reform the criminal or create deterrence and thereby reform the criminal and he may not commit crime. Such actions against criminal may cause and strengthen social solidarity, increase assurance in victim that he is protected against crime and criminals, thereby, save the individuals and ultimately members of society from fear of victimization. But plea bargaining provides a completely opposite consideration. In penal statutes minimum and maximum punishments are prescribed to inflict effective sentence after detailed analysis. But in plea bargaining neither consideration is given for deterrence creation nor for reformation of accused. Whole criminal justice considers reformation and deterrence of criminal and potential criminals as main objectives; and further, criminal justice ultimately focus on protection of victim and society; these are ultimate objectives of criminal justice system. Plea bargaining is not based on aforesaid basic considerations of criminal justice. Already for petty offences provisions were provided in Criminal Procedure Code permitting compounding⁹ and for some other offences complainant is permitted to withdraw the case¹⁰. Effect of inclusion of provisions of plea bargaining is extension and widening of compoundable offence for covering those offences also which have traditionally been considered more serious. Plea bargaining is claimed for having victim centric and victim restorative focus but detailed analysis shows that plea bargaining actually provide protections to accused, It is soft and favorable to accused. Minimum punishment is always taken as mandatory sentence and on conviction it is mandatory to inflict minimum sentence but on plea

bargaining even minimum sentence is reduced and half of minimum sentence is inflicted. Bargaining between the accused and the victim in which ultimately there is exchange of reduction of punishment and compensation create situation in which it appears that there is selling of crime; one person committed crime and now on payment of money, he becomes lesser liable, another person suffered injury due to crime commission but now by taking of money, he is selling his injuries. This whole procedure of plea bargaining appears to legalise the

In Section 320 CrPC compounding of offences is permitted; for some offences accused and victim may make compounding without permission of court and after compounding they inform the court and accordingly case is dismissed; for remaining offences mentioned in Section 320 CrPC accused and victim may make compounding with permission of court.

In Section 257 CrPC complainant is permitted to withdraw summon case with permission of court at any time before the permission of court. When number of accused is more than one, in such case complainant may withdraw case in the aforesaid manner against all the accused persons or any of them.

crime commission. Proposal for plea bargain is given by accused; whenever accused may find in the case that evidences available against him in the case are direct, sufficient and substantial as it appears that ultimately, he may be convicted and sentenced, he may give such offer and on successful plea bargain, accused may become liable for much lesser punishment only on expending some money giving it as compensation to the victim. No doubt two checks are created and thereby tried to check such loopholes and drawbacks, firstly, offer has to be accepted by victim, when he is not interested in reducing liability of accused by taking compensation then he may refuse and in such case criminal will have effective liability for crime as prescribed by substantive law, and secondly, court has final say in the case, whole proceeding takes place in supervision of court, it is responsibility of court to see whether plea bargaining is voluntary, and ultimately, disposition prepared by party becomes absolute only on passing order by court in accordance with disposition prepared by prosecution, victim and accused in case based on police report and in accordance with disposition prepared by accused and

victim in complaint case. The victim is the person for whose protection criminal law originated and has continued existence. Criminal justice has ultimate objective to protect life, property and liberty of individuals and ultimately to protect the whole society. Every measure prescribed in criminal justice should have focus for justice to individual victim and ultimately justice to society at large, thereby, there is continuous need for reviewing of measures used for justice imparting.



**SCHOOL OF LAW
DEPARTMENT OF LEGAL STUDIES**

UNIT 3 – SENTENCING AND IMPRISONMENT

Sentencing: Types of sentences: Indian penal code and special laws-white collar crimes-pre-sentence hearing: summary punishment-habitual offender-plea bargaining Imprisonment: The prison system-Rights of prisoners –State of jails in India today-classification of prisoners-open prisoners judicial surveillance, basis, development, reforms- Group Counseling and Re-Socialization Programme.

Prison Reforms in India

Prison reforms in India are a much-debated subject matter and have been the point of discourse for many Committees appointed by the Government of India. However, despite many suggestions made on multiple occasions, the ground-level situation with respect to Prison reforms remains gloomy and stagnant. This paper seeks to study the evolution of prisons in India from the middle of the nineteenth century and the various challenges in the Prison institutions in India and their reform.

Introduction

Unchi Diwaron Ke Peechhey Lohey Ki Salakhon Kay Andar Rehtey hain Muqaffal Kuch Insan Insan Jo Nahi Ik Ginti hai

(Locked behind High walls and Iron walls , An unfortunate human world slumbers Here they have lost even their names, And now they are just a roll of numbers)

Imprisonment is the final stage of the Criminal Justice Process. It simply means the curtailment of the liberty of an individual as a punitive measure for crime committed by him. However, when we talk of the persons lodged in prisons, we are not simply talking about those whose cases have been decided resulting in a conviction but also those persons whose cases are still being heard by the court of law. Such persons are denoted by the term undertrials. Besides convicts and undertrials, innocent children may also be housed within jail premises in case either or both the parents are inmates and there is no person to look after them. Usually, children below four to six years of age are placed inside prisons in accompaniment of their parents.

Having talked about an indicative group of persons that we may encounter as jail inmates; our core discussion revolves around some key standards of treatment to jail inmates that are universally recognized. These form the minimal principles recognized globally comprising of the entitlements of prisons as human beings in the peculiar situations and terms of confinement. Judging by the degree of their presence or absence, we deliberate on the necessity and progress achieved by India in reforming prisons and thus transforming them from "abodes of the condemned" to "training for a new beginning." Thus, we must at the outset understand the requirements of dignified treatment of Prisoners as co- human beings emphasized by the International Law.

International Law on Prison Standards

Key instruments that reflect the consensus of the international community press for minimum prison standards specifically the rights of prisoners. The International Covenant on Civil and Political Rights lays special emphasis on the rights of prisoners. India ratified the convention in 1979 and thus it is imperative to incorporate these standards into the municipal law. Article 10 of the ICCPR deserves to be reiterated here.

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Apart from the ICCPR , the ICESCR or the International Covenant for Economic , Social and Cultural rights , 1966 also voices the rights of prisoners. This means that the international community not only recognizes first generation rights of prisoners but also the second-generation rights that are the main concern of the ICESCR. Both ICCPRC and ICESCR reflect the spirit of the Universal declaration of human rights or the UDHR , 1948.

Since the Second World War, human rights have been quantified and set down in treaties and conventions. In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Later, two covenants were adopted, the International Covenant on Civil and Political

Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Another landmark development on the international level has been the UN Standard Minimum Rules for the Treatment of Prisoners, 1955 comprising of 95 rules pertaining to prison standards. These comprehensive rules have been classified into 5 parts. A significant contribution of these rules has been the emphasis on respecting the religious belief and moral principles of prisoners along with the principle of non-discrimination.

The instrument also talks about the necessity of segregation of various categories of prisoners such as men and women , undertrials and convicted inmates, young /child offenders and adult inmates inter alia while stressing on the separation of those held under civil laws and those lodged under criminal laws.

The Basic Principles for Treatment of Prisoners 1990 of the UNO and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 also strength the rights-oriented position vis a vis prisoner under international law. These particularly mandate that prisoners must be informed of the charges alleged against them, especially in cases of corporeal punishment . All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.⁵ Thus, it has been amply indicated that the approach of international law is rights-oriented when it comes to the question of prisoners.

History of Prison In India

Macaulay's Minute of 1835 laid down the foundations of Prison system in India as we see it today. Subsequently, a committee called the Prison

Discipline Committee was set up to look into the prison system in India. The Committee submitted its report in 1838 recommending the rigorous treatment of inmates rejecting humanitarian needs and reforms. This development has to be seen in the context of an imperialistic foreign rule.

In the same period, the Construction of the Central Prisons began pursuant to Macaulay's Minute and advanced rapidly between 1836 and 1838). Contemporary Prisons in India are thus, a legacy of the British as they still stand continuing their nearly two-hundred-year-old function.

The enactment of the Prison's Act in 1861 and 1894 mark yet another landmark event in the history of Prisons in India. This colonial law forms the basis for the present jail management and administration. The review of Prison problems that had preceded the Act was continued afterwards also. In 1919-1920 the Indian Jail Committee for the first time in India's colonial history declared reform and rehabilitation to be the objectives of Prison administration. This legacy was carried on by many post-independence committees.

A key change that was introduced during colonial times was the vertical division of legislative and executive powers made by the Government of India Act, 1935. This law transferred the subject matter of "**prisons**" from Central list to State list.

The significance of this event lies in the fact that in the post-independence era this division of powers gave rise to non-uniformity in Prison laws and management across various States of India. In 1951 Government of India invited a UN expert, Dr. Reckless to study jails in India and suggest management and policy reforms. Dr. Reckless submitted his report entitled, "Jail Administration in India" and pleaded for reforms and revision of the outdated jail manuals.

Modern Prison Manual

In 1957 An All-India Jail Manual Committee was appointed by the Government of India to prepare a Jail Manual which submitted its report in 1960. This forms the bedrock of Prison management in India until today. In 1972, the Union Home Minister appointed a Working Group to make suggestion with respect to prison management in India. The Group made recommendations to frame a much-needed National Policy on Prisons and classification of Prisons lodging different categories of inmates.

The Committee on Jail Reforms under Justice Mulla was set up by the Government of India in 1980 to review the laws, rules, regulations for protecting society and reforming offenders. The Mulla Committee submitted its report in 1983. The problems highlighted by the Committee and the reforms suggested by it are relevant even today and preponderate in any discourse on Prison reforms in India. It suggested that the Government is duty bound to provide dignified living Conditions for Prisoners and gave a humanitarian opinion vis a vis prison reforms that had hitherto been focusing more on security aspects. The Justice Krishna Iyer Committee of 1987 taking a similar stance highlighted the plight of women prisoners and emphasized the need to induct more women in the Police Services and management to inculcate a gender-sensitive approach in prison management. Later on, The National Police Commission made a recommendation in 1977 to overhaul the legislative framework by enacting a new Police Act to replace the two hundred year old Police Act of the nineteenth century.

Challenges In Indian Prison System

The forthcoming section of this article deals with the main problems besetting the India Prison management and administration. The main

problem in India Prison System is that ever since the laying down of the foundations of this system around two hundred years have gone by. Not only has the social structure and life of the individuals changed over this period but the population of the country has also grown manifold. Today India is the second most populous country in the world. This is when the infrastructure of our prisons, the brick and mortar has served its time. It is needed to upgrade the existing prisons and set up new ones because the existing infrastructure is overflowing its capacity resulting in overcrowding.

The saturation of prisons has been found to be over 100% in some of the prison establishments and in some extreme cases to the percentage of over 500% of the total capacity. This overcrowding aggravates the gross living conditions within jails leading to grave violations of inmates' human rights. The unsatisfactory living conditions affect every aspect of inmates' daily existence such as food, cleanliness, etc. The prisoner already reeling under social stresses around this time is thrust forward into a battle with the tensions of jail life. As a result the health, both mental and physical, of the prisoner suffers.

The inadequacy of prison programs further aggravates this situation. The lack of proper legal aid and abuse of authority by the staff who sometimes take unfair advantage of the prisoner's dependency and make unwarranted demand in lieu of fulfilling basic needs of the prisoner such as food, even to the degree of demanding sexual favours. The staff also indulge in corruption and extortion, this more than often benefits the privileged inmates with powerful networks of criminals backing them.

In concert with these corrupt staff, the powerful inmates enjoy all kinds of illegal luxuries whereas the poor are discriminated against because they do not have to their credit similar patronage. This highlights the discrimination between inmates in jail. The Mulla Committee had therefore, stressed on safeguarding the rights of the economically backward inmates with much emphasis. The staff that do not indulge in

corruption face problems too due to inadequacy of human rights training.

The result of these problems is that the inmates upon release are not prepared to re-integrate with the society. The reformation of the prisoner which is the main objective of today's punitive institutions is undermined. Also the health of the inmate suffers tremendously. It has been seen that the rate of disease incidence such as HIV-AIDS and Tuberculosis is many times greater in prison populations compared to the general populations.

This problem does not only involve the physical health but also the mental health of the inmates. It was found by a study done by NIMHANS⁶, Bengaluru in 1998 in the Central Prison in Bengaluru that the suicide rate among women inmates was fifty percentage points higher than the incidence of suicide among women in the general population. This revealed that women are often more vulnerable to extremely challenging situations within the prison walls.

Judicial Approach in Prison Reforms

Supreme Court has taken disparate approaches due to judicial subjectivism. However, the main philosophy that can be discerned from the judicial judgments is that: every saint has a past and sinner has a future. The Court has taken a reformatory approach in many important judgments giving a boost to the discourse on prison reforms.

Therefore, in **Sunil Batra v. Delhi Administration**, the Court held that the Prison is not denuded of all human rights upon entering the prison premises even as his right to liberty is fundamentally curtailed. However, this must not ipso facto prejudice his other fundamental rights. In **M H Hoskot v State of Maharashtra**, it was held that the state is duty bound to ensure that the right to free legal aid under Article 39A is made available to the prisoner. In **Prem Shankar v. Delhi Administration**, it was held that handcuffing is prima facie an inhumane practice. In **Ghiassudin**

Case , it was held that prison institutions must serve a therapeutic role to cure social morbidity in the prisoner's guilt.

In **State of Gujrat v Hon'ble High Court of Gujrat** , it was held that the prisoners are entitled to minimum wages for the work done inside the prison and must enable them to prepare for integration in the society upon release.

Critical Analysis Of Challenges In Prison Reforms

There are around 1387 Prisons in India with a capacity of over 3.5 Lakh. However, the total inmates occupying these establishments account to the tune of 4.18 Lakh .Moreover, around 64% of the inmates in all the jails are undertrials. Therefore, the first challenge that arises from both human rights perspective and internal security point of view is the upgradation of infrastructure. This can be done through improvement in budgetary allocations to the prison establishments. We have seen that under the recently launched modernization of police forces scheme, the utilization of funds has been as tardy as the allocation of them.

Secondly, prisons are a state subject , this creates difficulty in having uniform prison management. The Union can only frame models for the states to incorporate and help in coordinating between states , encouraging them to adopt best practices.

Thirdly and most importantly , prisons do not have voting rights as per the present Election law in India. Therefore , prisoners are not a political constituency for the ruling class and hence , remain irrelevant politically. Unless this changes , it is in fact very difficult to imagine any reform will be forthcoming with tangible results . This is because the provisions of the Representation of People's Act excluding prisoners from the right to vote disincentive the political class from taking concrete action for prison reforms.

Fourthly, the poor treatment meted out to prisoner's poses a very serious challenge internationally given that India's requests for extradition have on multiple occasions been declined due to the apprehension that once extradited , the offenders might be subjected to torture and inhumane treatment in Indian jails. This stalled the extradition of Neils Holck alias Kim Davey accused in the Purulia Arms Drop Case by the Netherlands Government .Likewise the repatriation of Sanjay Chawla by the UK, Karamjit Sigh by the European Court of Human Rights are some instances. The Government of India must take corrective steps at home and beyond.This can be addressed by ratifying the Convention against Torture. India has been criticized for having lingered too long in fulfilling the ratification of the Convention.

Finally , Key Judicial verdicts have broadly defined the contours of prisoner's human rights that must necessarily be ensured . These must be protected by checking systemic lapses and implementing the recommendations of the various committees set up the Government of India for the past decades. The recent case of Stan Swamy (2021) where he being a specially challenged and elderly inmate was not ensured the use of a sipper for drinking water warranted by peculiar conditions of health that did not permit him to hold a glass of water, the said inmate had to vindicate his rights only after approaching the court of law. This should not be necessary if the prison management makes sure that prioner's basic needs are met especially where the inmate is undergoing special condition of health.

The question of Children accompanying parents in jail lodgings because they have nobody else in the world to take care of them is a glaring example of human rights violation in jail premises. Children of a very tender age upto four or maximally six years of age learn and live within the jail premises inspite of being innocent and get acquainted with the law and order lexicon and most often learn abusing and cursing at a very

young age . They never go out and there most nascent childhood is spent in the jail which become their earliest memories for a lifetime. Even where the children are taken outdoors to parks or playgrounds, they are conveyed in ambulances and police vans. This needs to be changed by allocating budget and also incorporating a child-sensitive approach in the policy and rules as a compulsory requirement.

Conclusion

Beginning with the Mulla Committee, many important Committees such as the Malimath Committee, The Justice Krishna Iyer Committee and most recently , the Justice Roy Committee (2018) have been set up to review the situation of prisons in India and suggest reforms. However, the implementation of the reforms has been lax and the necessary political will to bring a change is invisible. It is imperative governments realize the importance of every human life by valuing and cherishing the potential of jail inmates as members of our society who can contribute in the future, given proper correctional and reformatory treatment.

The policy worldwide is tending towards the open jail systems and rehabilitation of Prisoners. India must take concrete steps to fill up the policy and legal lacunae and approach the problem with as much a humanitarian angle as an objective relevance for the state. Finally, every human life is valuable and deserves the dignity owing to it. Thus, violation of human rights cannot be condoned even as we face practical challenges in protecting the same

White-Collar Crime in India

Introduction

The concept of white-collar crimes refers to a wide range of illegal acts committed by respectable people in various businesses establishing as part of their occupational roles. These kinds of crimes usually occur in large

and complex organizations. It refers to the wrong or crime committed by the elites people belonging to a higher class of society during their occupation. So, it can also be called as the crime of educated and professional elites. In Indian society, there are numerous types of white-collar crime, ranging from finance, management, law, engineering, medicine, offences to environmental violations, and health care frauds on individuals, communities, and society in general.

There are more or less complexity and uncertainty in such crimes which is not noticeable like other offences. It is difficult to identify the victims, and victims are unaware of victimization. So, a certain profession offers beneficial opportunities for criminal acts and corrupt and immoral practices that hardly attract public attention. They are inclined to corrupt and dishonest practices because of their neglect at social and educational institutions, their greediness, profit-making mania, or want to reach on top by a short cut. These deviants have negligible regard for honesty and other ethical values. Hence, they carry on their illegal activities with impunity without fear of loss of prestige or status. The crimes of this nature are called, “White Collar Crimes”.

Historical Background

The well-known definition of white-collar crime was firstly coined by the eminent American sociologist Edwin H. Sutherland in the late 1930s. Sutherland as criminologists thought that wrong or crime was concentrated among the urban and argued that the **“respectable people from the upper social classes committed a great deal of harmful criminal acts in the course of their occupations and the furtherance of their economic and business interests.”** According to Sutherland (1949), “upper-class criminality was ignored by the government and the general public because the perpetrators did not fit the common stereotype of the criminals.” Offender based approach to defining white-collar crime emphasize as a crucial characteristic of white-collar crime the high social status, power, and respectability of the actor. The most well-known offence-based definition was proposed by Herbert Edelhertz in 1970. Edelhertz defined white-collar crime as “an illegal act or series of illegal

acts committed by nonphysical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage". The offence-based definition distinguishes white-collar crimes from other types of crime in the manner as they are committed rather than the characteristics of the person who commits them. White-collar crime highlights concerning a person who in the course of his or her occupation, utilizes respectability and high social status to perpetrate an offence.

Who is the white-collar criminal?

In 1989 Croall in his book stated: "White-collar criminals have traditionally associated with high status and respectable offenders: the 'crimes of the powerful' and corporate crime." A white-collar offence reveals that offenders were typically small businesses, employees, and those more properly described as 'criminal businesses'. This could be attributed to the 'immunity' of the corporate offender from prosecution. Croall argued that "such patterns of offending reflect not only enforcement policies but also wider structural and market factors." Therefore white-collar criminals are concentrated on the corporate offender and makeover simplistic distinctions between 'corporate' and other varieties of white-collar offending. White Collar Crimes are mostly economic offences are broadly categorized in certain classes like banking & allied fields such as commercial, chit fund & insurance frauds tax & duty evasion smuggling, violation of Industrial, labour, and environmental regulation, black marketing, adulteration of food drugs, and hawala & other Benami transactions. The crimes are also seen in drug trafficking and money laundering activities, bribery, and other corrupt practices. Government officials are frequently reported to be engaged in many such crimes like bank scans, fraud & computer-generated crimes, counterfeiting coins & currency, black money, and misappropriation of government funds are the most frequently reported cases in India.

White-collar criminal includes the following attributes

The person has high social status and considerable influence, enjoying respect and trust, and belongs to the elite in society. The elite have generally more knowledge, money, and prestige, and occupy higher positions than other individuals in the population occupied. Elite members are active in business, public administration, politics, congregations, and many other sectors in society.

The person exploits his or her position to commit financial crime. The person does not look at himself or herself as a criminal, but rather as a community builder who applies personal rules for his or her behaviour. The person may be in a position that makes the police reluctant to initiate a criminal investigation.

The person has access to resources that enable the involvement of top defence attorneys and can behave in court in a manner that creates sympathy among the public, partly because the defendant belongs to the upper class, often a similar class to that of the judge, the prosecutor, and the attorney.

Legal Profession & White-Collar Crime

The Industrial Revolution played a magnificent role to develop white-collar crimes in India. The modern free enterprise gave rise to critical legal intricacies pertaining to property rights and diverse legal matters that paved the method for the birth of a replacement category of professionals of advocates who within the name of providing justice started abetting within the wrong and thereby pursued their slender interest. The modern legal professionals started disregarding the righteous oath of serving the society and commenced trying to find the legal loopholes and concentrated in the main in serving to out the wealthy entrepreneurs to grow richer. The white-collar crimes committed by these legal practitioners exclusively reaching in finding out illegal ways of tax-evasion. There are unethical practices like fabricating false evidence, participating skilled witnesses, thereby violating moral standards of the legal profession and dilatory techniques in collusion with the ministerial workers of the courts.

Medical Profession & White-Collar Crime

White-collar crimes in India are so widespread in different professions like medical practitioners, engineers, businessmen, politicians, and therefore the list goes on. The issuance of false certificates, carrying out illicit abortions, merchandising out sample medicine, and drugs, even in some cases adulterated medicine and medicines to the patients are usually done by medical practitioners.

White-Collar Crime in Educational Institutions & Corporate Firms

White-collar crimes are practised in day-to-day life by certain professionals within the course of their profession like educational institutions do are available in the league to operate with freedom. A nastier role is played by the private institutions that are least bothered in providing the education, however, only concentrate on creating a business at the price of a child's future. In India, whenever any major scandal involves the media focus, a thorough investigation continuously finds an unlawful involvement of political parties in it. So far because the businessmen are involved, their acts of white-collar crimes go beyond count. They're termed because the company criminals who often, are involved in felonious contracts, combination, and conspiracies of trade restraints, unfair labour practices, merchandising of adulterated foods and medicines, bribing of public officers so on and so forth. They cash in of the company veil and indulged during several crimes.

Anti-White Collar Legislation in India

The enactment of the prevention of corruption commission, 1963 established the Central Vigilance Commission in 1964. The Central Vigilance Commissioner was vested with considerable autonomy and legal authority to consolidate the anti-corruption work performed by the various Ministries of the Union government. The two main tasks of the CVC were: prevention of corruption and maintenance of integrity; and ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders. The CVC vested with the power to inquire into and investigate complaints

against acts or omissions, decisions or recommendations, or administrative procedures or practices because they are wrong or contrary to law or unreasonable, unjust, or improperly discriminatory per the rule of law. The Government established the Central Bureau of Investigation (CBI) in 1963 to investigate the cases of bribery and corruption, as well as violations of central fiscal.

The Parliament enacted various other acts like The Anti-Corruption Laws (Amendment) Act, 1967, The Benami transactions (Prohibition) Act, 1988, The Consecration of Foreign Exchange and prevention of smuggling Activities Act, 1998, The Foreign Exchange Management Act 1999, Prevention of Money Laundering Act, 2002, The Prevention of Corruption Act, (Samvat) 2006, The Right to Information Act 2005 to curb white-collar crimes and to punish the culprits.

The Prevention of Corruption (Amendment) Act, 2018

This act was passed to enhance the transparency and accountability of the government. The act introduces the offence of giving a bribe as a direct offence. However, a person who is compelled to give a bribe will not be charged with the offence, if he reports the matter to law enforcement authorities within seven days. The Bill makes specific provisions related to giving a bribe to a public servant and giving a bribe by a commercial organization. The act redefines criminal misconduct to only cover misappropriation of property and possession of disproportionate assets. It does not cover circumstances where the public official: uses illegal means, or abuses his position, disregards public interest and obtains a valuable thing or reward for himself or another person. The act modifies the definitions and penalties for offences related to taking a bribe, being a habitual offender, and abetting an offence. It introduces the powers and procedures for the attachment and forfeiture of property of public servants accused of corruption. The act adds the provision for prior sanction to prosecute former officials. The act only provided for the prior sanction to prosecute serving public officials. It deletes the provision that protects a bribe giver from prosecution, for any statement made by him during a

corruption trial. This may prevent bribe givers from appearing as witnesses in court. Under the Act, the punishment for corruption was “a minimum of 6 years, which was extendable up to 3 years fine”. This has been enhanced to a minimum of 3 years, which is expandable up to 7 years with fine, which can go up to 10 years for a repeat offender”.

Conclusion

The phrase “white-collar crime” has not been defined in the code. The dimensions of white-collar crime are so wide that after analysing the provisions of IPC 1860, we may conclude that certain offence under Indian Penal Code is closely linked with white-collar crimes such as bribery, corruption, and adulteration of food, forgery, etc. The provisions of the Indian Penal Code dealing with white-collar crimes should be amended to enhance punishment particularly fine in tune with changed socioeconomic conditions. White collar crimes are the crimes that cause harm to the economy of the country as a whole. It threatens the country’s economy by bank fraud, economic thefts, evasion of tax, etc. It not only affects the financial status of a country or a person but has also a negative impact on society. Punishment regarding White collar crime should be stricter as harsh punishment can prevent these crimes to a great extent. People are not aware of most of these crimes so public awareness through any communication medium is also necessary. The government should impose strict regulations regarding economic thefts in the country.



SCHOOL OF LAW DEPARTMENT OF LEGAL STUDIES

UNIT 4 – THE POLICE SYSTEM

The Police System- Structural Organization of Police- Mode of Recruitment and Training- Powers and Duties of Police- Cr.P.C. and Other Laws- Constitutional Imperatives- Relationship Between Police and Prosecution- Liability of Police for Custodial Violence- Police and Public Relations-Police force in India-the role of police- functions of police

Organization Structure Powers and Functions

Introduction

Police are agents or agencies, usually of the executive, empowered to enforce the law and to ensure public and social order through the legitimized use of force. The term is most commonly associated with police departments of a state that are authorized to exercise the police power of that state within a defined legal or territorial area of responsibility. In the administration of criminal justice, the role of police are of primary importance. The criminal justice process gets ensued and initiated through the police. Besides its key role in the criminal justice

process the police role in the society concerns with maintenance of law and order and security of persons and property. It is therefore the most important agency of law enforcement and maintenance of peace and civil order in the society. This unit is concerned with the role of police and its importance in criminal justice administration.

This Part of the material concerns with the organization of the police and its origins and development. The structure of the police system would be another aspect of discussion which would consider different kind of police system existing in the country and their operational aspects. The powers of the police in context of the criminal law and procedure would be discussed in connection with the role of police in overall criminal justice system. Closely related to the power are the functions of police which would be discussed in context of the governance of the country and the role of police in enforcing the law of the land.

The Police as an Agency of Criminal Justice

The word ‘police’ is derived from the Greek word “Politeia” or its Latin equivalent “Politeia” which broadly means citizenship, state or the administration of the government. The word police therefore means a system of government or the power of the state. In the modern usage the word police came to be used to refer to an agency of the state to maintain security and peace and to enforce the criminal law.

Police force has always been an indispensable part of the state organization in almost all civil society of the world. Since ancient times there has been some agency all over the world to apprehend criminals and produce them before the king or the officers having judicial powers. The King also had his own spies to collect intelligence and information for running the state and for the better administration of the state. However with the progress of the civilization and development of knowledge the dimension of the police work has increased many folds. With the advancement of the society complexity of the police job has increased in many folds.

In modern context police can be defined as an organization that is an agency of government to enforce various laws, maintain public peace, order and security, control traffic, provide security to the citizens, protect

the individual's rights as per constitution, specially provide security to the weaker sections of the society and maintain order in the society. Police have to act as an intelligence agency, collecting intelligence for internal security and criminal intelligence for crime prevention, crime detection, and crime control. As a part of criminal justice system police has to investigate criminal cases and bring criminals before the court of law for justice. The police have to perform multi furious duties, functions and roles in a civilized society forming a major arm of governance.

Organization

Origin

The history of the development of the police organization dates back to ancient times which finds mention in the ancient Greek, Roman, Chinese and Indian texts. The Indian Historical reference of ancient times also have numerous mentions of police system be it Mahabharata, Ramayana, Makushita or the various religious or secular texts of Gupta dynasty, Maurya dynasty and Mughals. The first police force comparable to present-day police was established in 1667 under King Louis XIV in France, although modern police usually trace their origins to the 1800 establishment of the Marine Police in London, the Glasgow Police, and the Napoleonic police of Paris. The first modern police force is also commonly said to be the London Metropolitan Police, established in 1829, which promoted the preventive role of police as a deterrent to urban crime and disorder.

The colonial British government in India established the modern police system in India. It was obvious that the various police commissions established by the British and the police act of 1861 had important contributions in the development of police system in India. However, the colonial interest of the British Empire had great imprint over the organization and structure of police system in India.

The Organization of Police

Police forces are usually organized and funded by some level of government. The level of government responsible for policing varies from place to place, and may be at the national, regional or local level.

In some places there may be multiple police forces operating in the same area, with different ones having jurisdiction according to the type of crime or other circumstances. For example, in the UK policing is primarily the responsibility of a regional police force; however, specialist units exist at the national level. In the US policing there is typically a state police force, but a municipality may have its own police force. National police agencies also have jurisdiction over serious crimes or those with an interstate component.

Characteristics of Indian Police Organizations

The Police Act of 1861 largely governs Indian police forces. The Police Act gives each State Government the power to establish its own police force. In addition to the Police Act, other legislation such as the CrPC also regulates the police system. Based on the Police Act of 1861, the Indian police have three basic characteristics:

1. The police force is organized, maintained and directed by several States of Indian Union;
2. The Indian police system is horizontally stratified like military forces organized into different cadres; and
3. The police in each State are divided vertically into armed and unarmed branches.

The Indian police organizational setup has virtually remained the same since past century. It is ironical that the Police Act of 1861 has hardly changed due to changes in an around them. Despite the new democratic, secular, socialistic, welfare and humanitarian values vouched for in the Constitution after independence in 1947, the Indian police, by and large follows the philosophy of Para-militarism.

The constitution of India provides that the police is the state subject. It is therefore for the state to maintain peace and security within their territorial jurisdiction. There are, however, certain situations which authorize the Centre to intervene in the law-and-order problems of the State because the Centre is under a duty to protect the States from internal disturbances. Primarily it is the duty of the State govt. to maintain the civilian police force. Besides the state police force there are certain police force

establishments at the Union level, such as the Border Security Force, the Railway Protection Force, the Central Reserved Police Forces, or the Central Industrial Security Force.

The police set up in India is essentially divided into following broad categories: -

1. The general police which looks after the general police work and assist in crime investigation, detection crime control and it's also involved in law-and-order maintenance and enforcement of law.
2. The special arm force are paramilitary force which are there to assist the general police in maintaining the law and order and performing specialize duties like border securities large scale riots, election duties, VIP and Industrial security, disaster relief and general public order maintenance. Apart from these to basic categorization there are specialized police services which take care of particular policing jobs like
 - a) Railway police
 - b) Intelligence Police agencies
 - c) Traffic police
 - d) Women Police
 - e) Border Security Police
 - f) Specialized Investigative Police Agencies
 - g) Armed Reserves
 - h) Specialized Security Agencies

The above category exists at state level as well as at the central level.

Administrative Control under State Government

The constitution confers exclusive power on the States to control and regulate the functioning of the police as the maintenance of law and order and police are State subjects.

Structure

The structure of Police administration has derived its basic format from the traditional. Mughal administration which was later on adopted and reformulated by the British colonial govt. in India. The police structure has under would very few changes after the British left India in 1947. The bulk of the police personals in the country are related to the state police services rest of the police personals come from various central police organizations.

The DGP reports to the home secretary, a career civil servant belonging to the IAS. The Home Secretary is accountable directly to the Chief Secretary, the head of the civil service, and subsequently, to the Minister in charge of the Home Department, an elected functionary who forms part of the Cabinet that is responsible to the State Assembly.

Till a few years ago, an officer of the rank of Inspector-General of Police headed each force. The level was upgraded to Director-General mainly to widen the career prospects of IPS officers and, incidentally, to take into account the greater responsibility thrust on the higher echelons in the context of heightened political and social tensions. At the bottom of the pyramid is the Police Constable (PC), who constitutes the 'cutting edge' of the force. Between him and the DGP, there are nine levels of officers.

The Police Headquarters

Each state has a police head quarter at the apex of the police administration which is headed by the DGP who looks after the administration of the police force of the entire state. The Police headquarters is constituted of several specialized police departments which look after different specific functions of police by supervising and controlling district police set up which is ultimately the functional outlet of the police work the various police dept. or branches at the headquarters are generally headed by one Additional Director General of police.

There are generally following branches

1. Criminal investigation department
2. Intelligence
3. Railway
4. Administration
5. Training
6. Special armed force
7. Provisioning and planning
8. Telecommunication
9. Complaints
10. Special crime record bureau or computer

District Police Administration

Each state is divided into a number of districts for convenient civil administration. The head of the District Police Force is the Superintendent of Police (SP) who is accountable to the District Collector in matters of preservation of peace and control of crime. The SP controls a large number of police stations (PS) - the lowest formation of the local police machinery. Each station is headed by a Station House Officer (SHO) who could be of any rank, but is invariably a Sub-Inspector (SI) in a rural area, and an Inspector or Deputy Superintendent (DSP) in a town. The extent of geographical area covered by each police station varies from state to state. On an average, a rural station covers 100 sq. miles and an urban station, 25 sq. miles. The SHO is in charge of the administration of the Police station, the operation of their staff, and other duties relating to detection, investigation, and prevention of offences. Under the Police Act of 1861, other officers of a higher rank than the SHO may exercise the same powers as an SHO within their local area of appointment.

Each State has its own hierarchy and nomenclature. Some States employ the Police Commissioner System, while others use the traditional Directorate System described above.

Police Station

The word 'Police Station' is defined in section 2 (s) of CrPC 1973 wherein 'Police Station' means 'any post or place declared generally or specially by the State Government, to be Police Station, and includes any local area specified by the State Government in this behalf .

A Police Station is the nodal office of the Police through which the Police Department carries out its statutory duties of prevention and detection of crime and maintenance of law and order and all other allied functions within the ambit of these two broad categories of work. Additionally, it serves as a 24- hour, 365 days a year contact point for victims of crime or more correctly, interface point between police and public. To carry out these vital functions, a police station consists of a building official and residential premises manpower and equipment. However, for a Police Station to exercise any legal powers, it

has to be notified by the Government with its exact geographical jurisdiction and location of the Police Station. As per the Criminal Justice System existing in India, legal powers to initiate any action against crime is dependent upon the place of occurrence of the

incident. Hence for any Police Station to exercise any legal action, the crime should have occurred in an area, which should have been notified as the area of jurisdiction of that Police Station. Further, the State Govt. and not the Director General of Police exercises this power of notification.

Rural and Urban Police

The diverse nature of social and economic organization and the geographical lay out of urban places as compare to the rural one's results in diversity of police functions and organization in rural areas as compare to urban areas. The massive urban expansion has created greater challenges before police organizations in different states. The Indian

Police act of 1861 basically caters to the rural life as majority of population at that time was living in villages. The functions and the organizational structure of police station are diverse in rural areas as compared to urban areas. While there is no division of work in rural police station, in the essentially urban ones, work is distributed among three distinct sections, viz, law and order, crime and traffic.

Law and order personnel handle all matters concerning preservation of public peace such as patrolling, mob control, etc. Those constituting the crime section investigate all offences listed in the Indian Penal Code (IPC) and special enactments. The traffic section looks after the regulation of vehicular traffic in public places. Apart from manning specific points at road intersections, its personnel in some states, also handle investigation of road accidents.

While the staff of a town police station works in shifts, those in a rural station do not enjoy this benefit. They are expected to be available all the time, although, on paper, they are entitled to off-duty once a week. Police stations in the big cities have a much smaller area to cover, as compared to their rural or small-town counterparts. The number of stations vary with cities. For instance, Madras city the capital of Tamil Nadu, with a population of nearly 6 million has 82 police stations and 4 outposts.

Police Commissionerates:

A distinctive feature of the Indian Police is the commissionerate system that prevails in major cities. Before Independence, this was available only in the three Presidency towns of Bombay, Calcutta and Madras. Gradually, this has been extended to several others, including the nation's capital, New Delhi. This system provides for a greater freedom to the police from the Executive Magistrate in the matter of crowd control and issue of licenses, such as those required for buying arms and running cinema houses and hotels. In a typical commissionerate, the Commissioner (normally of the rank Additional DGP in major cities and IGP/DIG in the smaller ones) is assisted by one Additional and several Joint Commissioners, each of whom looks after a geographical area or a specific function, such as law and order, crime, traffic, etc. Next come the Deputy Commissioners (equivalent to a District SP) who have Assistant

Commissioners, Inspectors and Sub Inspectors and the constabulary working under them.

In the Police Commissioner system, a senior experienced and a mature police officer is directly in charge of policing and has complete authority over his force and is functionally autonomous. He is directly accountable to the Government. Under the system, the public has not to run to two different authorities i.e. District Magistrate and Superintendent of Police, to process their application for licenses, permits etc. This avoids delay and inconvenience to public. The conferment of magisterial powers on Police Commissioner brings efficiency in prevention and detection of crime and maintenance of law and order in major cities.

The Armed Police in India

The civilian police system in India has basically two divisions. The general police functions are performed by the district force or the general civilian police. There is a provision of having a special armed group in each state which is generally called the Special Armed Force which is available for handling grave incidents which threaten public peace and require professional and which handling. The special armed reserve is available for this purpose at the headquarters of each districts under the operational control of SP. The special arm reserves are well trained to cater to jobs demanding extreme physical fitness and mental toughness. There are situations when even the armed reserve at the district headquarter may be insufficient. It is tackle such really serious public order problems that there is the provision of keeping special armed reserves in every state at the disposal of the Director General. The special armed reserves are organized into a number of battalions headed by a Commandant who is of the rank of SP. Generally a special armed force may have a force of around 1000 police personals.

The Criminal Investigation Department

A special group of investigators called the Criminal Investigation Department (CID) is available at every state police headquarters to take the investigation of grave occurrences, such as a political murder, large scale rights, bank robbery involving large sum of money or theft of precious art etc. This wing is also used for conducting inquiries into allegation of misconduct by police personal and other police agencies.

The Intelligence Wing in Indian Police

Every government requires an agency that keeps track of the activities of anti-social and anti-national elements, who aim at fomenting disaffection against the lawfully constituted government and disrupting normal life. Also needed is a facility to monitor public opinion or the performance of the government so that quick corrective action is initiated to prevent a breakdown of law and order or economic stability. This twin role is fulfilled by the Intelligence branch at district and state levels. It is sensitive group, which has to be manned by personnel proven integrity and ability for collecting information in an unobtrusive manner. On matters of mutual interest, such as terrorism, VIP security, religious feud (especially Hindu-Muslim conflict), the State Intelligence coordinates with the Intelligence Bureau (IB) of the central government.

Powers and functions of police

The police as law of enforcement officer are required to serve the community by protecting all persons against illegal acts which is consistent with high degree of responsibility required as per the law. The police functions are multi furious and multi dimensional. The powers given by the law to the police makes the police one of the most important elements in the initiations of criminal justice process and at the same time makes the police completely responsible as an agency working towards social cohesion and public peace. The functions of police in the modern democratic society have multiplied and the role expectation has also increased. Major functions of police can be

listed through the following points .

1. Promote and preserve public order;
 2. Investigate crimes and where appropriate, to apprehend the offenders and participate in subsequent legal proceedings connected therewith;
 3. Identify problems and situations that are likely to result in commission of crimes;
 4. Reduce the opportunities for the commission of crimes through preventive patrols and other appropriate police measures;
 5. Aid and cooperate with other relevant agencies in implementing appropriate measures for prevention of crimes;
 6. Aid individuals who are in danger of physical harm;
 7. Create and maintain a feeling of security in the community;
 8. Facilitate orderly movement of people and vehicles;
 9. Counsel and resolve conflicts and promote amity;
 10. Provide other appropriate services and afford relief to people in distress situations;
 11. Collect intelligence relating to matters affecting public peace and crimes in general including social and economic offences, national integrity and security; and
 12. Perform such other duties as may be enjoined on them by law for the time being in force.
 13. To protect constitutional guarantees such as right of free speech and assembly.
 14. To assist those who can't care for themselves; the intoxicated, the addicted, the mentally ill, the physically disabled, the old and the young.
 15. To create and maintain a feeling of security in the community.
 16. Regulation and control of private morals and public decencies of life.
- The primary functions of police is the prevention and detection of crime and to maintain public peace and order in the society. The rights and duties of the police to inflict punishment are limited. Since there job is to pick up criminals from the society they play vital role in bringing the offenders to the justice. The major functions which the police is lawfully required to perform can be discussed in the following heads :

Patrolling and Surveillance

Patrolling is the visible police function for the purpose of general watch and word. Patrol and surveillance provide the most direct and effective means of preventing crime. A police beat is a given route or area to be covered by constable on patrol. In a town it usually means streets and building in a given locality while in a rural area it may comprise one or more villages or a stretch of road. Patrolling police officer keep a general watch over a particular beat in order to prevent crime.

In insurgency area armed police units do routine patrolling either on foot or on vehicles depending upon the locality. Police patrolling is also an exercise in area dominance by the law enforcement agencies especially where there are acute law and order insurgency related problems.

Surveillance is another important function of police which is based on anti crime branch. Each police station generally has list of criminals and anti social elements which required special watch. Surveillance activity involves various method of keeping such watch.

Preventive functions and Arrest

One of the important task assigned to the police is to make arrest of law breakers and suspected criminals and to take them into custody in order to prevent crime. The preventive powers of the police are contain in the code of criminal procedure which also defines legal elements of such power. The police may arrest a person on a warrant issued by a competent court. An arrest made on a warrant is in fact a case of arrest made by the Court through police. But at times, the circumstances may require the police to make an arrest without warrant. The police may arrest without warrant when they apprehend the commission of a crime or when they have reason to believe that crime has been committed by the suspected person.

The police can arrest and take into custody vagabonds, habitual rogues, persons with doubtful antecedents, of those who are conditionally released from jail or person for the sake of maintenance of law and order within their territorial jurisdiction.

Conditional release an Accused on bonds etc.

The police has the powers to release an accused on a bond with or without surety in case there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate.

Investigation by the police

The purpose of the investigation is to collect evidence and to apprehend the culprit. The police can question any person supposed to be acquainted to be the facts and circumstances of the case. An investigation is defined as all the proceedings under the CrPC for the collection of the evidence, conducted by a police officer or any person authorized by a magistrate. The principal agency with the power under law to carry out investigation is the police force. An investigation is initiated after an registration of an FIR regarding a cognizable offence. The police may start investigation in the cognizable without the prior permission of the magistrate while in case of non-cognizable offence the permission of magistrate is needed. Thus, during the course of investigation, the police is empowered to make search, order production of documents, seize any suspicious property, call witnesses, require them to attend court and arrest persons suspected or having committed crime without warrant. After the investigation, a police report is prepared upon which proceedings are instituted before a Magistrate. The law requires that every investigation should be completed without undue delay.

Nevertheless, delays do occur in the process of investigation for one reason or the other. The conclusion of a police investigation should be contained in a final report. At the completion of an investigation, the police should submit this report with all the details of the case to a magistrate. If the accused is to be prosecuted, this report is called a charge sheet or challan. If there is a charge sheet, it should list relevant charges along with the laws which have been contravened. After looking at the charge sheet, the magistrate decides to either (a) proceed with the case, (b) order further investigation of the case, or (c) dismiss the charges against the accused.

Essential Constituents of Investigation.

During the course of investigation done by a police officer, following steps are generally taken which constitute a typical investigation.

- The police authorities will proceed to the scene of an incident.
- They will ascertain the facts and circumstances of the case.
- They will attempt to discover and arrest the suspect(s).
- They will collect evidence relating to the incident through

a. examination of various people (including the accused), and
b. search of places and seizure of things considered necessary for the investigation and for production at trial.

- They will form an opinion about whether the material collected forms the basis of a case to be placed before a magistrate for trial and, if so, file a charge sheet under S.173 CrPC.

The police powers and functions related to investigation involve search, seizure, questioning, interrogation, arrest, etc. The powers and functions involve however are not unlimited, these powers are well defined by law and procedure. The individual liberty and freedoms guaranteed under the constitutions limit the powers and functions of the police officers during the discharge of their duties.

Public Peace and law and order management

The maintenance of public peace and law and order within a police jurisdiction is given high priority in police function. Thus criminal procedure court gives power to the police to use restrain civil force for dispersal of unlawful assembly the police may arrest people. In order to prevent public nuisance, writing or unlawful conduct. The police may initiate a process of taking security for keeping the peace. Police may also initiate process for removal of nuisance and for active maintenance of public order and social tranquility.

Police accountability

Police forces have the authority to exercise force to enforce laws and maintain law and order in a state. However, this power may be misused in several ways. For example, in India, various kinds of complaints are made against the police including complaints of unwarranted arrests, unlawful searches, torture and custodial rapes. To check against such abuse of power, various countries have adopted safeguards, such as accountability of the police to the political executive, internal accountability to senior police officers, and independent police oversight authorities.

Accountability to the political executive vs operational freedom

Both the central and state police forces come under the control and superintendence of the political executive (i.e., central or state government). The Second Administrative Reforms Commission (2007) has noted that this control has been abused in the past by the political executive to unduly influence police personnel, and have them serve personal or political interests. This interferes with professional decision-making by the police (e.g., regarding how to respond to law and order situations or how to conduct investigations), resulting in biased performance of duties.

To allow the police greater operational freedom while ensuring accountability, various experts have recommended that the political executive's power of superintendence over police forces be limited. The Second Administrative Reforms Commission has recommended that this

power be limited to promoting professional efficiency and ensuring that police is acting in accordance with law. Alternatively the National Police Commission (1977-81) suggested that superintendence be defined in the law to exclude instructions that interfere with due process of law, or that influence operational decisions, or that unlawfully influence police personnel transfers, recruitments, etc. The Supreme Court has also issued directions to states and the centre in 2006 in this regard.

Directions of the Supreme Court in Prakash Singh vs Union of India

In 1996, a petition was filed before the Supreme Court that raised various instances of abuse of power by the police, and alleged that police personnel perform their duties in a politically partisan manner. The Supreme Court issued its judgement in 2006, ordering the centre and states to set up authorities to lay down guidelines for police functioning, evaluate police performance, decide postings and transfers, and receive complaints of police misconduct. The court also required that minimum tenure of service be guaranteed to key police officers to protect them from arbitrary transfers and postings.

A summary of the Supreme Court judgement and its implementation are provided in the Annexure.

Independent Complaints Authority

The Second Administrative Reforms Commission and the Supreme Court have observed that there is a need to have an independent complaints authority to inquire into cases of police misconduct. This may be because the political executive and internal police oversight mechanisms may favour law enforcement authorities, and not be able to form an independent and critical judgement. For example, the United Kingdom has an Independent Office for Police Conduct, comprising of a Director General appointed by the crown, and six other members appointed by the executive and the existing members, to oversee complaints made against police officers. Another example is that of the New York City Police which has a Civilian Complaint Review Board comprising of civilians appointed by local government bodies and the police commissioner to

investigate into cases of police misconduct. India has some independent authorities that have the power to examine specific kinds of misconduct. For example, the National or State Human Rights Commission may be approached in case of human rights violations, or the state Lokayukta may be approached with a complaint of corruption.

However, the Second Administrative Reforms Commission has noted the absence of independent oversight authorities that specialise in addressing all kinds of police misconduct, and are easily accessible. In light of this, under the Model Police Act, 2006 drafted by the Police Act Drafting Committee (2005), and the Supreme Court guidelines (2006), states are required to set up state and district level complaints authorities.

Directions of the Supreme Court in Prakash Singh vs Union of India

Context: In 1996, a petition was filed before the Supreme which stated that the police abuse and misuse their powers. It alleged non enforcement and discriminatory application of laws in favour of persons with clout, and also raised instances of unauthorised detentions, torture, harassment, etc. against ordinary citizens. The petition asked the court to issue directions for implementation of recommendations of expert committees.

Directions: In September 2006, the court issued various directions to the centre and states including:

- Constitute a State Security Commission in every state that will lay down policy for police functioning, evaluate police performance, and ensure that state governments do not exercise unwarranted influence on the police.
- Constitute a Police Establishment Board in every state that will decide postings, transfers and promotions for officers below the rank

of Deputy Superintendent of Police, and make recommendations to the state government for officers of higher ranks.

- Constitute Police Complaints Authorities at the state and district levels to inquire into allegations of serious misconduct and abuse of power by police personnel.
- Provide a minimum tenure of at least two years for the DGP and other key police officers (e.g., officers in charge of a police station and district) within the state forces, and the Chiefs of the central forces to protect them against arbitrary transfers and postings.
- Ensure that the DGP of state police is appointed from amongst three senior-most officers who have been empanelled for the promotion by the Union Public Service Commission on the basis of length of service, good record and experience.
- Separate the investigating police from the law-and-order police to ensure speedier investigation, better expertise and improved rapport with the people.
- Constitute a National Security Commission to shortlist the candidates for appointment as Chiefs of the central armed police forces.

Status Note on Police Reforms in India

Police reforms has been on the agenda of Governments almost since independence but even after more than 50 years, the police is seen as selectively efficient, unsympathetic to the under privileged. It is further accused of politicization and criminalization. In this regard, one needs to note that the basic framework for policing in India was made way back in 1861, with little changes thereafter, whereas the society has undergone dramatic changes, especially in the post-independence times. The public

expectations from police have multiplied and newer forms of crime have surfaced. The policing system needs to be reformed to be in tune with present day scenario and upgraded to effectively deal with the crime and criminals, uphold human rights and safeguard the legitimate interests of one and all.

Committees / Commission on Police Reforms

Various Committees/Commissions in the past have made a number of important recommendations regarding police reforms. Notable amongst these are those made by the National Police Commission (1978-82); the Padmanabhaiah Committee on restructuring of Police (2000); and the Malimath Committee on reforms in Criminal Justice System (2002-03). Yet another Committee, headed by Shri Ribeiro, was constituted in 1998, on the directions of the Supreme Court of India, to review action taken by the Central Government/State Governments/UT Administrations in this regard, and to suggest ways and means for implementing the pending recommendations of the above Commission.

Constitutional Limitations of Central Government

“Police” being a State subject in the seventh schedule to the Constitution of India, it is primarily the State Governments who have to implement the various police reforms measures. The Centre has been making consistent efforts to persuade the States from time to time to bring the requisite reforms in the Police administration to meet the expectations of the people.

In this regard, the recommendations of the various Committees/Commissions were sent to the State Governments/UT Administrations for taking necessary action. Successive Union Home Ministers have been addressing the Chief Ministers/Administrators of States/UTs in this regard.

Important recommendations of the various Committees/ Commissions and the specific action taken by the Central Government

(A) Reports of The National Police Commission

The National Police Commission (NPC) was constituted in 1977 to study the problems of police and make a comprehensive review of the police system at national level. The NPC dealt with wide range of aspects of

police functioning. The National Police Commission submitted eight reports during the period February 1979 to May 1981. The first report was laid on the Table of Lok Sabha on 1.2.1980. The remaining seven reports were released in March 1983 with the specific directive from the Central Government to all State Governments/UT Administrations that these reports may be examined quickly and appropriate action taken. The Central Government took initiatives in persuading the State Governments/UTs to implement the recommendations of the National Police Commission.

The major recommendations of the NPC to amend the Code of Criminal procedure 1973 were considered in the Chief Minister's Conference on the Administration of Criminal Justice System held on 13th November 1992. The Code of Criminal Procedure (Amendment) Bill 1994 introduced in the Rajya Sabha had, inter alia, contained these recommendations.

(B) Reports of the Ribeiro Committee

7. On the directions of the Supreme Court of India in the case of Prakash Singh vs Union of India and others pertaining to implementation of the recommendations of the National Police Commission, the Government had on 25th May, 1998, constituted a Committee under the Chairmanship of Shri J.F. Ribeiro, IPS (Retd.). The Ribeiro Committee submitted two reports which were filed in the Supreme Court during 1998 and 1999, respectively.

The Ribeiro Committee endorsed the recommendations of the NPC with certain modifications. The case came up for hearing on 10.2.2005 and the Hon'ble Court directed Union of India and respective State Governments including NHRC to file their responses with regard to the direction issued in the Vineet Narain case and implementation of recommendations of Ribeiro Committee.

(C) Report of the Padmanabhaiah Committee on Police Reforms

Government had set up a Committee in January, 2000 under the Chairmanship of Shri K. Padmanabhaiah, former Union Home Secretary, to suggest the structural changes in the police to meet the challenges in the new millennium. The Committee submitted its report to the Government on 30.8.2000. In all, there are about 240 recommendations made by the Committee. The recommendations have been examined in this Ministry. Out of 240 recommendations of the Committee, **recommendations regarding** review of allocation of cadre policy, direct IPS officers to be given charge of district, to post IAS/IPS as judicial magistrate, police commissioners system in cities, division of NICFS, compulsory retirement to those not empanelled as DIG, review of cadre allotment policy of IPS for NE, recruitment of Constables and sub-Inspectors from the boys who have passed 10th & 12th Examination and giving them 2/3 years training in Police training Schools/Police Training Colleges respectively, maximum age of entry of IPS to be reduced to 24 years and federal offences etc **were not accepted**, after examination.

As many as **154 recommendations pertaining to** recruitment, training, reservation of posts, involvement of public in crime prevention, recruitment of police personnel, delegation of powers to lower ranks in police, revival of beat system, use of traditional village functional village functionaries, police patrolling on national and state highways, designs of the police stations, posting and transfer of SP and above etc. were found to be such that they can be implemented without any structural changes.

(D) Malimath Committee on Reforms in the Criminal Justice System

Government had set up (November, 2000) a Committee under the Chairmanship of Dr. (Justice) V.S. Malimath, a former Chief Justice of the Karnataka and Kerala High Courts to consider and recommend measures for revamping the Criminal Justice System. The Malimath Committee submitted its report in April, 2003 which contained 158 recommendations. These pertain to strengthening of training

infrastructure, forensic science laboratory and Finger Print Bureau, enactment of new Police Act, setting up of Central Law Enforcement agency to take care of federal crimes, separation of investigation wing from the law and order wing in the police stations, improvement in investigation by creating more posts, establishment of the State Security Commission, etc.

MHA Committee to review the various recommendations and the follow up taken:

Hon'ble Prime Minister, while interacting with DGPs / IGPs in 2004, appreciated the need for police reforms and declared that a Committee would be constituted to review the status of implementation of recommendations made by the various Commission/Committees. Accordingly a Committee was constituted by MHA in December 2004 to look into this aspect.

The Committee short-listed 49 recommendations from out of the recommendations of the previous Commission/Committees on Police Reforms as being crucial to the process of transforming the police into a professionally competent and service oriented organization. These 49 recommendations mainly pertain to:

- (I) improving professional standards of performance in urban as well rural police stations,
- (II) emphasizing the internal security role of the police,
- (III) addressing the problems of recruitment, training, career progression and service conditions of police personnel,
- (IV) tackling complaints against the police with regard to non-registration of crime, arrests, etc. and
- (V) insulating police machinery from extraneous influences.

The report of the Review Committee was sent to all State Governments/UTs Administrations to initiate action on the recommendations concerning them and to initiate action on regular basis on the same. The implementation of these recommendations in the States were reviewed twice with the Chief Secretaries and DGPs of all the States by the Union Home Secretary in September 2005 and February 2006. The Committee of Secretaries under the Cabinet Secretary also reviewed the progress of implementation of these recommendations on

20.9.2005, 28.9.2005 and 17.2.2006 and also suggested milestones to be achieved in a time bound manner.

Ministry of Home Affairs also constituted a Sub-Committee of the National Integration Council to examine the feasibility of the 49 recommendations identified by the Review Committee. The Sub-Committee of National Integration Council has seven Chief Ministers, three eminent persons as members apart from Union Law Minister. A Meeting of this Committee was held on 29 th July, 2006 under the chairmanship of Union Home Minister and it was stressed that there is an urgent need for adopting the right perspective towards Police Reforms and for strengthening the intelligence system, imparting special training to police personnel and making them responsible.

Expert Committee to draft a New Model Police Act:

As one of the recommendations of Review Committee was replacement of Police Act, 1861, the Ministry of Home Affairs set up an Expert Committee to draft a new Model Police Act in September, 2005. The Committee submitted a model Police Act on 30th October, 2006.

The Model Police Act emphasized the need to have a professional police 'service' in a democratic society, which is efficient, effective, responsive to the needs of the people and accountable to the Rule of Law. The Act provided for social responsibilities of the police and emphasizes that the police would be governed by the principles of impartiality and human rights norms, with special attention to protection of weaker sections including minorities. The other salient features of Model Police Act include

Functional autonomy: While recognising that the police is an agency of the State and therefore accountable to the elected political executive, the Committee has specifically outlined the role of Superintendence of the State Government over the police. The Model Police Act suggested creation of a State Police Board, Merit-based selection and appointment of the Director General of Police, ensuring security of tenures, setting up of Establishment Committees,

Encouraging professionalism: To ensure an efficient, responsive and professional police service, the Model Act sought earmarking dedicated staff for crime investigation; and distinct cadre for Civil police vis-à-vis Armed Police,

Accountability paramount: the Act prioritised police accountability, both for their performance and their conduct.

Improved service conditions: The Act also aimed to provide better service conditions to the police personnel including rationalising their working hours, one day off in each week, or compensatory benefits in lieu. It suggested creation of a Police Welfare Bureau to take care, *inter alia*, of health care, housing, and legal facilities for police personnel as well as financial security for the next of kin of those dying in service. It further mandates the government to provide insurance cover to all officers, and special allowances to officers posted in special wings commensurate with the risk involved.

Forwarding of copies of the Draft Police Act to States/UTs :

A copy of draft Model Police Act as framed by the Committee has been sent to States for consideration and appropriate action vide Home Secretary d.o. letter dated 31st October, 2006.

As per available information, 15 State Governments, viz., Assam, Bihar, Chhattisgarh, Haryana, Himachal Pradesh, Kerala, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tripura and Uttarakhand have formulated their State Police Acts and 02 State Governments, viz., Gujarat and Karnataka have amended their existing Police Acts (total 15 State Governments have either formulated State Police Acts or amended their existing Police Acts).

Supreme Court judgment on 22.9.2006 on Police Reforms and the follow up action:

The Supreme Court of India has passed a judgement on September 22, 2006 in Writ Petition (Civil) No.310 of 1996 – Prakash Singh and others vs UOI and others on several issues concerning Police reforms. The Court in the said judgement directed the Union Government and State Governments to set up mechanisms as directed by December 31, 2006 and file affidavits of compliance by January 3, 2007. The directions inter-alia were:

(i) Constitute a State Security Commission on any of the models recommended by the National Human Right Commission, the Reberio Committee or the Sorabjee Committee.

(ii) Select the Director General of Police of the State from amongst three senior-most officers of the Department empanelled for promotion to that rank by the Union Public Service Commission and once selected, provide him a minimum tenure of at least two years irrespective of his date of superannuation.

(iii) Prescribe minimum tenure of two years to the police officers on operational duties.

(iv) Separate investigating police from law & order police, starting with towns/ urban areas having population of ten lakhs or more, and gradually extend to smaller towns/urban areas also,

(v) Set up a Police Establishment Board at the state level for inter alia deciding all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police, and

(vi) Constitute Police Complaints Authorities at the State and District level for looking into complaints against police officers.

(vii) The Supreme Court also directed the Central Government to set up a National Security Commission at the Union Level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPOs), who should also be given a minimum tenure of two years, with additional mandate to review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf.

Out of the above seven directives, the first six were meant for the State Governments and Union Territories while the seventh directive related solely to the Central Government.

The matter was heard successively on different dates. On May 16, 2008, Hon'ble Supreme Court, as regards the implementation of the various directions made earlier in its judgement dated September 22, 2006, directed to set up a Committee under the Chairmanship of Justice K.T. Thomas, former retired Judge of the Supreme Court and two other Members. The Terms of Reference for the Committee, inter-alia, included – to examine the affidavits filed by the different States and the Union Territories in compliance to the Court's directions with reference to the ground realities; advise the Respondents wherever the implementation is falling short of the Court's orders, after considering the Respondents' stated difficulties in implementation; bring to the notice of the Court any genuine problems the Respondents may be having in view of the specific conditions prevailing in a State or Union Territory etc.

This Committee's term initially was directed for a period of two years. The Committee submitted its report to Hon'ble Supreme Court and the said report has been circulated to States/ Union Territories by the Registry of Supreme Court on 04.10.2010.

Implementation of Supreme Court's Judgment dated 22.9.06 by MHA

The Government considered the matter as regards the directions pertaining to **National Security Commission**. The Union Government vide order dated 02.01.2007 set up a Committee on National Security and Central Police Personnel Welfare. The composition of the Committee is as under:

- (i) Union Home Minister Chairman
- (ii) National Security Advisor Member
- (iii) Cabinet Secretary Member
- (iv) Union Home Secretary Member
- (v) Director, IB Member

Terms of Reference of the Committee are (i) to prepare a panel of police officers for appointing as Head of Central Para Military Forces, (ii) to review issues pertaining to the service conditions of the Central police personnel and (iii) to make appropriate recommendations thereon and also to review and make recommendation on any other matter relevant or incidental to the above, referred to by the Government of

India. The composition of the said Committee was changed by adding more members vide Office Memorandum dated 25.01.2007 and 13.07.2010.

The Supreme Court was not satisfied with the compliance of the direction by Central Government and extended the time to file the affidavits by 10.04.2007 vide its order dated 11.1.2007. An application was filed by Union Government on 12.02.2007, stating the difficulties in the implementation of the said direction, for modifications / clarifications, which has not yet been taken up by the Court.

Compliance of Supreme Court directions by UTs

The position varies widely in respect of UTs because of their unique characteristics in terms of legal, administration demographic situation specific to each Union Territory. Affidavits were filed by UTs in the Supreme Court on or around 3.1.2007, stating difficulties like some UTs do not have a legislature, the Administrator administers the UT under overall control of MHA, directions of Hon'ble Court to be implemented in consultation with and as per the directions of MHA, Soli Sorabjee Committee is under active consideration of MHA, MHA has decided to frame a new Police Act for the UTs as soon as possible, proposed legislation will address the issues covered by Hon'ble Court, there is no DGP and Administrator discharges responsibility of IGP on ex-officio basis, posting of both the Administrator and SP is done by the MHA etc. By its order dated 11.1.2007, the Hon'ble Court, upon consideration of affidavits filed by Union of India, States and UTs, ordered that in so far as directions contained in para 31(2) (selection and tenure of DGP), 31(3) (minimum tenure of IG of Police and other officers) and 31(5) (Police Establishment Board) of its judgment dated 22.9.2006 were concerned, these were self-executory and that steps be taken to comply with them forthwith and in any case, within four weeks. With regard to directions contained in para 31(1) (State Security Commission), 31(4) (separation of investigation) and 31 (6) (Police complaints authority) of judgment dated 22.9.2006, the Hon'ble Court granted time upto 31.3.2007.

The Ministry of Home Affairs filed another application dated 12.2.2007 in respect of UTs in the Hon'ble Court stating the difficulties in the implementation of its directions and sought modification of orders dated 22.9.2006 and 11.1.2007. While the above application has not yet been disposed, following steps have been taken to implement the directions pending disposal of the application.

(a) Orders constituting a Security Commission for all UTs (except Delhi) have been issued on 07.02.2013. It has been decided that there shall be separate Security Commission for each of the UTs (except Delhi) with the Union Home Secretary as Chairman. Before 07.02.2013, there was only one Security Commission for all UTs (except Delhi). Two meetings of the Security Commission for UTs (except Delhi) have been held on 18.1.2013 and 13.2.2013. The decision with regard to Delhi is that the Security Commission for Delhi should be headed by the L.G., Delhi. The State Security Commission for Government of NCT of Delhi has been constituted and four meetings of the Commission have been held.

(b) Orders constituting Police Complaint Authorities (PCAs) in UTs have been issued on 23rd March, 2010. In respect of Delhi, the request of Govt. of NCT of Delhi to treat its Public Grievances Commission as the PCA had been accepted as an interim arrangement till enactment of the Delhi Police Act.

(c) Regarding selection methodology and minimum tenure of Chief of Police and key functionaries such as Zonal IGs, Range DIGs, District SPs and SHOs of UTs, the Ministry has taken a policy decision that senior level of police functionaries would have minimum tenure of two years in the constituents, as far as possible, subject to superannuation. UTs have been advised through successive advisories / instructions in this regard. The draft Delhi Police Bill, presently under consideration of the Government provides for minimum tenure of two years, subject to their attaining the age of superannuation for key functionaries, including the Commissioner of Police, Joint Commissioner of Police/Additional Commissioner of Police in charge of a Range, District DCP and SHO.

(d) Regarding separation of law and order from investigation, the separation has to start in towns/urban areas having population of 10 lakh or more. Only Delhi qualified under this criterion and it has been

implemented in Delhi and separate IO is appointed. The draft Delhi Police Bill provides for creation of Crime Investigation Units in all Police Stations for investigation of economic and heinous crimes. However, in major Police Stations of UT of Puducherry, there is already a separation of law and order from investigation. An enabling provision has been made in the Punjab Police Act, 2007 as extended to Chandigarh, regarding creation of Crime Investigation Units in police stations.

(e) Regarding setting up of a Police Establishment Board, the direction has been complied in all UTs, keeping in view the divergent Police / Administrative hierarchies in the various territories. However, it has been prayed in the modification application dated 12.2.2007 filed in the Supreme Court that Police Establishment Board may not be entrusted with the Appellate functions as it would dilute the functional control and authority of the supervisory police officers.

Thus in UTs, there has been a significant and substantial compliance by the Government of India except only those issues in which appropriate clarification and modifications have been sought in application dated 12.2.2007 before Supreme Court.

The matter last came for hearing on 16.10.2012. All the States, Union Territories and the Union of India were directed to submit status reports as to how far they have acted in terms of the directions which had been given by this Court on 22nd September, 2006 by 4th December, 2012. The Ministry of Home Affairs has filed a Status Report by way of Affidavit in the Hon'ble Supreme Court on 26.2.2013. The matter sub-judice and is under active consideration of the Hon'ble Supreme Court.



**SCHOOL OF LAW
DEPARTMENT OF LEGAL STUDIES**

UNIT 5-VICTIMOLOGY

Victims of crime- compensation to victims- under Criminal Procedure Code-under public law remedy-need for compensation -compensation and rehabilitation-compensation as a mode of punishment- constitutional perspective of compensation-Role of National Human Rights Commission.

The information provided by these surveys shows that victimization is a frequent occurrence, involving loss, injury and trauma. It shows that police and particularly court data underestimated the extent of crime. Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. The Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents, the disruption lasted for two to three days (Aucoin &

Beauchamp, 2007). In 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victims felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts.

The impact of crime is perhaps best thought of as a product of the perceived seriousness or intensity of these effects plus their duration from the victim's own standpoint. Defined in this way, the term refers to an inescapably subjective assessment and evaluation by the victim of the overall consequences of the offence. This includes its meaning and significance for the victim, and whether or not it has resulted in a change of self-perception by which the victim comes to perceive himself or herself as a victim. Thus, the 'impact' of a crime has a crucial bearing on the way the victim interprets and responds to it during the second phase of the victimization process, as distinct from whatever tangible or intangible 'effects' may be associated with the primary phase. Unfortunately, most researchers have tended to conflate these two terms and to treat them as interchangeable, which has added to the methodological problems mentioned above, though it might help to account for the seemingly confused nature of many of the findings.

The UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power draws attention to the fact that crime is not just a violation of a criminal code but also causes harm to victims, including economic loss, emotional suffering and physical or mental injury.

The UN Handbook divides the impact of crime on victims into:

- The physical and financial impact of victimization
 - Psychological injury and social cost
- Secondary victimization” from the criminal justice system and society.

Victim and criminal justice system

India's criminal justice system is from the British criminal justice system. There is a clear Doctrine separation of power by the Legislature, Executive, and Judiciary. The judiciary is independent and there is a free press. The penal philosophy in India has accepted the concepts of prevention of crime and treatment and rehabilitation of criminals, which we can see by many judgments of the Supreme Court and High Court of India.

Victims have no rights under the criminal justice system, and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses.

Constitution, Criminal Law and Procedure:

The Indian criminal justice system is governed overall by four laws:

(i) The Constitution of India

(ii) The Indian Penal Code

(iii) The Code of Criminal Procedure of India

(iv) The Indian Evidence Act

The legislative power is vested with the Union Parliament and the state legislatures and the law-making functions are divided into the Union List, State List and Concurrent List in the Indian Constitution. The Union Parliament alone can make laws under the Union list and the state legislatures alone can make laws under the State list, whereas both the Parliament and the State Legislatures are empowered to make laws on the subjects mentioned in the Concurrent List of the Constitution.

The Constitution of India guarantees certain fundamental rights to all citizens. Under the Constitution, criminal jurisdiction belongs concurrently to the central government and the governments of all the states. At the national level, two major criminal codes, the Indian Penal Code, 1861 and the Code of Criminal Procedure, 1973, deal with all substantive crimes and their punishments, and the criminal procedure respectively to be followed by the criminal justice agencies, i.e. the police, prosecution and judiciary during the process of investigation, prosecution and trial of an offence. These two criminal laws are applicable throughout India and take precedence over any state legislation. All major offences are defined in the Indian Penal Code and these apply to resident foreigners and citizens alike. Besides the Indian Penal Code, many special laws have also been enacted to tackle new crimes. The Indian criminal justice system has four subsystems which include: Legislature, (Union Parliament and State Legislatures), Law enforcement (Police), Adjudication (Courts), and Corrections (adult and juvenile correctional institutions, Probation and other non-institutional treatment). The legal system in India is adversarial.

Victimization

Perhaps the first theory to explain victimization was developed by Wolfgang in his study of murders in Philadelphia. Victim precipitation theory argues that there are victims who actually initiated the confrontation that led to their injuries and deaths. Although this was the result of the study of only one type of crime, the idea was first raised that victims also might play a role in the criminal activity.

Victimization is a highly complex process encompassing a number of possible elements. The first element (often referred to as 'primary victimization') comprises whatever interaction may have taken place between offender and 'victim' during the commission of the offence, plus any after effects arising from this interaction or from the offence itself. The second element encompasses 'the victim's' reaction to the offence, including any change in self-perception that may result from it, plus any formal response that s/he may choose to make to it. The third element consists of any further interactions that may take place between 'the victim' and others, including the various criminal justice agencies with whom s/he may come into contact as a result of this response. Where this interaction has a further negative impact on the victim, it is often referred to as 'secondary victimization'.

Primary victimization

The 'primary victimization' phase of the process, it may be helpful to begin by distinguishing between the 'effects' or consequences that are known to result from crimes of different kinds and their 'impact' on victims themselves. Certain crimes entail physical effects, which are likely to involve some degree of pain and suffering, and may also entail loss of dexterity, some degree of incapacity and/or possible temporary or permanent disfigurement. Many crimes also have financial effects, which may be either direct. Very often crime can result in additional costs that might be incurred, for example, in seeking medical treatment or legal advice, or loss of income as a result of attending to the crime and its aftermath, or possible loss of future earning potential. Certain crimes can also have psychological and emotional effects upon victims including depression, anxiety and fear, all of which can adversely affect their quality of life.

Secondary victimization

Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the criminal justice system. At times it may amount to a complete denial of human rights to victims from particular cultural groups, classes or a particular gender, through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimization, from investigation, through decisions on whether or not to prosecute, the trial itself and the sentencing of the offender, to his or her eventual release. Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim.

Re – victimization

Crime is not distributed randomly. According to a recent estimate, based on data from the British Crime Survey, 44% of all crime is concentrated on 4% of victims. (Farrell and Pease, 2001) The following table shows the proportion of victims in this source who will be a victim of a similar offence within a year of the event.

Some of the repeat victimization is due to the victim living or being associated with the offender. Wife battering tends to happen more than once to the same victim who continues to live with the same man. This is also true of sexual incidents.

Some of the repeat victimization in property offences is due to the location of the victim or their residence. Those who live close to a concentration of potential offenders in residences that are unprotected are particularly at risk of repeat victimization.

Repeat victimization is disillusioning to victims who report their experience to the police and the criminal justice system because they were not protected. Being victimized a second time increases the psychological trauma of the event.

Self - victimization

In this category person himself commits such act which result in his own victimization we can say up to certain extent that it can be included in repeat victimization only as it result from wrong persons company, wrong habit, etc.

Victimology

Diverse views exist on the focus and place of the discipline of Victimology. While some believe that Victimology should function as an independent area of enquiry, others view it as a subfield of Criminology. A second issue concerns the breadth of victim related issues to be covered in the field of Victimology. Some scholars advocate that Victimology should limit itself to the study of victim-offender interaction. Others argue that the needs of crime victims, functioning of the organizations and institutions which respond to these needs, and the emerging roles and responsibility for crime victims within the CJS are important areas of inquiry for Victimology. A third issue is the breadth of the definition of the term 'victim'. One approach is to limit the concept to victims of traditional crimes such as murder, rape, robbery, burglary etc. However,

it has also been proposed to include a broader definition of the concept by covering groups such as prisoners, immigrants, subjects of medical experimentation, and persons charged with crime but not proved guilty.

Evolution of Victimology in India

At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer: victims suffer injustice silently and in extreme cases, take the law into their own hands and seek revenge on the offender.

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for a victims' law. Studies on crime victims by researchers started in India only during the late 1970s. Early studies were on victims of dacoit gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide (Rajan & Krishna, 1981); and victims of motor vehicles accidents (Khan & Krishna, 1981). Singh and Jatar (1980) studied whether compensation paid to victims of dacoits in Chambal Valley was satisfactory or not. Since the 1980s, many scholars have conducted studies in Victimology, which have been published.

Theory of victimology

The concept of victim dates back to ancient cultures and civilizations, such as the ancient Hebrews. Its original meaning was rooted in the idea of sacrifice or scapegoat -- the execution or casting out of a person or animal to satisfy a deity or hierarchy. Over the centuries, the word victim

came to have additional meanings. During the founding of victimology in the 1940s, victimologists such as Mendel son, Von Hentig, and Wolfgang tended to use textbook or dictionary definitions of victims as hapless dupes who instigated their own victimizations. This notion of "victim precipitation" was vigorously attacked by feminists in the 1980s, and was replaced by the notion of victims as anyone caught up in an asymmetric relationship or situation. "Asymmetry" means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating, or having inherent suffering. In this view, victimology is all about power differentials. Today, the concept of victim includes any person who experiences injury, loss, or hardship due to any cause. Also today, the word victim is used rather indiscriminately; e.g., cancer victims, holocaust victims, accident victims, victims of injustice, hurricane victims, crime victims, and others. The thing that all these usages have in common is an image of someone who has suffered injury and harm by forces beyond his or her control.

From this discussion we can say that there are various laws relating to victim and their protection. Now big question before us is its implementation. There is a provision of compensation and protection of victim but the question is whether this is sufficient for victim. For example if a person is killed by other person and the person who died is the only bread earner in his family then what is the amount of compensation is to be paid to his family member. In one of the case Indian Supreme court in case of death of a person order the compensation of only 1.5 lakh and that also after 5 to 6 year of commission of crime (SR 6197/2012). Now can we consider it as a proper order? According to UN declaration there should be law on it and that is the reason for which India has made law for victims. The Indian criminal justice system is mostly emphasized on the accuse only and not victim, which we can see.

The victimization is relation between victim and offender, and victimology is a science of study of victimization. When we see that there is direct relation between offender and victim it is very difficult to protect

the victim from the offender and I personally think that this is the only reason for very low rate of conviction in our country.

There are various countries in which the victim protection program is going on and the result is very good as there is no scope of any temporizing the victim or witness. If victim feel themselves safe then only they can speak in courts. When victim is easily approached by the offender it is really difficult to work even police is not taking proper note of this issues.

When person is suffering from such mental trauma it is very difficult to work with them and so we have to study the science behind it. And by using the scientific method we can get the result and make some good for the victim. According to me I don't find the concept of victimology in practice in general, it is only on paper in our country. If we take a serious note of it then our criminal justice system will improve a lot and will bring some positive change in governance of the nation.

Victimology and Victims' Rights

Introduction

'Why in history has everyone always focused on the guy with the big stick, the hero, the activist, to the neglect of the poor slob who is at the end of the stick, the victim, the passivist –or maybe, the poor slob (in bandages) isn't all that much of a passivist victim –maybe he asked for it?' [Hans von Hentig –The Criminal and his Victim –1948] The quote above illustrates that, in the past, there was a lopsided focus on the criminal event and the person acting in violation of criminal laws. For centuries, legal philosophers and lawyers have been preoccupied with the principles of criminal law, the criteria for criminalization, and the rights of the defendant; while criminologists typically concentrated on the characteristics of criminals, what caused their criminal propensity and

how to prevent crime. Their point-of-departure was always the offender, never the person who suffered as a result of the crime. It was only fairly recent, around the 1940s, that academics also started to take an interest in victims of crime and their standing in criminal procedure. 'The scientific study of crime victims is called „victimology“, after Benjamin Mendelsohn who coined the term in 1947. Comparable to criminology, where the offender plays a central role, the focus of victimologists lies with the victim and the different aspects of victimization. Victimology is: 'he scientific study of the extent, nature, and causes of criminal victimization, its consequences for the persons involved and the reactions hereto by society, in particular the police and the criminal justice system as well as voluntary workers and professional helpers.' Causes of Victimization One of the first aspects that scholars started to study was the role the victim himself had played in the commission of the crime. Instead of studying the offender in isolation, crime victimization usually involves at least two persons, and the criminal event may be the result of a certain dynamic between these two persons. What personal characteristics and what types of behaviours from the side of the victim influence the risk of falling victim to a crime? Early „victimologists“, such as Benjamin Mendelsohn, Hans von Hentig, Marvin Wolfgang, Stephen Schafer and Menachem Amir, investigated which behavioural, psychological and biological factors determined a person's propensity to crime victimization and how his behavior related to the degree of culpability in the criminal event („victim precipitation“). The result was often a typology ranging from victims who were „completely innocent“ to victims who were actually more blameworthy than the person who committed the crime. Some of these primary studies had a negative, victim-blaming connotation, suggesting that victims were largely responsible for their own victimization. Nowadays, victimological studies into the causes of victimization tend to focus more on the concept of „victim facilitation“ –which unintentional actions on the part of a person facilitate in his victimization –rather than the concepts of „victim precipitation“ or „victim provocation“, which suggest blame and responsibility and have a negative undertone. Modern-day studies have largely moved away from investigating the degree to which the victim can

be held responsible for his own victimization and have tried to come up with theories that explain victimization without necessarily placing blame upon the victim. An example of such a theory is the one on repeat victimization as proposed by, inter alia, Ken Pease and Graham Farrell. They proved that, contrary to general beliefs, people do not run an equal chance of victimization, but that victims run a far greater risk of becoming victims again. In other words, a small proportion of the general public experiences a large proportion of all crimes. This is true for domestic violence, but also for property crimes, such as burglary. Pease and Farrell discovered, for instance, that a house that has been burgled before is at greater risk to be burgled again. The fact that the burglar knows how to get in and knows what loot will await him can explain the increased risk of re-victimization. He even knows the best time for committing another burglary: After approximately one month the insurance company will have cashed out and most goods will have been replaced by brand new items. In the mind of a burglar, the fact that the burglary succeeded the first time, increases the chance that it will succeed a second time as well. One of the solutions to end this victimization cycle is to concentrate on victim oriented crime prevention. Vulnerable characteristics of the house –such as poor lighting or lack of an alarm system –need to be tackled to make them less attractive for burglars.

Nature and Extent of Victimization

A second goal of victimologists is to measure the nature and extent of crime victimization in the general (or a specific) population. Crime victimization can be measured in various ways. A first source of information could be the official crime statistics gathered by the police and the criminal justice system. The problem with these data is that they only represent a certain (small) percentage of all the crimes that have occurred in reality. There is a so-called dark number: the number of crimes that –due to underreporting or some other reason –do not come to the attention of the police. Furthermore, official crime data seldom contain detailed information on the victims that were harmed by the crime, because this information is less relevant for prosecutorial purposes. A more accurate and reliable manner to measure crime victimization is therefore to conduct national or international crime victimization surveys and ask a representative sample of the general population directly whether

they have been victimized. Although these surveys have their limitations too –victims may, for instance, not be able to recall what has happened to them –but these are less detrimental to the generalizability of the results than official police data. A first remarkable finding from the numerous crime victimization surveys that have been conducted since the 1960s is that crime victimization is widespread. Research has shown that almost everyone will, at some point during his or her life, become the victim of theft or property damage and that almost all men will have suffered at least one incident of criminal bodily injury. It turns out that property crimes are more prevalent than violent crimes, with theft being the most common property crime and simple assault the most common violent crime. Crime victimization surveys also demonstrated that men have an increased risk of falling victim to a violent crime in comparison to women. Only in the case of rape and other forms of sexual violence are women more likely to be victimized. Females were also more likely to be victimized by an intimate partner, while violence perpetrated by a stranger was typically targeted at male victims. Furthermore, teenagers and adolescents run a higher risk of being victimized – which decreases throughout adulthood –and the same goes for inhabitants of urban areas and persons with a „risky“ profession (police officers, taxi drivers, prison guards, prostitutes). Other characteristics linked to a higher risk of crime victimization are related to a person’s behaviour. Spending more hours outside ones’ home, going out at night, frequenting pubs and discos, associating with criminals or engaging in criminal activities yourself are all risk factors that increase the likelihood of ever experiencing crime victimization. These behaviours bear witness of a „risky lifestyle“.

Consequences of Victimization The consequences of crime victimization also form part of the victimological canon. These consequences can broadly be categorized under three headings: physical injury, mental health consequences, and economic consequences. Physical injuries can vary from light bruises and scratches to permanent disfigurements or even death. Economic costs derive from direct property losses, costs for medical care, legal costs, a reduced ability to earn an income, or immaterial damages such as costs related to pain and suffering or loss of quality of life. Mental health consequences are, for instance, depression,

reduction in self-esteem and anxiety, while severe forms of violence can even result in post-traumatic stress disorder (PTSD). Although crime victimization is commonly associated with trauma and PTSD, victimological studies have shown that most crime victims do not develop this psychiatric condition. The chance that someone develops PTSD as a result of a crime largely depends on the type and seriousness of the crime, the victim's social context, and pre-existing psychological characteristics. Despite the fact that it is normal for victims of severe forms of violence to display symptoms associated with PTSD –such as re-experiencing the traumatic event, avoiding certain places or being overly vigilant –most people do not develop PTSD. Only when these – and other –serious complaints last for more than one month can PTSD be diagnosed.⁸ Most victims, however, are surprisingly resilient and their symptoms usually diminish without professional support. Still the impact of crime in terms of mental and physical health issues and economic costs should not be underestimated. The costs for crime victims are in the order of tens of billions on an annual basis.

Reactions to Victimization A final aspect that academics are interested in is the reaction from other people and society at large to victimization. One would suspect that, given the detrimental effects of crime victimization, victims would meet with sympathy and respect everywhere they go. Surprisingly, quite the opposite is true. Many victims are blamed for what happened, their characters and appearances are derogated, and it is often believed that they „got what they deserved“. The underlying mechanism causing this negative reaction to crime victimization may be the prevalent belief in a just world. Melvin Lerner discovered that people generally assume that good things happen to good people and bad things to bad people.⁹ This belief in a „universal moral balance“ is important for people to maintain their own well-being and guide their actions: As long as one acts in accordance to certain moral standards, nothing bad can happen. The victimization of innocent people, however, threatens this „justice motive“ and causes distress. It implies that „bad“ things can happen to „good“ people too. One of the strategies to restore the belief in a just world is to attribute blame to a person who has suffered from a crime, to derogate this person's character or to distance oneself psychologically from this person. People's suffering is

rationalized on the grounds that they deserve it. The problem is that not only „ordinary“ people share this delusional belief in a just world, but that criminal justice officials may (subconsciously) be guided by this principle as well. Victim's Justice in India At the International arena, the adoption by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, hereafter UN Declaration) constituted an important recognition of the need to set norms and minimum standards in international and national legal framework for the rights of victims of crime. The UN Declaration recognised four major components of the rights of victims of crime: (i) access to justice and fair treatment; (ii) restitution (iii) compensation (iv) rehabilitation. i. Access to justice and fair treatment – This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety. ii. Restitution – including return of property or payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State. iii. Compensation – when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established. iv. Assistance – victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary and community based means. Police, justice, health and social service personnel should receive training in this regard. Historically speaking the victim's justice in India, the references are from the Manusmiriti to compensation being paid to the victims of criminal offences. Even in the recent times the AngloSaxon system of Criminal Justice was introduced in India, the victim was not completely neglected. References to victim's compensation are also found in the „Code of Hammurabi“. It is said that it was quite common for the early civilisation to extract payments for the victims from the offenders, which process is not known as restitution. However, the picture began to change with modern criminal justice in which the government assumes responsibility for dispensing justice by bringing the offenders to book, but

it also meant that, with the appropriation of the fines to the State Coffers, the victim was left with ineffective remedies. As a modern state emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became in the criminal justice arena. The criminal justice system in India is basically concerned with criminals, whether it is their conviction, treatment, reformation or rehabilitation. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence of an accused. The role of the victim of a crime in the present criminal justice system is restricted to that of a witness for the prosecution – even though he or she is a person who has suffered harm – physical, mental, emotional, economical or impairment of his/her fundamental rights. Since, the central object of legal process is to promote and maintain public confidence in the administration of justice, there is an urgent need for giving a well-defined status to the victim of crime under the criminal law. His interest in getting the offender punished cannot be ignored or completely subordinated to the social control by the State. Neither at the stage of the framing of a charge or passing of an order of discharge, are the views of the victim ascertained, let alone considered. He is not to be consulted during the trial. Even after the case ends up in a conviction, it is the State, which defends the judgment of the trial court in appeal, if any, filed against the conviction and sentence. It is necessary to give a central role of the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take law into his own hands in order to seek revenge and pose a threat to the maintenance of Rule of Law, essential for sustaining a democracy. This challenge was noticed by the Supreme Court in *P. Ramchandra Rao v. State of Karnataka*, when it expressed its concern for the plight of the victims of crime who, if left without a remedy might “resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals”. As at present, broadly speaking, there are two systems of dispensation of criminal justice-Adversarial and Inquisitorial. The system, followed in India, for dispensation of Criminal Justice System, is Adversarial System of common law inherited from the British rulers. In this system the accused is presumed to be innocent and the burden of proving his guilt beyond reasonable doubt lies on the

prosecution. The accused also enjoys the “right of silence” and he cannot be compelled to answer the queries. In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the Persecution and the defense before a neutral judge. The judge acts as a referee and decides whether the prosecution has been able to prove the guilt of an accused beyond a reasonable doubt. The system, per-se appears to be fair and justified, but viewed from the perspective of the victim, it is heavily loaded in favour of the accused and it insensitive to the rights of the victims or their plight because generally the judge in his anxiety to maintain his position of neutrality, fails to take initiative to find out the truth. In order to respond to the interests of victims more effectively, it is important to ensure that they play an active role during investigation and trial. The problem with the existing statutory scheme is that once an investigation starts, the role of the victim is minimal. In many instances the police personnel proceed very slowly on investigations, thereby losing out on the opportunity to gather relevant evidence and opening up the possibility of corruption. Conversely, investigations involving well-connected and influential persons as victims tend to be taken up in a relatively expeditious manner. Even during the course of trial, the victim’s role is confined to that of acting as a „prosecution witness“ since the prosecution is entirely conducted by the State. The lawyers working as Public Prosecutors at the district level often lack the necessary competence and function in a manner that is not accountable to the victim in any way. As a result trials are unduly delayed either on account of the disinterest or conversely the heavy workload faced by the Public Prosecutors. The Justice Malimath Committee on Criminal Justice Reforms (2003), Second Administrative Reforms Commission in 5th Report on “Public Order” (2007) and Law Commission of India’s 226th Report on “Compensation to the Victims” (2010) have recommended various measures for victims empowerment and rehabilitation. Remedial Measures to Victim’s Empowerment Over a period of time, the following measures have been initiated in India for empowerment of victims of crime and human rights violations: Legislative and Administrative Measures i) Victims’ Compensation in the Criminal Procedure Code, 1973 u/s 357-59 Section 357(1) concerns itself with the grant of

compensation out of the fine imposed on the offender at the time of sentencing the convict. Sub-clause 1(a) of Section 357 empowers a criminal court to indemnify the prosecuting agency against expenses incurred in the prosecution by way of fine imposed on the convict. Sub-Clause 1(b) of Section 357 entitles the court to award compensation for any loss or injury caused by the offence to the victim but this is subject to the condition that compensation must be recoverable by the victim in a civil court. This condition i.e. the word “recoverable” may be construed in two ways: 1. That the victim is entitled to sue the offender for damages in a civil court and that the offender is liable to pay, 2. That the offender had the capacity to pay the compensation. Section-358 of the Criminal Procedure Code, 1973 provides for payment of compensation up to Rs. 100/- to persons groundlessly arrested. While sub-clause of Section 359 of the criminal procedure code, 1973 empowers a court to award costs in non-cognisable cases to the complainant who is generally a victim of the crime, from the offender, providing further that if the offender did not pay costs as ordered, he shall suffer simple imprisonment up to 30 days. The recent amendment in the of the Criminal Procedure Code (Amendment) Act, 2008 has provided long debated issue of victims” compensation scheme. Besides victims compensation scheme the CrPC amendment Act has also empowered the victims to engage an advocate of his choice with the permission of the court to assist the prosecution (Section-24). This lawyer will also be authorised to present separate arguments, examine witnesses and produced evidence if permitted by the court. This aside, the victim may file an appeal against an acquittal of the accused, conviction for a lesser offence or the award of an inadequate sentence (Section-372). These provisions have given a legitimate space to the victims in the Criminal Justice System. In crux the following are the salient features of the Criminal Procedure Code (Amendment) Act, 2008: 1) “Section 357A. (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose overcompensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. 2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as

the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1). 3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. 4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. 5) On receipt of such recommendations or on the application under sub-section (4) the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months. 6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.” Compensation to the Victims in the Special Laws a) Under the Probation of Offenders Act, 1958 According to Section 5 of Probation of Offenders Act, 1958, a court directing the release of an offender under Section 3 or under Section 4 of the Act may, if it thinks fit, at the same time, a further order directing him to pay such compensation as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him. b) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, provides the monetary relief to the victims of crime ranging from Rs 25,000 to 2,00,000 depends on the nature of offence and circumstances of the case. Generally 25 per cent of the monetary support is provided at the time of submission of charge sheet, 75 per cent at the time of conviction by the lower court but in case of heinous crimes as murder, the victims are provided 75 per cent relief after the post-mortem and 25 per cent at the time of conviction by the lower court. In case assault on the women with intention to dishonour or outrage her modesty and exploit her

sexually, 50 per cent of the monetary relief is given at the time of medical examination and the remaining 50 per cent of the relief is given at the end of trial respective of the outcome thereof. However, the field reality is that majority of cases registered under SC/ST Act are not reaching to the logical conclusion. As the matter of fact in 70 per cent cases the accused are not punished by the court due to procedure lapses. The recent example is judgment delivered by Nagpur Bench Bombay High Court in CBI v Sakru Mahgu Binjavar & Others. This judgment has received sharp reactions from Dalit leaders as well as human right activists across the country broadly on two aspects; i) It commutes the Trial Court's death penalty for the accused to life imprisonment; ii) It refuses to accept the killings as Caste atrocity. In view of this, how far the provisions of the Acts in providing monetary relief to the victims of caste atrocities could have been useful is the subject of further inquiry?

Domestic Violence Act, 2005 This Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family setting as domestic violence. In this context, Sections 20 to 24 are relevant in protection of victims of domestic violence through compensatory justice. The trial court may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

The Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006 The proposed bill aims to prevention and protection against custodial crimes and also provides compensation to the victims of custodial offences.

The Communal Violence Bill, 2005 The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 provides for (a) prevention and control of communal violence, (b) speedy investigation and trials, and (c) rehabilitation of victims. Currently, the National Advisory council(NAC), Government of India has constituted a core group of human rights activists to examine the efficacy and effective of the bill in the context of rights based approach to the victims of communal violence.

Prevention of Torture Bill, 2010 The Prevention of Torture Bill (passed by Lok Sabha without any debate on 6 May 2010 and Rajya Sabha

referred the Bill to a select committee on August 31, 2010), in its present form, is being dubbed by the commentators as the “Sanction of Torture Bill”. The critique of the proposed bill is made on mainly on two aspects- definition of torture and weak redressal mechanism; and lack of compensatory provisions for the survivors of torture and their families.

Administrative Measures During last decade, the Government of India has framed various schemes to strengthen victim’s justice however their implementation at grassroots level has always been questioned due to procedural lapses. Among others, the following schemes are worth mentioning; a) Scheme for relief and rehabilitation of victims of rape b) Scheme for compensation to the victims of violence by left wing extremists c) Central Schemes for Assistance to victims of terrorist and communal violence d) Rehabilitation packages to provides relief to the victims of 1984 riots e) Ujjawala Scheme for prevention of trafficking and rescue, rehabilitation and reintegration of victims of trafficking for commercial and sexual exploitation Schemes for relief and rehabilitation of victims of rape

The Hon’ble Supreme Court in a leading decision in case of the Domestic Working Women’s Forum v. Union of India and others writ petition (CRL)No.362/ 93 had directed the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”. The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatised to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. This landmark case gives the relief and rehabilitation of the rape victims under the following ways and means; 1) A rape victim will be entitled to get compensation up to of Rs. 2,00,000, provided she testifies in a court of law against the accused. 2) Constitution of Criminal Injuries Compensation Board at District/State/ National Level. 3) The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs

as a result of rape. 4) Provision of budgetary requirements for the scheme, which would be transferred to the States as Grants-in-Aid; 5) Setting up of District Level Committees headed by District Magistrate, to consider the claims. Central Schemes for Assistance to victims of Terrorist and Communal Violence In India, there is no comprehensive legislation for compensation to the victims of terrorism. However, Government of India, Ministry of Home Affairs (MHA), has notified a scheme entitled “Assistance to Victims of Terrorists and Communal Violence” which is being implemented with effect from April 1, 2008 (detailed scheme is annexed). The scheme provides financial assistance to the family member(s) in the event of death or permanent incapacitation of the victim in terrorist violence. The assistance would be given over and above ex-gratia or any other relief from the State government or its agencies. The salient features of the scheme are summarized below: i) An amount upto Rs.3 lakhs would be given to the affected family, irrespective of the number of deaths in the family in a particular incident; ii) The principal amount would be deposited in a nationalised bank for lock-in period for 3 years and the interest on the above sum will be credited to the beneficiaries’ saving account on quarterly basis; iii) A district level committee under the chairmanship of District Magistrate will identify beneficiaries; iv) While examining eligibility claims, the District Committee would look into the FIR, postmortem certificate etc. for determining the rightful beneficiary/ claimant; v) The MHA after examining the case would issue the cheque in the name of the beneficiary and this would be sent to the District Magistrate (DM) for disbursement; vi) In case of employment if given to any family member of a victim of terrorist violence, the family will not be entitled to assistance under this scheme; vii) Those permanently incapacitated, and the member of the victims killed/ permanently incapacitated in the terrorist violence would be given a health card by the District Health Society funded under National Rural Health Mission, Rashtriya Arogya Nidhi, and the National Trauma Care Project. This card will provide free medical treatment for victims and their families. An analysis of this scheme shows that the scheme is mainly based on welfare approach and not on rights based perspective. The victim does not have any right to get compensation; however, the

financial assistance would depend on recommendations made by the bureaucrats, police officials and the doctors. Further, this does not include any component for other support systems such as counseling, assessment of loss/damage/property, financial expenses and other out of pocket expenses by victims and their families and also medical expenses incurred in the private hospitals. The procedure to get the financial support is very cumbersome and time consuming. The whole process gives lot of discretionary powers to the bureaucrats and therefore this will result in delay in the disbursement of the compensation the victims. The element of corruption may also not be ruled out while awarding the compensation for the victims. \ Ujjawala Scheme for victims of trafficking for commercial and sexual exploitation Ujjawala is a comprehensive scheme for the prevention of trafficking, rescue and rehabilitation of women and child victims of trafficking for commercial sexual exploitation in India. It was launched in 2007 by the Ministry of Women and Child Development. It consists of certain mechanisms for the reintegration and repatriation of victims including cross border victims. The Target Group or main beneficiaries of this scheme are women and child victims who have been trafficked for commercial sexual exploitation as well as those women and children who are vulnerable to becoming victims of this crime. These vulnerable sections include slum dwellers, children of sex workers, refugees, homeless victims of natural disasters and so on. This scheme is being implemented by various Non Governmental Organisations to provide direct aid and benefit to victims of trafficking. Immediate relief to victims includes the provision of food, shelter, trauma care and counseling to the rescued victims. Later on, victims are provided skill training, capacity building, job placement and guidance in income generating activities to empower them and help them live independently. Broadly, this scheme contains five components-prevention, rescue, rehabilitation, re-integration and repatriation to the victims of trafficking. Payment of Compensation ordered by the Hon'ble Supreme Court in respect to convicts in the prisons Advancing the philosophy of restorative justice, the Supreme Court in State of Gujarat v. Honorable High Court of Gujarat (1998 7 SCC 392) has directed that the prisoners should be paid equitable wages for the work done by them, every prisoner must be paid

wages for the work done by him and the state concern make law for setting a part a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence. This is a significant development in providing restorative justice to the victims of crime.

Recent Development More recently, Government of India, Ministry of Home Affairs has issued two advisories for all for all States and Union Territories to prevent – victimisation of vulnerable sections of society such as women, children and marginalised people etc. Broadly, the advisories focused on the following measures to be taken into considerations by the criminal justice functionaries in safeguarding the human rights of the victims of crime.

I) Set up exclusive „Crime against Women/Children“ desks in each police station. There should be no delay, whatsoever, in registration of FIRs in all cases of crime against children. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their family members. The administration and police should play a more proactive role in detection and investigation of crime against children and also ensuring that there is no under reporting.

II) Cases of crime against children should be thoroughly investigated and charge sheets against the accused persons should be filed within three months from the date of occurrence without compromising on the quality of investigation. Proper supervision of such cases should be ensured from recording of FIR to the disposal of the case. Speedy investigation should be conducted in heinous crimes like rape, murder etc. The medical examination of rape victims should be conducted without delay.

III) Steps may be taken not only to tackle such crimes but also to deal sensitively with the trauma ensuing the crime. Counselling to the victim as well as to the family may be provided by empanelling professional counsellors. Exploring the possibility of associating NGOs working in the area of combating crime against children and other vulnerable sections of the societies. Developing a community monitoring system to check cases of violence, abuse and exploitation against children and take necessary steps to curb the same;

IV) The local police must be advised to collabourate with the „Childline-1098 Service“ (which is an emergency service being operated by the Childline India Foundation (CIF) all over the country catering to the needs

of children in emergency situations) and NGOs for mutual help and assistance wherever and whenever required. A Reception Officer (of the rank of Head Constable) must be available round the clock in every Police Station. Equal and fair treatment must be given to every petitioner/complainant irrespective of his/ her status, class or creed and a proper receipt should be given for every complaint forthwith. The disposal of the complaint should normally be ensured within two days by holding an on the spot enquiry in the ward/ village concerned. Wherever found appropriate, the complaint should be converted into an FIR.VI. Whenever an FIR is registered, a signed copy of the FIR must be provided to the complainant on the spot. The State Governments/ UT Administrations must ensure registration of cases round the clock and deal sternly with any dereliction of duty in this regard.VII. „Crime against Women/Children“ desks may be set-up in every police station. Judicial Measures a) Right to Victims“ Compensation (Supreme Court U/A-32, High Court U/A-226)

In the scheme of the Constitution of our country, the judiciary works as a sentinel and guardian of the Constitution and as also custodian of the rights of the people. Article 32 and Article 226 of the Constitution have conferred powers on the Supreme Court and High Courts to pass appropriate orders which include to ensure the rights of the victims as well. In the absence of statutory provision in any other law, for the first time the Supreme Court of the country recognised right of compensation to the victim for violation of human rights in the landmark judgment in Rudal Shah v. State of Bihar(1983 4 SCC 141). That was case in which the petitioner was illegally detained in Ranchi Jail for 14 years ever after his acquittal by the court after trial. The Supreme Court while directing releasing the petitioner awarded a total sum of 35,000/- by way of compensation. This judgment was later followed in subsequent judgments of the Supreme Court as well as the High Courts. Custodial violence is an unacceptable abuse of power and an abhorrent violation of human rights by the protectors of the law themselves. It not only violates Article 21 of the Constitution of India which guarantees the fundamental right of life and liberty, but also infringes upon Article 3 of Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the right to life, liberty

and security and no one shall be arbitrarily deprived of life. Further, Article 5 of UDHR and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that no one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. Article 9 of Universal Declaration of Human Rights and Article 9 of the Covenant emphasize that no one shall be subjected to arbitrary arrest, detention or exile. These provisions also lay down that anyone who is arrested shall be informed of the reasons of his arrest and shall be promptly informed of the charges against him. Article 22 of the Constitution protects the rights of the individual in case of arrest and detention and essence incorporates the principles of these United Nations documents. It is a fundamental right under this Article, that the arrested person must be produced before the nearest magistrate within twenty-four hours. In this regard, the Supreme Court in the case of *D. K. Basu v. State of West Bengal* (AIR 1997 SC 610), which dealt with the principle *Ubi jus, ibi remedium* i.e., there is no wrong without a remedy. The law wills that in every case where a man is wronged and damaged, he must have a remedy. A mere declaration of the invalidity of an action, or the finding of custodial violence or death in a lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. While there is no express provision in the Constitution of India for grant of compensation for violation of the fundamental right to life, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. The Court observed that the claim in public law for compensation for unconstitutional deprivation of the fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for torturous acts of public servants. Public law proceedings serve a purpose different from private law proceedings. Award of compensation for established infringement of the indivisible rights guaranteed under Article 21 is a remedy available in public law, since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system where in their rights and interests shall be protected and

preserved. The grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. The quantum of compensation will, of course, depend upon the particular facts and circumstances of each case. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. However, the liability of the State for damages for violation of the Constitutional rights to life, liberty and dignity of the individual has been recognised and established as a part of the public law regime. In decision of the Apex Court, in particular, in cases of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981 1 SCC 608) and *Nilabati Behera v State of Orissa*, (1993 2 SCC 746) the constitutional and juristic foundations of this liability of the State have been formally and finally laid down. Even the claim of sovereign immunity arising out of the State discharging sovereign functions is held to be no defense at all against the acts of violation of the constitutionally guaranteed Foundational Human Rights (Annual Report of National Human Rights Commission, 1999- 2000). Compensation (Interim and Final Relief) Awarded by Human Rights Commission (u/s-18 of PHRA, 1993) The Protection of Human Rights Act, 1993(as amended in 2006) provides an additional forum to address violation of human rights through National/State Theories and Perspectives in Criminal Justice Human Rights Commissions and Human Rights Courts across the country. Upon receiving the complaint, and after enquiry, human rights commissions may recommend to the government any or all of the following: a) register a criminal case against the guilty persons; b) pay immediate compensation to the victim or to the victim's family; c) take disciplinary action against the guilty persons; d) stop a particular act if it is violating human rights; e) properly perform its duty and protect those whose human rights are being violated; and f) take preventive measures so that human rights violations do not take place in future. Human rights commissions may award an immediate compensation to victims or their families. It is paid

so that money can be made available to them for rehabilitation, without delay. It does not affect the right to claim further compensation in court by filing a civil case against the offender. It is therefore termed „interim relief“ by human rights commissions. Though there is no hard and fast rule, typically complaints regarding serious violations of human rights such as death in custody, torture, rape, illegal detention, kidnapping, destruction of private property, insults to personal dignity, and negligence by police, security forces or government agencies qualify for payment of immediate compensation. This recommendation to pay immediate compensation is made either to the government under whose jurisdiction the violation has taken place or the government that controls the department responsible for the violation. Sometimes after paying immediate compensation, the government concerned recovers the amount from guilty officials. Immediate compensation amounts vary from case to case depending upon the circumstances and from commission to commission. During the last 13 years, the Commission has recommended for payment of interim relief to the extent of Rs. 10,44,97,634/- to be paid in 716 cases, recommended disciplinary action in 223 cases and prosecution in 74 cases against the public servants who were prima facie found responsible for their acts of omission and commission resulting in violation of Human Rights of the people. Added to this, the Commission has also recommended a total of Rs. 23,24, 25,000/- to be paid to the next of the kin of 1245 deceased in the matter of Punjab Mass Cremation case. The enormous increase in the number of complaints indicates the awareness of Human Rights among the people and the confidence people have in the Commission. However receiving of more and more complaints of violation of human rights may not be a happy situation (Journal of The National Human Rights Commission, India, Vol-5, 2005-2006, pp.141-42). Right to Victims' Rehabilitation: In a landmark case – Custodial Torture of Rakesh Kumar Vij by Uttar Pradesh Police (NHRC Case No. 12982/96-97), the NHRC asked the UP Government to constitute a Medical Board to assess the extent of physical disability suffered by the victim due to torture by UP Police. The Medical Board, gave a report to the Commission, stating that the victim did not suffer from any gross structural damage, on which the victim raised doubts and communicated

to the Commission. In view of grave apprehensions of miscarriage of justice, the Commission got the victims examined by the Delhi Trauma and Rehabilitation Centre, which gave an entirely different report and assessment. Then, the Commission thus directed the UP Government to pay Shri Rakesh Vij Rs. 10 lakhs by way of immediate interim relief. The Government was also directed to arrange for the complete medical treatment of victim. The expenses of the treatment as well as the traveling expenses of victim along with one attendant, from his native place to the place of medical treatment at AIIMS, New Delhi or PGI, Lucknow, would also be borne by the State Government. This way the Commission has recognised the right to rehabilitation of victims in holistic manner. Besides establishments of NHRC and SHRCs at National and State level, under Section 30 of the Protection of Human Rights Act, the State Governments may, with the concurrence of the Chief Justice of the concerned High Court, by notification specify for each district a Human Rights Court to try the offences arising out of the violation of Human Rights. The NHRC time and again has stated that in order to give a better focus to this laudable provision and to provide justice at the district level itself in case of human rights violations, the section needs amendment. Further the lack of clarity as to what offences, precisely, can be clarified as human rights offences, has been the biggest impediment in the effective functioning of human rights courts, which have been set up by some of the states. The NHRC urged the Central Government through its annual reports for amendment Section 30 of the Protection of Human Rights Act, 1993. It is rather unfortunate that the Central and State Governments have so far failed to resolve issues that are creating impediments in the setting up of fully functioning human rights courts. In order to provide access to justice for victims of human rights violations including victims of crime at the local level (District level) the human rights courts could be an effective and speedy justice mechanism, however due to lack of clarity of offences to dealt by these courts and procedure to followed, this mechanism is under utilisation. References Srivastava, S.P. (1997) : Theoretical and Policy Perspectives in Victimology- An agenda for the development of Victimology in India, Police Research and Development Journal: JulySeptember, pp.8-9). Chockalingam, K. (2007): Victimology

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VICTIMOLOGY

INTRODUCTION

The word ‘*Victimology*’ was coined in the year of 1947 by a French Lawyer, Benjamin Mendelssohn, by deriving from a *Latin* word ‘*victima*’ which translate into “victim” and a Greek word ‘*logos*’ which means a system of knowledge, the direction of teaching, science and a discipline.

The development of Victimology as discipline in academic field is a phenomenon of approximately six decades. In 1948, a German Criminologist, Han Von Hentig made the first overall exploration of the role of victim in crime. The discovery of victim inaugurated a new trend in criminology with increased accent on exploring the doer-sufferer’ relationship. This recognition of the sociological significance of victim had immediate academic repercussions. Victimology acquired international interest and became the subject of solid scientific inquiry.

An important breakthrough occurred when discussions in several international victimological symposiums pleaded for the extension of the concept of “victim” beyond its traditional confines. The plea, in effect, was towards widening the concept of victim including within its purview the victims of different varieties.

This view derived ample support from studies which discovered new categories of victims, e.g. victims of abuse of economic, political and public power, victims of organised/and corporate crime, victims of environmental offences, victims of consumer frauds, victims of development induced crime as well as victims of natural and man made disasters etc. The studies further highlighted the fact that the event of victimisation is unevenly distributed: some persons, groups or communities are more vulnerable to

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victimisation, for example, women, children, elderly, and the poor and the powerless. They are victimised at a significantly higher rate because of their relatively weak position.

Who is a Victim?

The term victim is lacking descriptive precision. It implies more than the mere existence of an injured party, in that innocence or blamelessness is suggested as well as a moral claim to a compassionate response from others. The term victim is defined in Oxford English Dictionary as:

“victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment: one who is destined to suffer under some oppressive or destructive agency: one who perishes or suffers in health etc., from some enterprise or pursuit voluntarily undertaken.”

As per Collins English Dictionary, the term ‘victim’ means a ‘person or thing that suffers harm, death, etc. from another or from some adverse act, circumstance, etc.’

According to New Webster’s Dictionary defines the word ‘victim’ means “a person destroyed, sacrificed, or injured by another, or by some condition or agency; one who is cheated or duped; a living being sacrificed to some deity, or in the performance of a religious rite”.

The U.N. Declaration on Justice to Victims of Crimes and Victims of Abuse of Power has related the term victim to two distinct categories, namely victims of crimes and victims of abuse of power. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

In the context of criminal justice system the term victim is defined in Black’s Law Dictionary as:-“The person who is the object of a crime or tort, as the victim of a robbery is the person robbed”. The Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) (notified by Govt of India on December 31, 2009 except Para 5, 6, 21) Section 2 defines the word “victim means a person who has suffered any loss of injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes with his/her guardian or legal heir.

Victimology is the scientific study of victimisation, including the relationships **Victimology** between victims and offenders, the interactions between victims and the criminal justice system – that is, the police and courts, and corrections officials – and the connections between victims and other social groups and institutions, such as the media, businesses, and social movements. Victimology is however not restricted to the study of victims of crime alone but may cater to other forms of human rights violations that are not necessarily crime.

SCOPE OF VICTIMOLOGY

The Victimology is a branch of Criminology. The scope of Victimology is to understand how victims have been or might be harmed or abused and how the victims can be empowered, assisted and rehabilitated. In the past, victimology was centered primarily on criminological aspects such as offenders and victims of crime, however, in the recent years, the focus of

Victimology is moved from traditional approach to radical approach which explains that how the State and its systems serve to criminalise and consequently victimise some groups and not others. Essentially, this prospective seriously challenges domination of positivism on criminology and Victimology.

During last few decades, by studying the experience of victimisation feminist scholars sought to demonstrate how the law and state institutions including justice systems see and treat women and girls from the perspective of men gaze, continually repositioning and measuring them in relation to men. The emphasis within radical feminist on women's oppression and control through their sexuality has had its greatest impact on criminology through the avenue of "victim studies". The radical families gave more emphasis for the terms 'survivor' rather than victim since the term implies a more positive and active role for women in their routine lives. This has highlighted that 'safe haven' of the home as a place where much criminal behaviour occurred and is perpetuated by men towards women.

This has brought a paradigm shift in explaining factors behind crimes against women such as rape, domestic violence, and child abuse etc. Thus, feminism has played a key role in the emergence of Victimology. Broadly, scope of Victimology can be delineated in the following three perceptive:

1) **Conservative Perspective:** The Victimology discipline confines the scope within conservative tendency to the study of street crimes. A basic postulate of conservative ideology that is readily applicable for their actions and decisions including mistakes such as momentary lapses due to carelessness and provocative acts that incite violent responses. It means, that within Victimology, there is an opinion that the individual should strive to take personal responsibility for preventing, avoiding, resisting and reconverting from criminal act and for defending themselves, their families and homes.

Conservatives within Victimology and victim's rights movements see the criminal justice system as the guarantor of retributive justice-satisfying victims within the knowledge that offenders are being punished for their crime. By they do not vouch for programmes to repay victims for their losses or to deliver services etc. which goes into the gamut of compensatory jurisprudence and victim assistance programmes.

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2) Liberal Perspective: sees the scope of the field beyond street crimes to include criminal harm inflicted on persons by delinquents. A basic theme within the liberal thought is the constitutional guarantee of equal protection under the law. All kinds of victims from all walks of life are thus entitled to fair treatment. The crux of the liberal victimological thinking is to ensure that the "safety net" provisions of the welfare state to cover any existing gaps in government's benefit programmes are utilised to compensate losses to the victims due to misfortune including crime. To reinstate the victim in the "previous position" adequate services must be provided which inter alia includes, state compensation funds, government subsidised crime insurance and rape rehabilitation centers etc. In selected cases, restitution and rehabilitation are deemed more appropriate ways of resolving conflicts than the arrest, prosecution and conviction of accused persons.

3) Radical-Critical Perspective: within Victimology argues that the field should not be limited simply to the study of the causalities of criminal activity. The inquiry must be extended to cover additional sources of suffering and harm inflicted by industrial polluters, owners and managers of hazardous workplace, brutal police force, discriminatory institutions and other agents of power and privilege. In such instances, the victims may not be individuals but whole groups of people such as scheduled caste, "factory workers", "minority groups", "consumers", or "neighbourhood" residents" or impersonal entities such "small companies". The key question which becomes important for

radical victimologist is that “which suffering people get designated as victims, and which do not and why?” The answer is important, since it determines whether or not public and private resources will be mobilised to help them out and end their mistreatment. The radical victimologist places the blame for such needless suffering squarely on the “the system” the social structure, the ways in which society is organised and the operation of the social institutions. The radical-critical victimologist perceives the criminal justice system as a part of the problem because it safeguards the interest of powerful groups in society much more than it attends to the interests of the causalities of competition and conflict. Thus, emphasis on the State to ensure that institutional wrongdoing be avoided at all cost is more among radicalist.

Victimology In Indian Context

The concern for victims in Indian society has its root in the history too. The victims did not have to face many difficulties in the past. There was an inbuilt mechanism for restitution and community support for them. We had a tradition of atonement and restitution. Those who attend for the wrong were forgiven.

The king had the right to determination the compensation. The laws of *Manu* provided for reparation “to the victim and payment of fine” to the King. When mosses ordained ‘Thou shall not take money from the murderer, he surely put to death’, crime came to be regarded as an offence principally against king’s peace and only incidentally against the individuals’ wronged.” The victims were left to fend themselves. It appears that with the advent of British Rule in India, the laws of *Manu* were over taken by the dictas of Moses. The state started to prosecution of the offenders. Resultantly, the victims treated as a tool to support the system, to identify and punish the offender.

In Indian context, the first empirical study regarding, “*Victims of Dacoit Gangsin Chambal Valley*”, was conducted by D.R. Singh in 1978. Thereafter, Bureau of Police Research and Development has published a report on ‘*Compensation to the Victims of Crime*’ in 1979. This report and some other studies, undertaken by the Institute of Criminology and

Forensic Science, (now known as LNJN NICFS), New Delhi in early 1980s have started victimological orientation in the criminal justice research in the country. During 1990s, International donor organisations and the civil society organisations have highlighted victimisation process in the context of development. Thus, the research studies on Victimology in India have started gaining ground in the 1990s. Recently, a survey of Criminological studies has documented various studies undertaking in the field of Victimology in India.

11.6 NATURE AND FORMS OF VICTIMISATION

Like any other developing country, in India too, the concept and extent of victimisation is very huge. In contemporary discourse, the victims not only includes the victims of conventional crimes; they include victims of social oppression (the so called untouchables who are victims of caste atrocities), victims of gender based atrocities (crime against women and children), victims of economic exploitations (bonded labour, child labour and human trafficking etc), victims of abuse of power (illegal detentions, torture, custodial deaths in police and judicial custody and police encounters etc), victims of human rights violations (including human rights violations by non-state actors (Naxalite, private armies such as Ranvir Sena in Bihar etc), Victims of development induced Crime. Victims of Organised and Corporate Crimes, victims of natural and man made disasters etc. Broadly, the nature of victimisation may be divided into the following three levels;

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- 1) **Primary Victimisation:** Primary victimisation comes from being a victim of crime itself. For example physical, psychological and financial damage caused through victimisation.
- 2) **Secondary Victimisation:** it stems from the reaction of the victims from social milieu. This includes suffering from stigmatisation, social isolation, ostracisation and degrading questioning etc.
- 3) **Tertiary Victimisation:** it means the assumption and internalisation of the role of victim through repeated primary and secondary victimisation. The repeated confrontation of the victims with the offence

and the offenders in the context of police, prosecution and court examination as well as questioning in the context of in the main proceeding in some cases through numerous court instances can further secondary and tertiary victimisation.

IMPACT OF VICTIMISATION

During last two decades researchers in social sciences have focused on issues such as social exclusion, impact of globalisation and liberalisation on crime, caste and ethnic conflict and development induced crime which has highlighted new patterns of victimisation. We are witness to growth of crimes not merely in quantity but more so in quality. The threats posed by present –day dimensions of crimes and particularly their sophistication, to personal and public security are matters of serious concern. Crimes are presently taken as business ventures, operated in syndicate styles and with ‘profit’ as the motive, practically emulating the current economic development in this one respect Organised Crimes as they are called have been transcended borders to constitute Organised Transnational Crimes.

Victimisation Surveys undertaken by UN indicate that the growth of crime and the indirect costs as a result of these largely in terms of the level of general insecurity of the citizen, constituting the indirect kind. Based on empirical and interview –based approach, a cross-section of urban population of 50 countries principally, the first round of study showed that more than half the urban populations world-wise have been victimized by a crime at least once during the period 1990-94. If development is the process of building societies that work, crime acts as a kind of ‘anti-development’ destroying the trust relations on which society is based. Crime destroys social capital and devalues precious human resources overseas. Fear of crime restricts mobility, which interferes with social and economic interactions, as well as education, access to health care, and other development services.

While the direct impact of crime on poor victims is great, the indirect effects of **Victimology** crime have a far wider reach. Victimisation or fear of victimisation can cause people to withdraw from social interaction in order to limit their exposure. This can interfere with commercial, recreational, and educational activities. Crime negatively impacts quality of life, and can drive skilled labour overseas.

Development experts agree that one of the key elements needed for economic development is a skilled workforce, and thus have encouraged developing countries to invest in education. This investment is largely lost, however, when the best and the brightest chose to emigrate. Several countries in this region are among those listed by the World Bank as suffering from some of the highest rates of skilled emigration in the world.

VICTIM'S JUSTICE IN INDIA

At the International arena, the adoption by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, hereafter UN Declaration) constituted an important recognition of the need to set norms and minimum standards in international and national legal framework for the rights of victims of crime. The UN Declaration recognised four major components of the rights of victims of crime: (i) access to justice and fair treatment; (ii) restitution (iii) compensation (iv) rehabilitation.

i) **Access to justice and fair treatment** – This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety.

ii) **Restitution** – including return of property or payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State.

iii) **Compensation** – when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be

established.

iv) **Assistance** – victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary and community based means. Police, justice, health and social service personnel should receive training in this regard.

Historically speaking the victim's justice in India, the references are from the *Manusmiriti* to compensation being paid to the victims of criminal offences. Even in the recent times the Anglo-Saxon system of Criminal Justice was introduced in India, the victim was not completely neglected. References to victim's compensation are also found in the '*Code of Hammurabi*'. It is said that it was quite common for the early civilisation to extract payments for the victims from the offenders, which process is not known as restitution. However, the picture began to change with modern criminal justice in which the government assumes responsibility for dispensing justice.

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Victim was left with ineffective remedies. As a modern state emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became in the criminal justice arena. The criminal justice system in India is basically concerned with criminals, whether it is their conviction, treatment, reformation or rehabilitation. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence of an accused. The role of the victim of a crime in the present criminal justice system is restricted to that of a witness for the prosecution – even though he or she is a person who has suffered harm – physical, mental, emotional, economical or impairment of his/her fundamental rights. Since, the central object of legal process is to promote and maintain public confidence in the administration of justice, there is an urgent need for giving a well-defined status to the victim of crime under the criminal law. His interest in getting the offender punished cannot be ignored or completely subordinated to the social control by the State. Neither at the stage of the framing of a charge or passing of an order of discharge, are

the views of the victim ascertained, let alone considered. He is not to be consulted during the trial. Even after the case ends up in a conviction, it is the State, which defends the judgment of the trial court in appeal, if any, filed against the conviction and sentence.

It is necessary to give a central role of the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take law into his own hands in order to seek revenge and pose a threat to the maintenance of Rule of Law, essential for sustaining a democracy. This challenge was noticed by the Supreme Court in *P. Ramchandra Rao v. State of Karnataka*, when it expressed its concern for the plight of the victims of crime who, if left without a remedy might “resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals”. As at present, broadly speaking, there are two systems of dispensation of criminal justice-Adversarial and Inquisitorial. The system, followed in India, for dispensation of Criminal Justice System, is Adversarial System of common law inherited from the British rulers. In this system the accused is presumed to be innocent and the burden of proving his guilt beyond reasonable doubt lies on the prosecution. The accused also enjoys the “right of silence” and he cannot be compelled to answer the queries. In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the Prosecution and the defense before a neutral judge. The judge acts as a referee and decides whether the prosecution has been able to prove the guilt of an accused beyond a reasonable doubt. The system, per-se appears to be fair and justified, but viewed from the perspective of the victim, it is heavily loaded in favour of the accused and it insensitive to the rights of the victims or their plight because generally the judge in his anxiety to maintain his position of neutrality, fails to take initiative to find out the truth.

In order to respond to the interests of victims more effectively, it is important to ensure that they play an active role during investigation and trial. The problem with the existing statutory scheme is that once an investigation starts, the role of the victim is minimal. In many instances the police personnel proceed very slowly on investigations, thereby losing

out on the opportunity to gather relevant evidence and opening up the possibility of corruption. Conversely, investigations involving well-connected and influential persons as victims tend to be taken up in a relatively expeditious manner. Even during the course of trial, the victim's role is confined to that of acting as a 'prosecution witness' since the prosecution is entirely **Victimology** conducted by the State. The lawyers working as Public Prosecutors at the district level often lack the necessary competence and function in a manner that is not accountable to the victim in any way. As a result trials are unduly delayed either on account of the disinterest or conversely the heavy workload faced by the Public Prosecutors. The *Justice Malimath Committee on Criminal Justice Reforms* (2003), Second Administrative Reforms Commission in 5th Report on "*Public Order*" (2007) and Law Commission of India's 226th Report on "*Compensation to the Victims*" (2010) have recommended various measures for victims empowerment and rehabilitation.

REMEDIAL MEASURES TO VICTIM'S EMPOWERMENT

Over a period of time, the following measures have been initiated in India for

empowerment of victims of crime and human rights violations:

- a) Legislative and Administrative Measures
- b) Judicial Measures
- c) Human Rights Measures

Legislative and Administrative Measures

i) Victims' Compensation in the Criminal Procedure Code, 1973 u/s 357-59

Section 357(1) concerns itself with the grant of compensation out of the fine imposed on the offender at the time of sentencing the convict. Sub-clause 1(a) of Section 357 empowers a criminal court to indemnify the prosecuting agency against expenses incurred in the prosecution by way of fine imposed on the convict. Sub-Clause 1(b) of Section 357 entitles the court to award compensation for any loss or injury caused by the

offence to the victim but this is subject to the condition that compensation must be recoverable by the victim in a civil court.

This condition i.e. the word “recoverable” may be construed in two ways:

1) That the victim is entitled to sue the offender for damages in a civil court and that the offender is liable to pay,

2) That the offender had the capacity to pay the compensation.

Section-358 of the Criminal Procedure Code, 1973 provides for payment of compensation up to Rs. 100/- to persons groundlessly arrested. While sub-clause of Section 359 of the criminal procedure code, 1973 empowers a court to award costs in non-cognisable cases to the complainant who is generally a victim of the crime, from the offender, providing further that if the offender did not pay costs as ordered, he shall suffer simple imprisonment up to 30 days. The recent amendment in the of the Criminal Procedure Code (Amendment) Act, 2008 has provided long debated issue of victims’ compensation scheme. Besides victims compensation scheme the CrPC amendment Act has also empowered the victims to engage an advocate of his choice with the permission of the court to assess the prosecution (Section-24). This lawyer will also be authorised to present separate arguments, examine conviction for a lesser offence or the award of an inadequate sentence (Section witnesses and produced evidence if permitted by the court. This aside, the victim may file an appeal against an acquittal of the accused, -372). These provisions have given a legitimate space to the victims in the Criminal Justice System.

In crux the following are the salient features of the Criminal Procedure Code (Amendment) Act, 2008:

1) “Section 357A. (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose overcompensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

- 3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- 4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- 5) On receipt of such recommendations or on the application under sub-section (4) the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- 6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

ii) Compensation to the Victims in the Special Laws

a) Under the Probation of Offenders Act, 1958

According to Section 5 of Probation of Offenders Act, 1958, a court directing the release of an offender under Section 3 or under Section 4 of the Act may, if it thinks fit, at the same time, a further order directing him to pay such compensation as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him.

b) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, provides the monetary relief to the victims of crime ranging from Rs 25,000 to 2,00,000 depends on the nature of offence and circumstances of the case. Generally 25 per cent of the monetary support is provided at the time of submission of charge sheet, 75 per cent at the

time of conviction by the lower court but in case of heinous crimes as murder, the victims are provided 75 per cent relief after the post-mortem and 25 per cent at the time of conviction by the lower court. In case assault on the women with intention to dishonour or outrage her modesty and exploit her sexually, 50 per cent of the monetary relief is given at the time of medical examination and the remaining 50 per cent of the relief is given at the end of trial respective of the outcome thereof. However, the field reality is that majority of cases registered under SC/ST Act are not reaching to the logical conclusion.

As the matter of fact in 70 per cent cases the accused are not punished by the court due to procedure lapses. The recent example is judgment delivered by Nagpur Bench Bombay High Court in *CBI v SakruMahgu Binjavar & Others*. This judgment has received sharp reactions from Dalit leaders as well as human right activists across the country broadly on two aspects;

- i) It commutes the Trial Court's death penalty for the accused to life imprisonment;
- ii) It refuses to accept the killings as Caste atrocity.

In view of this, how far the provisions of the Acts in providing monetary relief to the victims of caste atrocities could have been useful is the subject of further inquiry?

c) Domestic Violence Act, 2005

This Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family setting as domestic violence. In this context, Sections 20 to 24 are relevant in protection of victims of domestic violence through compensatory justice. The trial court may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

d) The Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006

The proposed bill aims to prevention and protection against custodial crimes and also provides compensation to the victims of custodial offences.

e) The Communal Violence Bill, 2005

The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 provides for (a) prevention and control of communal violence, (b) speedy investigation and trials, and (c) rehabilitation of victims. Currently, the

National Advisory council (NAC), Government of India has constituted a core group of human rights activists to examine the efficacy and effective of the bill in the context of rights based approach to the victims of communal violence.

f) Prevention of Torture Bill, 2010

The Prevention of Torture Bill (passed by Lok Sabha without any debate on 6 May 2010 and Rajya Sabha referred the Bill to a select committee on August 31, 2010), in its present form, is being dubbed by the commentators as the “ Sanction of Torture Bill”. The critique of the proposed bill is made on mainly on two aspects-definition of torture and weak redressal mechanism; and lack of compensatory provisions for the survivors of torture and their families.

g) Administrative Measures

During last decade, the Government of India has framed various schemes to strengthen victim's justice however their implementation at grassroots level has always been questioned due to procedural lapses.

Among others, the following schemes are worth mentioning;

- a) Scheme for relief and rehabilitation of victims of rape
- b) Scheme for compensation to the victims of violence by left wing extremists
- c) Central Schemes for Assistance to victims of terrorist and communal violence
- d) Rehabilitation packages to provides relief to the victims of 1984 riots

e) Ujjawala Scheme for prevention of trafficking and rescue, rehabilitation and re-integration of victims of trafficking for commercial and sexual exploitation

Schemes for relief and rehabilitation of victims of rape

The Hon'ble Supreme Court in a leading decision in case of the *Domestic Working Women's Forum v. Union of India and others* writ petition (CRL)No.362 had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of Constitution, it was necessary to set up criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatised to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place.

This landmark case gives the relief and rehabilitation of the rape victims under the following ways and means;

- 1) A rape victim will be entitled to get compensation up to of Rs. 2,00,000, provided she testifies in a court of law against the accused.
- 2) Constitution of Criminal Injuries Compensation Board at District/State/ National Level.
- 3) The Board shall take into account the pain, suffering and shock as well as **loss** of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.
- 4) Provision of budgetary requirements for the scheme, which would be transferred to the States as Grants-in-Aid;
- 5) Setting up of District Level Committees headed by District Magistrate, to consider the claims.

Payment of Compensation ordered by the Hon'ble Supreme Court in respect to convicts in the prisons

Advancing the philosophy of restorative justice, *the Supreme Court in State of Gujarat v. Honorable High Court of Gujarat* (1998 7 SCC 392) has directed that the prisoners should be paid equitable wages for the work done by them, every prisoner must be paid wages for the work done by him and the state concern make law for setting a part a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence. This is a significant development in providing restorative justice to the victims of crime.

Recent Development

More recently, Government of India, Ministry of Home Affairs has issued two advisories for all for all States and Union Territories to prevent – victimisation of vulnerable sections of society such as women, children and marginalised people etc. Broadly, the advisories focused on the following measures to be taken into considerations by the criminal justice functionaries in safeguarding the human rights of the victims of crime.

I) Set up exclusive 'Crime against Women/Children' desks in each police station. There should be no delay, whatsoever, in registration of FIRs in all cases of crime against children. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their family members. The administration and police should play a more proactive role in detection and investigation of crime against children and also ensuring that there is no under reporting.

II) Cases of crime against children should be thoroughly investigated and charge sheets against the accused persons should be filed within three months from the date of occurrence without compromising on the quality of investigation. Proper supervision of such cases should be ensured from recording of FIR to the disposal of the case. Speedy investigation should be conducted in heinous crimes like rape, murder etc. The medical examination of rape victims should be conducted without delay.

III) Steps may be taken not only to tackle such crimes but also to deal sensitively with the trauma ensuing the crime. Counselling to the victim

as well as to the family may be provided by empanelling professional counsellors. Exploring the possibility of associating NGOs working in the area of combating crime against children and other vulnerable sections of the societies. Developing a community monitoring system to check cases of violence, abuse and exploitation against children and take necessary steps to curb the same;

In the scheme of the Constitution of our country, the judiciary works as a sentinel and guardian of the Constitution and as also custodian of the rights of the people. Article 32 and Article 226 of the Constitution have conferred powers on the Supreme Court and High Courts to pass appropriate orders which include to ensure the rights of the victims as well. In the absence of statutory provision in any other law, for the first time the Supreme Court of the country recognised right of compensation to the victim for violation of human rights in the landmark

judgment in *Rudal Shah v. State of Bihar* (1983 4 SCC 141). That was case in which the petitioner was illegally detained in Ranchi Jail for 14 years ever after his acquittal by the court after trial. The Supreme Court while directing releasing the petitioner awarded a total sum of 35,000/- by way of compensation. This judgment was later followed in subsequent judgments of the Supreme Court as well as the High Courts.

Custodial violence is an unacceptable abuse of power and an abhorrent violation of human rights by the protectors of the law themselves. It not only violates Article 21 of the Constitution of India which guarantees the fundamental right of life and liberty, but also infringes upon Article 3 of Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the right to life, liberty and security and no one shall be arbitrarily deprived of life. Further, Article 5 of UDHR and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that no one

shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. Article 9 of Universal Declaration of Human Rights and Article 9 of the Covenant emphasis that no one shall be subjected to arbitrary arrest, detention or exile. These provisions also lay down that anyone who is arrested shall be informed of the reasons of his arrest and shall be promptly informed of the charges against him. Article 22 of the

Constitution protects the rights of the individual in case of arrest and detention and essence incorporates the principles of these United Nations documents. It is a fundamental right under this Article, that the arrested person must be produced before the nearest magistrate within twenty-four hours. In this regard, the Supreme Court in the case of

D. K. Basu v. State of West Bengal (AIR 1997 SC 610), which dealt with the principle *Ubi jus, ibi remedium* i.e., there is no wrong without a remedy. The law wills that in every case where a man is wronged and damaged, he must have a remedy.

A mere declaration of the invalidity of an action, or the finding of custodial violence or death in a lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. While there is no express provision in the Constitution of India for grant of compensation for violation of the fundamental right to life, the Supreme Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. The Court observed that the claim in public law for compensation for unconstitutional deprivation of the fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for torturous acts of public servants. Public law proceedings serve a purpose different from private law proceedings. Award of compensation for established infringement of the indivisible rights guaranteed under Article 21 is a remedy available in public law, since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system where in their rights and interests shall be protected and preserved. The grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The quantum of compensation will, of course, depend upon the particular facts and circumstances of each case. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.

However, the liability of the State for damages for violation of the Constitutional rights to life, liberty and dignity of the individual has been recognised and established as a part of the public law regime. In decision of the Apex Court , in particular, in cases of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*(1981 1 SCC 608) and *Nilabati Behera v State of Orissa*, (1993 2 SCC 746) the constitutional and juristic foundations of this liability of the State have been formally and finally laid down. Even the claim of sovereign immunity arising out of the State discharging sovereign functions is held to be no defense at all against the acts of violation of the constitutionally guaranteed Foundational Human Rights (Annual Report of National Human Rights Commission, 1999- 2000).

Compensation (Interim and Final Relief) Awarded by Human Rights Commission (u/s-18 of PHRA, 1993)

The Protection of Human Rights Act, 1993(as amended in 2006) provides an additional forum to address violation of human rights through National/State Human Rights Commissions and Human Rights Courts across the country. Upon receiving the complaint, and after enquiry, human rights commissions may recommend to the government any or all of the following:

- a) register a criminal case against the guilty persons;
- b) pay immediate compensation to the victim or to the victim's family;
- c) take disciplinary action against the guilty persons;
- d) stop a particular act if it is violating human rights;
- e) properly perform its duty and protect those whose human rights are being violated; and

f) take preventive measures so that human rights violations do not take place in future.

Human rights commissions may award an immediate compensation to victims or their families. It is paid so that money can be made available to them for rehabilitation, without delay. It does not affect the right to claim further compensation in court by filing a civil case against the offender. It is therefore termed '*interim relief*' by human rights commissions. Though there is no hard and fast rule, typically complaints regarding serious violations of human rights such as death in custody, torture, rape, illegal detention, kidnapping, destruction of private property, insults to personal dignity, and negligence by police, security forces or government agencies qualify for payment of immediate compensation.

This recommendation to pay immediate compensation is made either to the government under whose jurisdiction the violation has taken place or the government that controls the department responsible for the violation. Sometimes after paying immediate compensation, the government concerned recovers the amount from guilty officials. Immediate compensation amounts vary from case to case depending upon the circumstances and from commission to commission.

During the last 13 years, the Commission has recommended for payment of interim relief to the extent of Rs. 10,44,97,634/- to be paid in 716 cases, recommended disciplinary action in 223 cases and prosecution in 74 cases against the public servants who were prima facie found responsible for their acts of omission and commission resulting in violation of Human Rights of the people. Added to this, the Commission has also recommended a total of Rs. 23,24, 25,000/- to be paid to the next of the kin of 1245 deceased in the matter of Punjab Mass

Cremation case. The enormous increase in the number of complaints indicates the awareness of Human Rights among the people and the confidence people have in the Commission. However receiving of more and more complaints of violation of human rights may not be a happy situation.

a) Right to Victims' Rehabilitation:

In a landmark case – Custodial Torture of Rakesh Kumar Vij by Uttar Pradesh Police (NHRC Case No. 12982/96-97), the NHRC asked the UP Government to constitute a Medical Board to assess the extent of physical disability suffered by the victim due to torture by UP Police. The Medical Board, gave a report to the Commission, stating that the victim did not suffer from any gross structural damage, on which the victim raised doubts and communicated to the Commission.

In view of grave apprehensions of miscarriage of justice, the Commission go to the victims examined by the Delhi Trauma and Rehabilitation Centre, which gave an entirely different report and assessment. Then, the Commission thus directed the UP Government to pay Shri Rakesh Vij Rs. 10 lakhs by way of immediate interim relief. The Government was also directed to arrange for the complete medical treatment of victim. The expenses of the treatment as well as the traveling expenses of victim along with one attendant, from his native place to the place of medical treatment at AIIMS, New Delhi or PGI, Lucknow, would also be borne by the State Government. This way the Commission has recognised the right to rehabilitation of victims in holistic manner.

Besides establishments of NHRC and SHRCs at National and State level, under Section 30 of the Protection of Human Rights Act, the State Governments may, with the concurrence of the Chief Justice of the concerned High Court, by notification specify for each district a Human Rights Court to try the offences arising out of the violation of Human Rights. The NHRC time and again has stated that in order to give a better focus to this laudable provision and to provide justice at the district level itself in case of human rights violations, the section needs amendment. Further the lack of clarity as to what offences, precisely, can be clarified as human rights offences, has been the biggest impediment in the effective functioning of human rights courts, which have been set up by some of the states. The NHRC urged the Central Government through its annual reports for amendment Section 30 of the Protection of Human Rights Act, 1993. It is rather unfortunate that the Central and State Governments

have so far failed to resolve issues that are creating impediments in the setting up of fully functioning human rights courts. In order to provide access to justice for victims of human rights violations including victims of crime at the local level (District level) the human rights courts could be an effective and speedy justice mechanism, however due to lack of clarity of offences to dealt by these courts and procedure to followed, this mechanism is under utilization.

**** End of Course Material****