

Study of Penal Systems of Different Countries including India: A Critical Review.

Dr. Kabita Chakraborty,

Professor, Faculty of Law, ICAFI University, Agartala, Tripura, India

Abstract: *Under the present scenario, our society is facing with the problem of criminals and crime control mechanism. Different researches have already been conducted to this end and applied and administered different methods of crime control, but however none has given fruitful result. With the aim of finding out the solution to the said problem, this researcher makes a critical study of existing penal systems or penal procedures of different countries and trying to work out on the common issues. For this purpose this researcher also divides the study under two heads e.g penal systems of Asian countries as well as penal systems of European countries. Further, this researcher also studies the different types of punishments prevailing in different periods of history, however, most of which have been removed due to the cruel and inhuman nature from the present society. Also this researcher examines the penal policies and procedures applied in Indian society along with its judicial trends towards crime control. Finally it has evaluated the entire study by the application of analytical, explorative and applied research methodology and comes to the conclusion that the crime and criminal can never been completely removed from the present society where technology has reached its highest peaks with the application of only single penal theory. At the end this researcher also has formulated certain corrective measures as suggestions which might have given some positive result.*

Keywords: *crime; control; different countries; penal policies*

I. Introduction

Proclamation of punishment against any crime is a characteristic feature of human civilization. Since the power of proper judgment was created, such acts have been identified as crimes that are harmful to society and civilization. Attempts to eradicate this crime have been observed in civilized society since its inception.

This effort has led to the emergence of the policy of punishment. From the earliest times of civilization, the main purpose of punishment was to make the perpetrator realize the evil of his deeds by expressing hatred and inflicting physical and mental pain on him because according to human tradition, the reflection of a bad deed can never be a good outcome.

According to the old view, personal interest must get more emphasis against any crime, as a result, the victim of any crime has the responsibility to punish the offender by taking revenge, from which the concept of retributive theory had emerged. Gradually, punishment became the main weapon in crime prevention. Depending on the circumstances and the nature of the crime, different methods of punishment may be observed. The cruelty of the

old-fashioned punishment diminishes with age, and the penalty becomes more and more plausible connecting to crimes. Punishment for any crime depends mainly on three factors which are as follows-

- The reason and certainty to consider that act as crime.
- The gravity of the crime and the brutality of its application.
- The severity of the injury caused by a crime.

With the evolution of ages and development of modern rationality, the concept and attitude towards crime and criminals has changed. Earlier brutality of the personified penal application gradually diminished and scientific analysis of criminal tendency has become much more acceptable in society. For example, the frequent application of corporal punishment for prevention of offence has lost its importance in modern time and now it has become one of the main goals of the penal policy to analyze the cause of the offender's guilt and guide him to the right path.

By generalization it can be said that the usefulness of a punishment policy depends on its impact on society and its response to the perpetrators. Necessarily applying severe punishment to criminals protects the overall interest of a nation. Every civilized country should follow a certain system of punishment.

The policy of imposing punishment for the suppression of any crime has always been prevalent in all countries. Variation in applicability of penalty and infrastructural differences can be observed in separate parts of the world according to the type of governance. Firstly through this article, the customary punishment policies of significant countries in different continents of the world including India will be discussed here.

II. Penal systems in Asian Countries

Indonesia -

This country situates in between the Indian Ocean and the Pacific Ocean of Southeast Asia. There is a strict penal system prevails in this country. This territory governs through the practice sharia law, which criminalize drinking, gambling, being alone with a non-relative of the opposite sex, and a range of sexual acts.

They frequently execute criminals and punished them with hardest form, There is a strict law in this country relating broadcasting pornography, in this nation watching porn or possessing sexually explicit content is a crime and for which a person can be sentenced for imprisonment up to four years. In addition with that they also have strict law relating consumption of drug and drag trafficking, if any person is caught with drug related articles like heroin, cocaine, marijuana or opium, he or she will be punished with life imprisonment and any forms of human trafficking under this country is penalized with death sentence. Malaysian courts of law inflict corporal punishment for crimes that range from rape and assault to drug related offenses and also for illegal immigration.

Singapore -

This country situates in the Southeast Asia. The govern policy of this country beliefs that "the right to be presumed innocent until proven guilty". Their legal system follows a rational penal process, even in this age public caning is one of the form of customary punishment which can include several lashes. In Singapore caning is used as an form of penalty forover 35 offences like rioting, causing grievoushurt, drug abuse, vandalism, extortion, molestation etc and administered only to men. The mandatory death penalty is also prevails in this country for drug trafficking.

Malaysia -

Malaysia is a country that functions on federal constitutional elective monarchy, the Islamic sharia law are mainly followed in this territory apart from a common judge-made legal system. Like Indonesia, hanging till death is a common sentence in Malaysia for the crime of drug trafficking, and was a compulsory punishment until 2017, but now it is the subject of discretion of the judge. Corporal punishments are also prevails in this country like other Asian states for crimes that range from rape and assault to drug related offences and illegal immigration. In fact, this country canes around 6,000 migrants and refugees a year.

Vietnam -

This is another Southeast Asian country which had a single, unified legal system since 1975. The legal system, proclaimed in this country is influenced by eastern and western legal traditions, the French civil law system, and Soviet communist legal ideology. In Vietnam, persons with drug addiction are sent without any trial process to detention centers and, according to Human Rights observation, there they are used as forced labor with little or no pay. The death penalty isinflicted for severe offences like murder, rape of child and drug trafficking.

North Korea -

This country is situates at Eastern part of Asia. It is a strict communist country famous for the application of weird and strict laws which is executed on both to the natives as well as tourists in the country. Here, even little misdemeanor can warrant public execution. According to the information given by South Korean paper Joong Ang Daily, 80 people were killed in a single day on November 3, 2013, for watching South Korean movies. In 2016, the brutal approach of North Korea's judicial system was highlighted when an American student namely Otto Warmbier was sentenced to 15 years hard labor for stealing a propaganda poster and was died for unspecified brain injury. Breaking any of the prescribed laws that includes travel independently, buying objects from unauthorized shops, wearing non-conservative western cloths and especially speaking against the government caused imprisonment of an individual, where the they made to produce hard labor for long periods of time, which may result death.

Philippines -

The President of Philippines, Duterte has promised to "slaughter" drug addicts in the

Philippines and compared himself with Hitler. He encourages ordinary citizens to murder drug users, and as per police report over 7,000 drug addicts were killed as of April 2017. Although the Human rights groups claim the number is much higher and also includes children. This heinous disregard for human being is perhaps not surprising as because he was a person who once commented that as Mayor of Davao he “should have been first” in the gang-rape and murder of an Australian lay minister.

United Arab Emirates -

It is a country situated in western Asia, located at the eastern end of the Arabian Peninsula and having borders with Oman and Saudi Arabia. This territory follows a dual legal system of civil and Sharia laws, and recently this system has also included the common law specifically practiced in Dubai International Financial Centre Courts (DIFC). The principles of the UAE's laws are formulated through Islamic Sharia (the system of law) as its basic source.

Public displays of affection, prohibited sex, and drinking are considered here as crimes and in form of punishment fines, jail, and deportation for non-Muslims, and flogging for Muslims are prevalent.

Iran -

Iran is also called Persia, officially known as the Islamic Republic of Iran. It is a country in Western Asia. Like other Asian countries capital punishment is also prevalent there. This country executes the highest number of people per capita, there are several capital offences which include murder, terrorism, blasphemy, prohibited sexual relations, and recidivist consumption of alcohol. While in most of the cases, capital punishment is capital punishment is executed through hanging, sometimes adulterers are penalized with stoning. Here men are buried to their waists, and women to their necks, corporal punishment are imposed here in greater form like flogging and amputation. In 2008, five robbers in one week had their right hands and left feet amputated in terms of punishment.

Saudi Arabia -

This country is located at Southwest Asia, specifically follows Islamic law in their legal system.. Corporal form of punishments is proclaimed here in broader aspects which include flogging to crimes related to sex, alcohol, and apostasy. Cutting of hands and feet are still practiced here as a form of punishment for theft, and in 2005 an Indian migrant worker was sentenced to have his eye gouged for the crime of assault in Saudi Arabia some non-violent crimes like atheism, drug smuggling, sexual misconduct, and witchcraft are considered as capital offense. In 2016 the country performed at least 154 executions, most by public beheading. The bodies are sometimes crucified publicly as a warning to future offenders.

China -

China is officially known as the People's Republic of China. It is a country situated in East Asia. It is the most populous country of the world. The country with Communist party-

ledis famous for enforcing many strict laws and bans and proclaims strict punishments for offenders who are found guilty.

More than thousands of people in each year are executed here, which is in greater number than all other countries combined. While many of these are for violent crimes, China currently has 46 capital offenses which includes embezzlement, drug-related offenses, and robbery. Till 2011 there are 68 capital offences prevailed in this country. But it does not stop only through execution. The most scaring part is that In 2005, The Guardian reported that a Chinese cosmetics company was harvesting the skin of executed prisoners for beauty products, and in 2009 China admitted two-thirds of organs used in transplants came from the same source.¹

Japan -

Japan is an island country situated at East Asia. It is located in the north-west Pacific Ocean. The Penal procedure of Japan (including prisons) is one of the part of the criminal justice system. It believes in reformatory approach of punishment which includes re-serialize, reform, and rehabilitate offenders. The penal system is controlled by the Correction Bureau of the Ministry of Justice. This country has a very low crime rate and one of the lowest imprisonment rates in the world, though incarceration is used as an important form of punishment depends on the severity of offence.

Japan's prison system is also impressive. Offences like assaults or rapes among prisoners are rare, there is no existence of drugs and weapons within prison walls, hardly anyone escapes from prison and Japan has an exceptionally small proportion of its population in prison.

South Korea -

South Korea is an East Asian nation located at the southern half of the Korean Peninsula. The legal system of South Korea followed civil law system that has its source from the Constitution of the Republic of Korea. There is no localized criminal justice systems prevails in South Korea and thus the entire criminal justice procedures including prosecution, courts and prison system, is supervised and controlled by central government. This country has a low rate of criminal activity and a moderate imprisonment ratio, and it placed some emphasis on reformation of prison system. There are nine types of criminal punishment prevails in this country which includes capital punishment, imprisonment, penal servitude, revocation of qualification, suspension of qualification, fines, jails, minor fines, and forfeiture. Fine followed by imprisonment and penal servitude are used here most frequently as a form of punishments. There are more than sixteen heads of offences for which capital punishment is proclaimed like murder, conspiracy with foreign countries.

¹ Journal Articles : Nick Roffey "Top 10 Countries with harsh punishments", available at: <https://www.watchmojo.com/articles/top-10-countries-with-harsh-punishments> (Visited on May 14, 2022).

Hong kong -

Hong kong is located to the east of the Pearl River (Zhu Jiang) on the south coast of China, which is a special administrative region of China. capital punishment was officially abolished in Hong Kong on 1993 and since then, life imprisonment has been the most severe and highest punishment in Hong Kong. This territory was unique for foundation of the largest proportion of female prisoners worldwide in 21st century. Here more than 20percent of the total prison population was female, compared with a global average of about 5%.²

III. Penal systems in European Countries**Germany -**

Germany is a western European country the legal system of which mainly follows civil law procedures with codified legislature. This country adopted its legislative source from the Federal Republic. In modern German judiciary, adjudication of law in court procedure based on the German Codes. There is specific criminal code for adjudicating crime related matters. There are mainly two kind of punishments prevails in this country. They are imprisonment and monetary fine. For so-called “misdemeanors” monetary compensation is imposed. In Germany a minimum sentence of punishment is one year imprisonment applied as per statutes. Death penalty is totally abolished here from 1949.

France -

France has possessed dual legal system, one of such system is known as *Droit public*, or Public law which defines the function related principles of the state and public bodies and other branch is *droit privé*, or private law which is exclusively applied to private individuals and private institutions. Under criminal legal system French law have three categorical heads of offence.

First one is defined as “crimes” which includes such offenses that are punishable by 15 years or more of imprisonment, second is “delicts” means such offenses that are punishable by between two months and ten years of imprisonment and the last one is labeled as “contraventions” which is punishable only through fine or prescribed measures. In this country the length of imprisonment as a form of punishment for general offences such as theft, rape, assault, robbery, and murder depends on the gravity of the offences.

Under French penal code, the punishment for murder is prescribed as thirty years of imprisonment, but when the murder is committed in more severe way, the punishment is life imprisonment. In the year of 1981 the death penalty was abolished from this country.

Italy -

In Italy the governing body is known as democratic republic, which was established by a

² Journal Article: Donald C. Clarke & others “Punishment” available at: <https://www.britannica.com/topic/punishments> (VisitedonMay14,2022)

constitution in 1948. It has mainly three wings namely legislative body, executive body, and judiciary, The President is the constitutional head of the country. The types of customary punishment, prevailed in Italy, are imprisonment, probation, house arrest, compensation and semi-custody. Under this territory crimes are divided into two heads regarding to their gravity, first is “delicti” which includes the serious crimes, and the other is “contravenzioni” which possessed less serious crimes. The crime responsibility is imposed over the individuals who have completed fourteen years of age. The Italian Constitution came into force since January 1948 and from that time being death penalty is completely abolished with prescribed resolution.

England -

England and Wales being a part of United Kingdom follow the common law system which is constructed through both ways either by passing of legislation or the creation of precedents by the judges through case law. The Parliament, where laws are sanctioned, consists of two houses, the House of Commons and the House of Lords.

Under UK law, punishment depends on various factors which includes criminal history and personal circumstances besides the nature of offence and plea.

There are five types of penalty prevails under English territory. They are discharge, fines and compensation, driving disqualification or points, community orders and prison sentences. A suspended sentence is based upon the community order the violation of results in imprisonment.

Belgium -

Belgium is known as a federal state having a civil legal system, which is influenced by Roman Law and systematically followed French legal

procedure specifically the French Civil Code in 1804. The highest penalty under this territory is Life imprisonment, considered as the most severe punishment available under Belgian law after the termination of the death penalty. This penalty can only be imposed for the most sincere crimes like murder, genocide, crimes against humanity, war related crimes and terrorism.

With the evolution of ages and development of modern rationality, the concept and attitude towards crime and criminals has changed. Earlier brutality of the personified penal application gradually diminished and scientific analysis of criminal tendency has become much more acceptable in society. For example, the frequent application of corporal punishment for prevention of offence has lost its importance in modern time and now it has become one of the main goals of the penal policy to analyze the cause of the offender's guilt and guide him to the right path.

Whenever punitive measures are taken to curb criminal activity, it is important to keep in mind that human nature is very complex and cannot be easily guessed. This is why not all

people respond equally to the same situation. From this realization the idea of inventing different types of punishment policy for criminals came into application. The prison is not only considered a four-walled enclosure, but also a training center for those who break the law. More attention is being paid to the process of correcting criminals through proper training than just keeping them under the supervision of the authorities. It has been realized that security in society is possible only when the perpetrators will be corrected through separate treatment. Experience has shown that it is not enough to rehabilitate the offenders during his penalty period. It is also the duty of the authorities to ensure that after their release from prison they are able to lead a proper life.

Now I shall discuss the different types of punishment introduced in various periods of history.

IV. Types of Punishments

Flogging -

Flogging is categorized as a form of corporal punishment which was a usual technique for punishing offenders in previous era. it is also known as whipping. Flogging is a very old form of punishment which used to apply almost all civilized countries although this practice is mostly abolished now a days. The main purpose of this punishment was to inflict physical pain on the offender, by using corporal force with the help of a whip. In some Middle East countries the practice of this punishment is still prevailed. This punishment was not much more effective for hard core criminals. The elements and method of this punishment differs from country to country. In some countries the offender was released with one or two blows of the whip and in some places the it was ruthlessly whipped so that the scars on the offender's body remained visible. According to penologist researcher the effectiveness of this punishment was not remarkable, compared to its barbarism.

Branding -

Applying branding as punishment means engraving marks on a visible part of a criminal's body with a sharp weapon or hot iron sticks, this was usually done on his forehead. The offender was publicly identified by providing these specific and visible wounds. The main purpose of this identification was to warn society about the specific offender and to ensure that the offender does not commit the same crime again. The Roman penal code endorsed this punishment, and it has long been practiced in many parts of England, until its abolition in 1829. People in the United States who were involved in crime like bangles had the letter "T" engraved on their hands and the word "R" was engraved on their foreheads when they repeat the offence. The use of this punishment was observed in India during the Mughal period, although it is now completely abolished.

Mutilation -

Mutilation is also a form of corporal punishment. This punishment is usually given by cutting off a particular part of human body. The main feature of this punishment was that

the offender was punished by the specific mutilation of the body part which the offender uses to accomplish his crime. For example, a thief was punished by cutting off the hands used for theft, and for any sexual offense, the personal body part of the offender was cut off. This type of punishment was practiced mainly in European countries such as England and Denmark. Such punishment was significant in retaliation and preventive approach, although it is no longer used as a punishment for its barbaric nature.

Bilboes -

It is a form of corporal punishment the practice of which was mainly seen in the colonies of ancient England and America. In this form of punishment, the offender's legs were tied with the two ends of an iron rod and he was hanged from the roof so that he could not move. This punishment was mainly used for the purpose of causing physical discomfort to the offender and public humiliation.

Ducking Stool -

In this method of punishment, a criminal was tied with a chair or stool at the edge of a large pole and lowered into a river or pool. Such corporal punishment was mainly observed in the colonies of England and North America. Women who were accused of being stubborn, witches and prostitutes were given such punishments.

Rack -

This penalty is also an example of ancient corporal punishment. In this method of punishment, both the hands and the feet of the offender were tied and the elephant or the horse was dragged him with that position either in the same direction or sometimes in the opposite direction. In the process, the perpetrator suffered severe physical pain and various parts of his body were cut off.

Tieing on roaming wheel -

In this method of corporal punishment, the offender was tied to a rotating wheel and that was roaming with extreme speed. This method was usually used to inflict severe physical pain on the offender.

Pressing by iron rods -

It is one of the examples of inhuman and cruel punishment during primitive era. In this method the body of the offender was brutally crushed by two iron rods, which puts him within barbaric and inhuman physical torture.

Stoning -

Stoning was one of the most widely used forms of corporal punishment in mediaeval regimes. Even in present days this kind of punishment prevails in various Muslim-ruled countries, such as Pakistan and Saudi Arabia. In this method the offender was made to stand in a small hole dug in the ground and people surrounds him from all sides and throw stones at him until he dies. This punishment was mainly given for any crime committed

against women.

Pillory -

In this method of punishment, the offender is made to stand in a crowded place and his head and hands are locked in an iron armor. In this position the offender was whipped or stoned depending on the gravity of the offense he has committed. Sometimes the ears of the offenders are also nailed to the beams of pillory. This type of punishment was common in many parts of the world until the middle of the 20th century. Similar punishments were also introduced in India during the Mughal period.

All of the above types of punishment carry the identity of the cruel and inhumane treatment meted out to the criminals in the society of ancient time. In those days the criminal was not recognized as a human being in any way but was considered as an unwanted and unnecessary object of the society. Prisoners were even traded at the behest of the king and they were deprived of all rights. Brutality could be noticed in all kinds of corporal punishment of that era. But later, towards the end of the eighteenth century, such inhumane punishments were gradually on the verge of extinction, although in some countries this barbarism of punishment was seen in some cases. For example, flogging was practiced in India till 1995, but after the Universal Declaration of Human Rights was implemented, all forms of inhumane corporal punishment were abolished. The effect of which is to be observed in the subsequent punishment policy.

Social Boycotts -

Social boycott means expelling a certain person and his family from all kinds of social conventional hospitalities such as drawing water from a public well or participating in any kind of social or family event, in return for his wrongdoing. This provision was introduced mainly as a punishment for religious offenses. In ancient India, before the British rule, such punishments were prevalent through Nyaya Panchayats.

Amercement -

Such punishments are mainly imposed on the offenders by imposing financial penalties through the court. This type of punishment is mentioned in the English Penal policy. In this case, the amount of financial compensation largely depended on the decision of the specific appointee authority and Such punishments were mainly imposed on minor offenses.

Forfeiture of property -

This penalty is applied when an offender illegally occupies a property and fails to pay any compensation imposed on him. The victim is compensated mainly through the money quoted from the confiscated property of the offender. Section 53 of the Indian Penal Code deals with the forfeiture of property of the offenders.

Fines -

Penalties are usually set for minor offenses, such as traffic offenses, property offenses or

motor accident, frauds, gambling related crimes. The offender alleviates his crime by paying compensation to the victim. According to Indian penal code, compensation is sometimes used as a means of punishment instead of short term imprisonment. If the offender fails to pay compensation in any way, the property of the offender is confiscated for the purpose of enforcing this punishment. It is important to pay close attention to the financial status of the offender when determining compensation, although this is often not followed properly.

Penalties or Collateral Sanctions -

As a means of this punishment, the offender is deprived of all basic public benefits, such as the right to vote, federally founded housing, and even to live with his or her own children. In this case, the offender is also prevented from receiving all kinds of social measures such as employment and educational benefits. In the United States, such punishments were proclaimed for sex offenders and released drug addicts.

Security bond -

Security bond is basically a undertaking furnished by an offender regarding his good conduct and also applied as a note of some restrictions imposed on him against his disposal. In strict sense it is not an punishment but used as an instrument of correctional justice system. Through this the wrongdoer gets a chance to establish himself as a law abiding member of the society.

Ostracism -

Such punishment means the complete exclusion of the offender from the society and to sever all social ties with him. The main purpose of this punishment is to deprive the offender from all communication. These kinds of punishment were practiced mainly in the ancient Greek cities and in various parts of Athens. In ancient India, the application of this punishment can be seen in the process of out casting of a person in rural areas. This penalty can be seen as a part of the social boycott system.

Exile -

This type of punishment deports the offender far away from the country or city and threatens to imprison or execute him if he returns in unauthorized way. Such punishments were prevailed among the masses, mainly inspired by Christian churches during mediaeval period. Even in present days this punishment is still proclaimed in different countries as a form of banishment.

House arrest -

This punishment means keeping the offender in his own house under the control and supervision of the police and stopping all his outside movements. It is an alternative of prison sentence and usually imposes on political dissidents by the Govt. In this way, the detainee cannot establish contact with the outside world using the telephone or any other means of communication.

Custodial sentence -

In this method the offender is mainly involved in the necessary supervision or custody either within prison or in other closed therapeutic institutions. Imprisonment is a prime example of such punishment. This punishment usually lasts for a certain period of time until the offender is released in bail or some other way.

Banishment -

Banishment is a punishment by which an unwanted criminal is sent to a depopulated area so that he can never return to the society. Some societies punish certain criminals or political and religious revolutionaries with this method of punishment as unwanted individuals. In ancient time such punishment was quite common and was often compared to the maximum punishment as the authorities would not provide any kind of food or shelter to the offender within a certain distance. Similar punishments were practiced in various Chinese colonies in the eighteenth and nineteenth centuries and were considered the second most severe punishment after the death penalty.

The process of deportation of criminals was also arbitrarily practiced in India during the British rule and it was termed as Kalapani. The most heinous criminals were sent to an uninhabited island, mainly the Andaman and Nicobar. This type of punishment was finally abolished in 1955 and as an alternative of this penalty imprisonment for life was included in the Indian Penal Code.

Solitary Confinement -

In this system of punishment, the offender was cut off from all forms of social communication through incarceration and he could not communicate with any one inside the prison except the prison guards. It was a kind of mental torture on the offender which often resulted in the mental distortion of him and even death in prison. The main purpose of this punishment was to keep harmful and horrible criminals out of contact with people so that in this loneliness they would repent of their crime. In the middle Ages, hardened criminals were usually punished in this way because it was believed that if they were released from prison and returned to society, it would be terrible for society. Section 73 and 74 of the Indian Penal Code mentions this solitary confinement even though it is enforced for a fixed period.

Detention -

Detention is defined as a type of punishment in which an offender is arrested by the authorities and taken into custody as a punishment for his misdeeds or in order to prevent him to escape during investigation. Through this procedure The movements of detained person is monitored for a period of time or any suspected individual is placed under surveillance during the investigation.

Imprisonment -

Imprisonment means keeping a criminal in prison. It can be divided into two main parts

one is life imprisonment and the other is imprisonment for a certain period of time. The main purpose of this punishment is to keep the criminal away from criminal activity through detention so that the society can maintain a secure lifestyle. It is a very effective way of punishments which is commonly used in various countries.

Life imprisonment refers to the imprisonment of a person until his or her normal death in order to completely restrain him or her from committing a crime. Imprisonment for a fixed term means that the term of imprisonment for an offense shall be determined by the decision taken by the judiciary and the provisions of law regarding its form of application, imprisonment can be divided into two main types, one is general or simple imprisonment and the other one is rigorous imprisonment. In many cases, life imprisonment is used as an alternative to the death penalty as a punishment for serious crimes.

Capital Punishment -

This punishment is also known as death penalty. This is the highest form of punishment prevails even in present days. It is imposed mainly on rarest of rare cases. In fact, this cruel punishment has been used in various forms all over the world since ancient times. This is one of the main examples of retaliatory punishment. This punishment is given only when a criminal kills another person through his crime. According to the philosophy of this punishment, a murderer can never survive as a part of society and murder can always be avenged by the death of the murderer. Although the death penalty was first introduced mainly in England and other European countries, it is now abolished in almost all European countries. The death penalty is still practiced in India as the highest form of punishment by hanging the offender till death.³

V. Penal Systems and policies of punishment in India:

According to modern doctrine, those who break the law need to be given appropriate punishment as a price for the crime. In developing countries like India, more importance is given to the application of penal section than to the analysis of the appropriateness of punishment. Weak punishment formulation and structural flaws in the nature of penal policies indirectly destroy the usefulness of the law. Some laws relating to social policies like law relating to homosexuality and beef ban are gaining more popularity all over the country due to having over strict penalties even section 499 or 500 IPC which is dealing with the criminal defamation are also added with this list. It was earlier considered as a civil wrong and therefore criminalized during the British period. The main flaw of the Indian legal system is that any judicial process here is time consuming. One of the downsides of the Indian legal system is that the policy of imposing punishment for relatively less important crimes is often not properly reviewed for serious and more destructive crimes. Although some activities are no longer included in the list of crimes, for an instance homosexuality is not a crime in present days.

³Dr. N. MaheshwaraSwamy, *Criminology and Criminal Justice System* (Asia Law House, Hyderabad, 1st edn., 2013) 170-177.

Reformative form of Penal System in India –

"Every saint has a past and every sinner has a future"

This beautiful observation was made by Justice Krishna Iyer in the case of Mohd. Giasuddin v. State of A.P. This means that just as there is a history behind the attainment of sainthood by every pious person, there is also an opportunity for a sinner or criminal to lead a life in the right way. Through this approach the policy of formulating corrective punishment has emerged, which is known as Reformatory or Rehabilitative forms of penal system. According to this theory, the main goal of punishment is not only to take the offender through adverse situation but also to transform him into a law abiding member of society through reformatory measures. One of the duties of a state is to establish a wrong doer as a contributor to society at the end of the punishment process. The application of Reformatory or restorative approach depends largely on individualism. That is, according to this doctrine, when a judge punishes an offender, he must pay special attention to the circumstances under which the offense was committed which will include the age of the offender, his or her natural characteristics and the method of commissioning the crime. Only through this process it will be possible to analyze the root causes of crime and prevent it. Because according to the reformatory idea, showing hatred towards crime is appropriate but not towards the criminal. In other words, it is necessary to use the punishment as the end of the criminal activities but not as the obstacle of returning a wrongdoer to a healthy life. The process of reformatory punishment based on some activities like education, therapy as well as training.

- **Education**

Often due to lack of proper education a person doesn't get the ability to judge right and wrong and they engage themselves in criminal activities. They are imparted proper moral education through the reformatory process.

- **Therapy**

In many cases, people who are involved in criminal activities are mostly suffers from mental disorders. They are given appropriate psychiatric treatment in the correctional process.

- **Training**

In some cases, due to unemployment, many people are involved in criminal activities. In this process, the prisoners are given necessary training so that they can involve themselves in productive works.

Mahatma Gandhi once stated that "an eye for an eye will make the whole world blind." That is, it is never possible to solve a problem with violent or vindictive attitude. In order to eradicate crime from the society, the main goal should be to guide the offender towards morality so that he will feel remorse for the crime he has committed. This doctrine has also been incorporated in recent legal system of India. Reformatory approach is primarily applied to the first criminal, juvenile delinquents and women offenders.

The following methods are used in Indian judiciary as an essence of reformatory process.

Methods of reformatory process:

Parole -

Under parole an offender is either temporarily or permanently released from prison due to his good behavior while in captivity, although he is subjected to some restrictions and conditions imposed by the authorities.

In the case of **Budhi v. State of Rajasthan** it was held that parole serves the following three purposes-

- It serves as a motivation for the offenders to mend their ways and be released early.
- It ensures that the family relations of the offender remain intact.
- It assists the offender to assimilate into the society and adapt to its folds.

Parole is proclaimed by Prison Act, 1894 and Prisoner Act, 1900. However, each State has its own guidelines regarding grant of parole.

Probation -

Probation means allowing a person, who was involved in any minor offense, to enter the world at large under the supervision of a probation officer who will be in charge of his / her reformation and employment relating matters.

In India, probation is proclaimed by the Probation of Offenders Act, 1958. This Act has mentioned about the release of first-time offenders involving in offenses which are punishable with imprisonment of less than 2 years, such as theft (Section 379 of Indian Penal Code) or cheating (Section 420 of Indian Penal Code).

In the case of **Satish v. State of U.P.**, during discussion with the question of probation, the Supreme Court observed that:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilized society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.”

Pardon -

The Constitution of India, 1950 empowers the President of India under Article 72 to grant pardon to an offender and Similar power has also been given to the Governor under Article 161. Article 72 of the Indian Constitution not only gives the President the power to pardon the offender but also to reprieve, respite or remit sentence, which was granted to him by the judiciary. Such petitions are made to the President mainly after passing the death sentence by Supreme Court of India.

Commutation of Sentence -

Section 54 and Section 55 mainly these two sections under IPC deal with the commutation of sentences. Section 54 provides for commutation of sentence regarding death penalty with a view to transform it to any other punishment and Section 55 provides for commutation of sentence in case of life imprisonment to 14 years. Such commutation can be done by the Appropriate authority, that is the Governor of the State, without the consent of the offender.⁴

Judicial Trends in India:

Soman v. Kerala-

In this case, the Supreme Court of India has mentioned a number of decisions in applying the Court's discretion power. They are considered as proportionality deterrence and rehabilitation approach. Both aggravating and mitigating factors should be considered, mitigating circumstances are related to the offenders and aggravating circumstances are connected to the offences.

In para 12 of this case, the Supreme Court pronounced that "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges."

State of Punjab v. PremSagar -

In this case Supreme Court observed that "in our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender have not issued any guidelines."

Sibbu Munnial v. State of Madhya Pradesh -

In this case the bench of three judges of the Madhya Pradesh High Court had denoted some guidelines of punishment as follows:

- The maximum punishment relating to each offence with the classification of offences must be made with reference to which, the offender is liable to punish.
- Where both death penalty and imprisonment for life is provided as a punishment under a specific penal section. Imprisonment for life shall be considered as an alternative penalty and death penalty shall only be given if the case comes under the jurisdiction of 'rarest of rare case'. Whenever a death penalty is given as a punishment the nature and degree of the circumstances subject to be concerned by the court.
- Imprisonment can be divided into two categories- simple and rigorous. Imprisonment for life denotes rigorous imprisonment for twenty years.

⁴Journal Article: Aakriti Gupta "Reformative Theory of Punishment in India", *available at* : <https://lawcorner.in/reformative-theory-of-punishment-in-india/> (visited on May 15th, 2022)

- The difference between imprisonment for life and imprisonment is the former can be rigorous and the duration of this imprisonment can be till his last breath, however, the duration of a normal imprisonment can vary from 24 hours to 14 years.
- Lastly, offences punishable with fine mean the offences for which the maximum penalty can be compensation only.

Bachan Singh v. State of Punjab -

In this case the Supreme Court observed that capital punishment shall exclusively be given in the “rarest of the rare case”. However, the exact categories of the “rarest of the rare cases” is not mentioned by the Supreme Court or by the legislature, it is totally depends on the discretion of the presiding judges.

Jagmohan Singh v.State of Uttar Pradesh -

In this case Supreme Court observed that, mitigation and aggravation these two factors mainly balance the imposition of capital punishment, But after the case of Bachan Singh, this approach firstly was called into question because of the amendments in the CR.P.C., where it is mentioned that in the offence of murder the offender will be punished with the sentence of life imprisonment. After taking due consideration of the amendment, the Court came to the conclusion that capital punishment shall give in rarest of the rare cases only.

Sangeet&Anr v. State of Haryana -

In this case the court observed that the approach which was denoted in Bachan Singh’s case is not fully adopted. The courts still give emphasis to the crime and not to the circumstantial status of the criminal. The balancing factor of the mitigation and aggravation has taken a bit of a back seat in ordering punishment.⁵

Renuka Shinde and Seema Gavit: Child Killers (1990-1996) (Case where children were the victim) -

A woman in Maharashtra continues to educate and encourage her family to raise money through child abuse and murder. When the whole incident came to light, her two daughters, one 29-year-old and the other 25-year-old, and her husband were arrested in 1996. The three, including the woman, are accused of kidnapping and killing children under the age of five, although they kidnapped 13 children between 1990 and 1996 and killed nine of them, but were charged for killing only five children.

Their mercy petition was rejected by the President on 31 July 2014, although the Bombay High Court in January 2022 commuted their sentence from death to life imprisonment. On account of the delay in giving decision on their Mercy petition after rejection of appeal in Supreme Court on 2006.

⁵Journal Article: Lakshmi.V. Pillai “Punishment under IPC: All you need to know about it”, *available at:* <https://blog.ipleaders.in/punishment-under-ipc-all-you-need-to-know-about-it/> (Visited on May 17, 2022)

The Nirbhaya gang-rape (2012) -

It was an event that spread like wildfire across the country, demanding a change in the rape law across the nation. Jyoti Singh, also known as Nirbhaya was subjected to a barbaric gang rape and The entire Indian youth community came to the streets to protest the mass rape. And finally, after a long legal battle, the accused were hanged in Tihar Jail in March 2020.

The changes made in the rape law were substantial. A committee was set up under a former judge of the Supreme Court, J.S. Verma to suggest amendments in the criminal law. The report found that crimes against women were directly linked to failures of the government and the police. The major suggestions of the report were to make rape punishable by life sentence instead of death as it had been seen that the death sentence did not act as a deterrent and cleared ambiguity over the control of the Delhi police in such cases. The committee, however, did not favour setting the official age of a juvenile at sixteen rather than eighteen.

For starters, through the Criminal Law Amendment Act, 2013 the definition of rape was changed in Section 375 to include the insertion of any object in the vagina or rectum of a woman. Further, The punishment for rape is seven years at the least and may extend upto life imprisonment (Section 376). Any man, be it a police officer, medical officer, army personnel, jail officer, public officer or public servant, who commits rape may be imprisoned for at least ten years (Section 376). A punishment of life imprisonment, extending to death, was prescribed for situations wherein the rape concludes with the death of the victim, or the victim being in a vegetative state (Section 376-A). Gang rape has been prescribed punishment of at least twenty years under the newly amended sections (Section 376-D). The new amendment also defined 'consent' to mean an unequivocal agreement to engage in a particular sexual act; clarifying further that the absence of resistance will not imply consent.⁶

VI. Conclusion and Suggestion

Punishment policy should never be too harsh or too lenient. Punishment policy largely reflects society's attitudes toward crime, so the goal of enforcement depends largely on the social infrastructure and values prevalent there. In fact, the main demand of the present age is to improve the rehabilitation process and reduce the use of external punishment. Punishment procedures can never be created automatically. It develops mainly in the context of the socio-economic, political and cultural conditions of a particular society. They also have pre-dominance effects on emergence of crime. That is why alternative approaches are needed to control the criminal and his criminal tendencies. So that new penal policy can developed in the criminal justice process. Although in recent ages there

⁶Journal Article: Ansruta Debnath "Most famous and controversial criminal cases in India", available at: <https://blog.ipleaders.in/most-famous-controversial-criminal-cases-india/> (Visited on May 20, 2022)

has been a radical change in penal policy in many developing countries of the world, there is still a need for in-depth review in a number of areas related to crime and criminals.

The followings are some of the corrective measures which should be included in the existing penal procedure:

1. One of the major tasks of modern penal policy is to scientifically classify criminals, to control the work of various criminal organizations and to improve their punishment system. The impact of criminology and the spread of related legislation is inextricably linked with punishment. Inhumane treatment with a criminal is not justified and fundamental human rights and dignity must always be respected. An appropriate criminal justice policy always places the utmost importance on the security of the society and builds resistance against the perpetrator and his criminal tendencies.
2. The main objective of a rational punishment policy should be to protect the society from various crimes and to strengthen its security. One of the goals of this policy is to eliminate all the flaws in the penal code through proper assessment of the offender. There is always a need to focus on prevention than cure. One of the functions of this system is to take appropriate steps so that people do not get a chance to commit a crime in any way and if they become prone to crime in any situation, they can get out of it through correction. The nature of punishment policy varies according to the degree of criminality.
3. Bentham, a leading English law reformer, argued that the penal code should be based on hedonism which is known as utilitarian doctrine of pain and pleasure. The pleasure and benefit that a criminal receives from a crime may in no way exceed the pain inflicted by the punishment, otherwise the principle of punishment will lose its usefulness. Therefore, punishment should be formulated based on the depth of the crime following the principle of hedonistic calculus as proposed by Jeremy Bentham.
4. It is universally accepted fact that delay defeats justice. Unnecessary delays affect the regulatory effect of punishment. The main requirement of a proper punishment formulation policy is to eliminate all kinds of delays in the application of punishment. It must be borne in mind that unreasonable delays in the delivery of justice have pushed the poor litigants to the brink of extinction, especially in India, for this reason people are losing confidence in the judiciary.
5. The main function of punishment is to prevent all anti-social practices from being used in general and to control those who engage in such practices. In other words, the main purpose of formulating punishment is to protect the society from the hands of law breakers. According to the Beccaria the ultimate purpose of penal policy is 'to make crime and ill-bargain for the offender'.
6. Experience has shown that the principle of equal punishment for equal crimes is by no means effective for all types of criminals. Young and first-time offenders must be evaluated differently from those who are habitual and professional offenders. The main

reason for this discriminatory treatment is that the effect of punishment varies among different offenders based on their age, intelligence, mental constitution, gender, and social response. That is why there should be proper classification among the offenders so that they can get themselves back on the right track through corrective assistance as required.

7. It is imperative to introduce corrective thinking in the system of punishment as well as to take caution regarding the movements of criminals. It is often observed that all kinds of facilities are provided to the inmates in and around the prison as a result of the initiative of corrective policy and as a result, the inmates continue to lead a comfortable life without any responsibility and the main objective of the correctional policy is not achieved. It is expected that the lives of the inmates in these organizations will be spent mainly through some hard work and diligence so that they may realize the bad experiences of the prison life so that they will restrain themselves from committing crime in future. All punitive policy should ensure that offenders improve their mentality through suffering for what they have done.
8. Many modern jurists believe that the death penalty should be abolished on humanitarian grounds because they believe that killing is inhumane. Moreover, if an innocent person is sentenced to death through wrongful trial, it is considered as irreparable loss. According to many, putting a criminal to death means killing a person in cold blood without any specific reason. Because the main purpose of punishment is to correct the crime, not to expel him. This doctrine completely denies the use of the death penalty as it does injustice to humanity.
9. Compensation and imprisonment both should be part of the formulation of punishment. Compensation should be applied primarily to property-related offenses, and both imprisonment and Compensation should be introduced as punishment for crimes against person, especially against women and children.
10. According to the proper principles of criminal justice, it is necessary to specify the maximum term of punishment in each criminal law. This will enable the court to punish each individual offender as required.
11. Punishment methods such as solitary confinement are now completely extinct and outdated. The main reason for this expulsion was that such punishment was inherently considered torture and would bring inhuman suffering to the offender. According to modern scholars, solitary confinement was one of the ways in which criminals were pushed to their deaths without any bloodshed. After spending years in solitary confinement without any work, the criminals became more and more arrogant and when they returned to the society, they became horrible and desperate criminals. This has never been beneficial for the society.
12. Punishment should always be considered as a process that provides security to the

society. In other words, expulsion of incorrigible offenders and rehabilitation of reformed offenders should be the main objective of the penal process. An appropriate punishment policy should be much more flexible so that it can be changed at the urging of time and need.

13. While conducting the policy formulation of punishment, it is necessary to respect not only the rights of the victim but also the rights of the society as a whole. The law should always take proper action and control based on the factual matrix. Giving inadequate punishment for the sake of unnecessary sympathy raises questions about the effectiveness of the law in the eyes of the general people and society.

From the above review of the punishment formulation method it is understood that Crime and criminals can never be excluded from society based on a single doctrine among deterrent, preventive, retributive or reformative. This will be possible only when the policy of formulation of punishment is implemented using two or more of these doctrines in a deliberate manner. Some socialist countries in their criminal legal code, have clearly stated the purpose and reasons for punishing offenders.

British and American jurists have focused on the plight of the victims, which has given rise to a new trend called Victimology. This includes not only the victims of personal criminality but also those who have been the victims of misjudgments through the criminal justice process. This is why law enforcement agencies, especially like the police and prison authorities, need to be vigilant about human rights. The establishment of the National Human Rights Commission of India in 1993 is undoubtedly a landmark step in this regard.⁷

The duty of a proper law-making policy is to correct and rehabilitate juvenile and first-time offenders and to adopt deterrent policy for habitual offenders. That is why the current penal policy places more emphasis on institutional infrastructure with reformative approach. Punishment should be made in such a way that instead of inflicting external pain on the perpetrators, the perpetrators should be made more aware of the moral values of the society and they should be established as a sophisticated member of the society.

⁷Prof. N.V. Paranjape, *Criminology & Penology* (Central Law Publications, Delhi, 18th edn., 2019) 319 - 324

References

Book:

Footnotes:

¹Dr. N. Maheshwara Swamy, *Criminology and Criminal Justice System* (Asia Law House, Hyderabad, 1st edn.,2013) 170-177.

²Prof. N.V. Paranjape, *Criminology & Penology* (Central Law Publications, Delhi, 18th edn.,2019) 319 -324

References (in alphabetical order):

Ahuja, Ram *Criminology*, (Rawat Publications, Jaipur / New Delhi).

Gour, K.D., '*Criminal Law, Criminology and Administration of Criminal Justice*', (3rd Edition, Universal Law Publishing).

Paranjape, Prof. N.V. '*Criminology Penology*' (Central Law Publications, Delhi, 18th edn.,2019) 319 -324

Paranjape, N.V '*Crime and Punishment – Trends and Reflections*', (Lexis Nexis).

Siddique, Ahmed '*Criminology and Penology*', (6th Edition, Eastern Book Company, Lucknow).

Sutherland, Edwin H., David R. Cressey, David F. '*Principles of Criminology*' (11th Edition, Luckenbell, Rowman and Littlefield Publishers).

Swamy, Dr. N. Maheshwara '*Criminology and Criminal Justice System*' (Asia Law House, Hyderabad, 1st edn.,2013) 170-177.

Williams, Glanville., '*Text book of Criminal Law*', (4th Edition, Sweet and Maxwell South Asian Edition).

Case studies:

Bachan Singh v. State of Punjab, (1982) 3 SCC 24, 1983 1 SCR 145

Budhi v. State of Rajasthan, 2006 CriLJ 357, RLW 2006 (1) Raj 289, 2006 (1) WLC 27

Jagmohan Singh v. State of Uttar Pradesh 1973 AIR 947, 1973 SCR (2) 541

Mohd. Giasuddin v. State of A.P. 1977 AIR 1926, 1978 SCR (1) 153

Nirbhaya gang-rape, Mukesh & Anr v. State For NCT of Delhi & Ors., (2017) 6 SCC 1

Sangeet & Anr v. State of Haryana, 2013 (1) ACR 545, AIR 2013 SC 447, .

Soman v. The State of Kerala, 2013 (1) AD 233 (SC), ILR 2013 (1) Kerala 1, 2013 (1) KLT 55 (SC), 2012 (12) SCALE 719

Sibbu Munnial v. State of Madhya Pradesh, AIR 1968 MP 97, 1968 CriLJ 631

State of Punjab v. Prem Sagar, State of Punjab [(1979) 4 SCC 719]

Renuka Shinde and Seema Gavit, CRI.WP-3103.2014

Journal Article:

Footnotes:

¹Journal Articles : Nick Roffey “Top 10 Countries with harsh punishments”, available at: <https://www.watchmojo.com/articles/top-10-countries-with-harsh-punishments> (Visited on May 14, 2022).

² Journal Article: Donald C. Clarke “Punishment” available at: <https://www.britannica.com/topic/punishments> (Visited on May 14, 2022)

³ Journal Article: Aakriti Gupta “Reformative Theory of Punishment in India”, available at : <https://lawcorner.in/reformative-theory-of-punishment-in-india/> (visited on May 15th, 2022)

⁴ Journal Article: Lakshmi.V. Pillai “Punishment under IPC: All you need to know about it”, available at: <https://blog.ipleaders.in/punishment-under-ipc-all-you-need-to-know-about-it/> (Visited on May 17, 2022)

⁵ Journal Article: Ansruta Debnath “Most famous and controversial criminal cases in India”, available at: <https://blog.ipleaders.in/most-famous-controversial-criminal-cases-india/> (Visited on May 20, 2022)

References (in alphabetical order):

Aakriti Gupta “Reformative Theory of Punishment in India”, available at : <https://lawcorner.in/reformative-theory-of-punishment-in-india/> (visited on May 15th, 2022)

Ansruta Debnath “Most famous and controversial criminal cases in India”, available at: <https://blog.ipleaders.in/most-famous-controversial-criminal-cases-india/> (Visited on May 20, 2022)

Donald C. Clarke “Punishment” *available at:* <https://www.britannica.com/topic/punishments> (Visited on May 14, 2022)

Lakshmi.V. Pillai “Punishment under IPC: All you need to know about it”, *available at:* <https://blog.ipleaders.in/punishment-under-ipc-all-you-need-to-know-about-it/> (Visited on May 17, 2022)

Nick Roffey “Top 10 Countries with harsh punishments”, *available at:* <https://www.watchmojo.com/articles/top-10-countries-with-harsh-punishments> (Visited on May 14, 2022).

Raunak Chaturbedi, “Theories of punishment- a thorough study”, *available at:* <https://blog.ipleaders.in/theories-of-punishment-a-thorough-study/> (Visited on May 15, 2022)

“Evolution of the Process of Punishment in India”, *available at:* <https://www.ijlmh.com/paper/evolution-of-the-process-of-punishment-in-india>, International Journal of Law Management and Humanities, <https://www.ijlmh.com> (visited on 7th May 2022)

“Origins & Forms of Punishment in Ancient Hindu and Mohammedan Law”, *available at:* <https://theindianlaw.in/punishment-in-ancient-hindu-and-mohammedan-law/>, The Indian Journal, 28.10.2020, (Visited on May 9, 2022)