

## **FINE AS A PUNISHMENT - A POSSIBLE JURISPRUDENTIAL FAILURE**

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### **INTRODUCTION**

Administration of Justice is important in a society where harmful behavior poses a threat to the safety of the larger section of the society. A mechanism of sanctions is primarily imperative for the sake of wellness amongst the people, both mentally and physically. It is the modern and civilized alternative for the primitive practice of private violence. Without a system of administration of justice, man tends to redress the wrong committed to him in an impartial manner, which is certainly not at all desirable. Interference by the state is required to maintain peace. So how does the state administer justice? Punishment is a penalty for the transgression of law. The Indian Penal Code provides Punishment to be a method to administer justice for the wrong done by the criminal. It is a way of the state taking matter into its own hands in accordance with impartial codified set of laws. Law courts exists in society ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirements of the society. It may be imposed on any a person or property of the accused depending on the nature and extent of a crime in a particular case. In Fact, the greatest virtue of law is its flexibility and its adaptability; it must change from time to time so that it answers the ever-evolving needs of the society.

While referring to the historical context of punishments, roughly 6 methods have generally been used for punishing offenders viz a) Death Penalty b) Exilement c) Corporal Punishment (Eg. Flogging, Branding, Mutilation, Physical torture and confinement in the pillory) d) Imprisonment e) imposition of Fine and lastly f) Social degradation. However, Section 53 of the Indian Penal Code prescribes five kinds of punishments. They mainly include 1. Death penalty 2. Life Imprisonment 3. Imprisonment 4. Forfeiture of Property and 5. Fine.

This paper will mainly look into fine as a form of punishment and question its legitimacy in the current judicial system. From historical practice to future prospects, the use of fine will be gauged into.

## JUSTIFICATION AND DEVELOPMENT OF PUNISHMENTS

Punishment as a concept is a socio- legal one. It gains its legitimacy through enforcement with the help of the legal framework which is a set of social norms that need to be adhered to. It is here, when the concept of punishment seeks to protect and regulate the institution of norms and ensures sanctioning in case of any transgression from it by imposing unpleasant consequences on the offender.<sup>1</sup> According to H.L.A Hart, there are certain essential features. According to him, punishment should inflict some amount of pain and unpleasant consequences to the offender, it should relate to the offense that the offender has committed, it should be a response for breaking the social norms, and it should be administered by an authority under the legal framework.<sup>2</sup> The object of punishment has been well summarized by Manu, the great Hindu lawgiver, in the following words: ‘Punishment governs all mankind; Punishment alone preserves them; punishment wakes while the guards are asleep; the wise consider the punishment (danda) as the perfection of Justice.’<sup>3</sup> This goes to show that Indian scriptures have glorified the need for punishment. By doing so Punishment simply acts as a deterrence for commitment if crime and a way to reform the criminal. Before examining the nuances of pecuniary sanctions in criminal law as done in later sections of this paper, I feel inclined, to explain why criminal law used ‘fines’ a preventive measure. Under Criminal Jurisprudence, jurists have propounded many theories of punishment. Eminent jurists and authors recognize widely 4 theories of punishments which include Deterrent, Retributive, Preventive and Reformative. The beauty of Indian criminal law is that it has been able to integrate all of these four theories into the system. The deterrent theory tries to put an end to the crime by causing fear of the punishment in the mind of the possible crime-doer. The very existence of set codified laws prescribes in Acts, Statutes and legislations emanate from deterrence theory. The

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<sup>1</sup> Greenawalt, K. (1983). Punishment. THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 74

<sup>2</sup> Spohn, C. (2009). How do judges decide? The search for fairness and justice in punishment (2nd ed.). THOUSAND OAKS, CA: SAGE.

<sup>3</sup> Houghton, Institute of Hindu Law, 1825 p 189

preventive theory aims at preventing crime by disabling the criminal, for example, by inflicting the death penalty on the criminal, or by confining him in prison, or by suspending his driving license, as the case may be. While preventive theory is lauded by utilitarians like Jeremy Bentham, there seems to be a lack of feasibility in this approach. The retributive theory, on the other hand disregards the above theories and works on the underlying principle that it eye for an eye is deemed to be the rule of national justice. Hence corporal punishments would be an apt example for the Retributive theory. In contrast to this theory, the Reformatory theory believes that every wrongdoer is as important as any other member of the society and deserves to be reshaped. Case in point would be the Juvenile Justice Act 2015 wherein juvenile offenders are not to be given as rigorous punishments as adults. These according to Sir John Salmond are the ends of criminal justice. The Deterrent and Retributive theories are considered to be the most important ones, while others a merely accessory.

#### ***What caused the shift to fine from harsher punishments?***

In earlier times, death as a punishment was administered even for minor offenses. For example, theft in shop under five shillings was a capital offence, as was stealing a tree.<sup>4</sup> The number of capital statutes ballooned in the eighteenth century to over 200. Reformers were horrified that many of these offences were too minor or obsolete to warrant the death penalty.<sup>5</sup> Humanitarian concerns motivated the reformers to protest against imposing the death penalties for minor acts. The reformers concentrated on the purpose and form of punishment during the late 1800s. With the widespread acceptance of new theories, on criminal reform and deterrence led by Bentham, a new regime of punishments was implemented. That regime was adopted by the Royal Commissions in the draft codes and by Macaulay in his Code. The new approach was now to introduce a wide range of punishments, called *secondary punishments*. Secondary punishments, like transportation, imprisonment, and fines were explored in terms of their ability not only deter crime, but also to reform criminal behavior. Even though a variety of

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<sup>4</sup> Radzinowicz, Leon. A History of English Criminal Law and its Administration from 1750. London: Stevens & Sons Limited, 1848.

<sup>5</sup> Skuy, D. (1998). Macaulay and the Indian Penal Code of 1862: The myth of the inherent superiority and modernity of the English legal system compared to India's legal system in the nineteenth century. *MODERN ASIAN STUDIES* [Hereafter Skuy, 1998]

secondary punishments like whipping, imprisonment, public exposure in stocks or pillory existed, they were applied at the courts discretion rather than an arbitrary exercise of power.<sup>6</sup> The types of punishments are varied and have been changing with the development in the society.<sup>7</sup> Gradually other forms of punishment like imprisonment, community services, and fines have been considered apt for achieving the purpose of punishment with a specific emphasis that it should be proportionate to the crime committed.<sup>8</sup>

In the case of *Hazara Singh v. Raj Kumar*<sup>9</sup> the court has observed that it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The court went on to further state that punishment awarded should be directly proportionate to the nature and magnitude of the offense. The court observed that the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offense.

## INTRODUCTION TO FINE AS PUNISHMENT

As mentioned earlier, Section 53 of the IPC, 1980 mentions fine as a widely employed form of punishment. And their applicability depends on the type of crime committed. The purposed of imposing a fine is for the offender of the crime to feel a monetary loss due to the commission of the crime. However scholars have also criticized this method by stating that this only results in commodification of offence by paying a price to committing it.<sup>10</sup>

So what is the difference between offence, punishment and penalty and where does fine fit in? The word "offence" more often contemplates criminal prosecution in a court of law while the word "penalty" is a monetary infliction which may be imposed either by a court of law or by an administrative or a revenue authority. The word 'penalty' has a seriously broad connotation and can be defines as any suffering or forfeiture, depravation or disability imposed as

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<sup>6</sup> Beattie J. M. *Crime and courts in England, 1660-1800* Princeton: PRINCETON UNIVERSITY PRESS, 1986 p 456-504

<sup>7</sup> Gupta, R. P. D. (2007). *Crime and punishment in ancient India*. New Delhi, India: Bharatiya Kala Prakashan.

<sup>8</sup> Skuy , 1998 Supra note 8.

<sup>9</sup> 2013 9 SCC 516

<sup>10</sup> Gneezy, U., & Rustichini, A. (2000). *A fine is a price*. *THE JOURNAL OF LEGAL STUDIES*, 29,

punishment by law or judicial; authority in respect of any piece of legislation which was in force at the time of committing the act which the individual is being penalized for. The Oxford Dictionary echoes the same conception by referring to a loss, disability or disadvantage of some kind fixed by law for some offence.<sup>11</sup>

According to Mr. J. R Lucas, fine forms a part of penalty. Punishment is for mala in se offenses whereas penalty is *mala prohibita* in nature. Another difference pointed out was that punishment is given in case of breach of general obligations by the public, whereas penalty is in case of specific obligation. Because penalties relate to transgression of standard of conduct relating to specific obligation, it does not indicate the existing reluctance to abide by the rules, thereby failing at censuring the transgression.<sup>12</sup> Feinberg too, in his article on expressive function of punishment dwells in the question of difference between punishment and penalty. According to him, punishment carries a sense of severity and is inflicted in the form of hard labor, imprisonment. This consequentially disallows speed tickets, fines which are comparatively less severe (than imprisonment) to be considered as punishment and rather would fit appropriately in the category of penalty.<sup>13</sup> Besides acknowledging the difference in severity, he stresses that penalty is more like a price tag attached to a certain non-conformity behavior which those who are willing to commit, pay the price for it. He further points that penalty carries a miscellaneous character, whereas punishments carry a specific characteristic which is an expressive function of resentment and indignation.<sup>14</sup>

## **SHORTCOMINGS OF FINES- FINES AND FAIRNESS**

In India, neither the legislature nor the judiciary has issued any structured sentencing guidelines, several governmental committees have pointed out the need to adopt such guidelines. In fact the existence of guidelines can help shell out any inconsistency in the judicial system and promote fairness. The higher courts, recognizing the absence of such guidelines, have provided judicial guidance in the form of principles and factors that courts must take into

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<sup>11</sup> Prakash Roadlines (Pvt) Ltd. vs. Union of India and Ors. AIR 1962 SCR (3) 650

<sup>12</sup> Spjut, R. J.(1985). Criminal law, punishment, and penalties. OXFORD JOURNAL OF LEGAL STUDIES, 5

<sup>13</sup> Feinberg, J. (1965). *The expressive function of punishment*. The Monist, 49,

<sup>14</sup> Id

account while exercising discretion in sentencing.<sup>15</sup> In March 2003, the committee Reforms on Criminal Justice System (the Malimath Committee) did issue a report identifying the need to introduce these guidelines. It stated:

*“The Indian Penal Code prescribed offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum may be prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing option[s] is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimize uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.”<sup>16</sup>*

While it has been established that the absence of the guidelines may be problematic the question still remains as to how can offences be quantified into monetary units?

### ***Proportionality Element***

As will be elaborated in later sections, fine is considered to be a popular compensatory mechanism in civil cases. Its achievability is easy in civil cases as the damages are or can be liquidated and ascertained. However, in cases where the damages are unliquidated, it depends on the facts of the case to determine the loss suffered and to order the punishment accordingly so that the damage can be repaired and compensated. This is more quantifiable in nature and is

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<sup>15</sup> *Sentencing Guidelines :India*. Available at: <https://www.loc.gov/law/help/sentencing-guidelines/india.php> (Last Visited on 4/04/17)

<sup>16</sup> I Government of India, Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System Report* 170 (Mar. 2003), Available at: [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf) (Last Visited on 4/04/17)

successful when the harm caused can be repaired quantifiably. Proportionality as a principle is where courts focus on the very essence of decision making consists in the attribution of relative importance to the factors and considerations of the case.

The general policy which the courts have followed with regard to sentencing is that the punishment must be appropriate and proportional to the gravity of the offence committed. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. The punishing element of monetary fines is the deprivation of a sum of money, which is essentially the generation of a monetary loss for the offender.<sup>17</sup> It is an indisputable fact that the monetary penalties codified in the Indian Penal Code need revision, but these revisions can't be standard and should vary while being imposing depending on the harm suffered to either the state or the victim.

The apex court in *Gurmukh Singh v. State of Haryana*,<sup>18</sup> enumerated the various considerations which will be taken into account while determining the sentence. Some of them are listed as follows:

1. Motive or previous enmity
2. Whether the incidence had taken place at the spur of the moment.
3. The criminal background and adverse history of the accused.
4. The gravity, dimension and nature of the injury.

While these factors are valid, neither are they exhaustive nor can the court possibly quantify the offense according to the degree of the affirmation of these factors or otherwise. If fines are adopted as punishment, then for their administration and to decide the amount, the harm caused by a crime will have to be calculable in nature or will have to be assessed in numeric terms. The inherent features of the crime that it is a wrong against the public at large and shocks the collective conscience because of its heinous nature will all be reduced to just numbers. As a result, only the incalculable or uncompensable "harm" will be treated as crime, whereas the

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<sup>17</sup> Joel God, *Proportionality - An Unattainable Ideal in the Criminal Justice System*, Manchester Students Law Review Vol 2: 41

<sup>18</sup> JT 2009 (11) SC 122

rest will become the hybrid of civil criminal liability.<sup>19</sup> Even though fines are considered to be imposed on offenses with lesser degree of harm, they are still imposed on a large section of the society and hence fairness needs to be ensured.

### ***Unlimited Liability in Criminal law***

The IPC does not specify the quantum of fine which can be imposed on a convict and it must be decided by considering the gravity of the offence. The code state:

*'Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive'*<sup>20</sup>

Hence sections 155, 156, 171-G may impose fine of unlimited amount. Now the power of the magistrate to fine in is limited to Rs 5,000/- but the court of chief judicial magistrate or of the sessions high court can inflict fines up to any amount.<sup>21</sup> Whether a fine imposed in a particular case is excessive would be a question of fact in each case.<sup>22</sup>

While the Lord Macaulay Report stated that in imposing fine it is always necessary have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. He exemplified the assertion by further going on to say that the mulct which is ruinous to a labourer is easily borne to a trademan and is absolutely unfelt by a rich zamindar. It is impossible to fix any limit to the amount of fine which will not either be so high as to be ruinous to the poor or so low as to be no object of terror to the rich. The number of poor in every country exceeds in a very large ratio the number of rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable is limited or not, unless it be so limited as to render it quite insufficient as a mode of punishing the rich.<sup>23</sup> No sentence of fine should be passed by a criminal court on an accused person without the regard to his

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<sup>19</sup> Becker, G. S. (1974). *Crime and punishment: An economic approach*. In G. S. Becker & W. M. Landes (Eds.), *Essays in the economics of crime and punishment*. New York National Bureau of Research. pp. 1-54.

<sup>20</sup> Section 63, Indian Penal Code 1860 Act 45 of 1860. [Hereafter : The Indian Penal Code, 1860]

<sup>21</sup> RA Naelson's *Indian Penal Code*, SK Sarvria, 2008 Vol 1 406 10<sup>th</sup> edition

<sup>22</sup> K. Satwant Singh v. The State of Punjab 1960 AIR 266 SCR (2) 89

<sup>23</sup> Ratanlal & Dhirajlal's, *The Indian Penal Code*, 2010 32<sup>nd</sup> edition,



means to pay fine.<sup>24</sup> The amount of fine should be such as would be within the means of the accused to pay, though he must be made to feel the pinch of it.

## CIVIL V. CRIMINAL JUSTICE

Reparations as a penological goal, relates to compensation and repair of the harm that has been done through the crime. According to this theory, fine plays a very efficient role but only in cases where it acts as a good compensatory medium. Fine here comes as a rescue in two ways: first, where it can be awarded as an alternative to imprisonment in petty crimes and second, when it is awarded in addition to imprisonment, it serves restoration to the victim and compensation to the state, thereby recovering the costs borne.<sup>25</sup> In *Bhagwan and anr. v. State of Haryana*,<sup>26</sup> the high court makes distinction between fine and compensation as a concept. It clarified that fine forms part of punishment under IPC and comes as a pecuniary penalty to the offender. It also attracts penal liability in terms of imprisonment in case of failure to pay the fine. Compensation on the contrary is distinct, and as per the court, it fulfills the retributory purpose of compensating the victim without attracting any penal liability in case of failure to pay.

Criminal law which reflects the social ambitions and norms of the society is designed to punish as well as reform criminals but it hardly takes notice of the victims. The victims unfortunately are entirely overlooked in misplaced sympathy for the criminal. The convicted individual is clothed, fed and lodged in a prison at the expense of the state but the victim is rarely allowed any monetary benefit out of the loss that he may have suffered to the wrongful acts of the criminal. This issue was completely overlooked till the year 1969. However in pursuance of the recommendations of the Law Commission of India in its 41<sup>st</sup> report, 1969 a comprehensive provision for compensation to the victims of the crime has been provided in S. 357 of CrPC.<sup>27</sup> Under this section compensation can be awarded irrespective of whether the offence is punishable with fine or not<sup>28</sup> and fine is actually imposed; but such compensation can only be

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<sup>24</sup> Abdulla v Empror AIR 1924 Lah81, 24 CrLj 278

<sup>25</sup> Wheeler, G. R., Hissong, R. V., Slusher, M. P., & Macan, T. M. (1990). Economic sanctions in criminal justice: Dilemma for human service? THE JUSTICE SYSTEM JOURNAL, 14,

<sup>26</sup> 1986 CriLJ 1860

<sup>27</sup> KD Gaur 2015, Supra note 1 at 326

<sup>28</sup> Section 357 (3) Criminal code of procedure 1973, Act 2 of 1974

ordered if the accused is convicted and sentenced.<sup>29</sup> The compensation should be payable for any loss or injury whether physical or pecuniary and the court shall have due regard to the nature of the injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.<sup>30</sup> It must be noted that compensation granted under subsection (3) of section 357 quite liberally and without restrictions relating to subsection (1) where compensations can only be provided if fine is imposed. Hence the subsection (3) is applicable only if a sentence of fine is not imposed. The objective of Subsection (3) is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does not form a part of the sentence.<sup>31</sup> It is rather surprising to see that while the powers of a magistrate or judge as restricted powers to grant fines depending on their position, their power to grant compensation under Section 357 (3) is unlimited. For example, a magistrate of Second class has the power to pass a sentence of fine limited to Rs 1,000 only but the same magistrate has no apparent limit to grant compensation of any amount. Hence he may also grant compensation of Rs 10,000 or more depending on loss or injury to the victim.

In the case of *Ahammedkutty v. Abdullakoya*<sup>32</sup> the question of recovering fine and compensation has been examined by the supreme court. It was opined that the default to pay compensation the accused shall suffer simple imprisonment. If compensation ordered under S357 is not paid, it could also be ordered under Section 421 of the Code. Section 421 is a step further where the court may issue a warrant for levy of fine and ensures compensation either by issuing a sale deed of movable property belonging to the offender or methods similar to it.

In the case of *Hari Krishan & state of Haryana v Suhbir Singh*<sup>33</sup> directed the attention of all courts to exercise provisions under S.357 of CrPC 1973, liberally and award adequate compensation particularly when an accused is released on admonition, probation or when the parties enter into a compromise. This was done to reassure the victim that the judicial system

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<sup>29</sup> R.V Kelkar, Criminal Procedure 2014 Eastern Book Company (6<sup>th</sup> Ed.)

<sup>30</sup> Hari Singh v. Sukhbir Singh (1988) 4 SCC 551

<sup>31</sup> Swaran Singh v. State of Punjab (1978) 4 SCC 111.

<sup>32</sup> Ahammedkutty v. Abdullakoya (2009) SCC 6 652

<sup>33</sup> AIR 1988 SC (1988) 4 SCC 551

has not forgotten about him. In the case of *Sarup Singh*<sup>34</sup> the apex court awarded Rs 20,000 compensation to the widow of the deceased and reduced the sentence of seven years imprisonment to one.

In the case of *Hari Singh v Sukhbir Singh* (1988), the accused was convicted under section 325, 148 and 149 of the IPC. Power of the speech of the victim was impaired permanently. The High Court granted compensation of Rs 2500/- which this court said it would be payable by each of the accused having regard to the nature of the injuries suffered. The court found out that the accused has means and ability and was also unwilling to bear the additional financial burden. The award of compensation was enhanced to Rs 50,000/-.<sup>35</sup> As we can see the balance between monetary compensation and monetary sanctions has been set out in order to maximize the limited resources the offender may have. This has been done to ensure equitable justice in the society with respect to the offender, victim and the state.

## **FINE UNDER THE IPC**

The Indian penal code accommodated the provision of fine in three circumstances. Sections 63-70 deal with the punishment of fine as given in section 53. Roughly fine is accommodated in 4 large heads in the code.

1. When the Fine is mentioned.
2. When the Fine is not mentioned.
3. Where fine stands as an alternative to imprisonment.
4. Sentence of Imprisonment for non-payment of fine.

### **1. When the amount of fine is mentioned**

Roughly only 29 offences indicate the exact amount (with maximum limit) of fine. If we were to ponder on the legitimacy of the provision, it must be noted that these fines we prescribed over 150 years ago. Due to the currency has not only devalued greatly but the fine imposed has

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<sup>34</sup> *Sarup Singh v state of Haryana* 1995 Cr Lj 4168

<sup>35</sup> 50 Leading Cases of Supreme Court of India, Aushitosh Mishra 2014 (1<sup>st</sup> Ed.)

lost its ability to actually cause any impartible effect enough to deter the offender to commit the crime again. The valuation of money has been decimated considerable since the code was last amended. Our economy is has evolved and been overturned on numerous occasions, be it the 1991 crisis of recession or otherwise. Consider this; currently the minimum wage limit for an unskilled labor is Rs 513.<sup>36</sup> So the Maximum one has to forfeit while committing a crime is his one days earning. The loss can only extend to an amount that can be recovered in a day. Hence fines ranging from Rs 10- Rs 500 fail miserably to satisfy any of the penological goals. It is rather a mockery of the gravity of the offence rather than being penological. When the amount of fine mentioned becomes nothing more than a colonial hangover, it should either be removed or revamped.

## 2. When the amount of fine is not mentioned.

There are various provisions under IPC, where there is an option with the court to order fine as a form of punishment but no amount is mentioned. This brings in flexibility but also a lot of amount of responsibility and discretion. This is a much preferred way of including fine as a punishment in criminal law as there is enough scope to materialize all penological goals through fine. But this may even prove harmful when there is increased inconsistency in the application of fine. Spjut has considered sentencing guidelines in order to ensure consistency in the judicial system. Indian criminal justice system suffers from a major issue of dearth of sentencing deadlines whether for imposing imprisonment or fine as a penalty. Time and again in various reports such as Malimath Committee (2003) and Madhav Menon Committee (2008) and in case laws, it has been stressed that there is immediate need of extensive and detailed guidelines that provide a basis to the judges to come to a decision. The committee in its report stated:

*“As the fines were prescribed more than a century ago and value of the rupee has since gone down considerably, the Committee feels that it should be suitably enhanced.”*

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<sup>36</sup> Labour Department Notification , Current Minimum Wage Rate 3/04/17

[http://www.delhi.gov.in/wps/wcm/connect/doi\\_t\\_labour/Labour/Home/Minimum+Wages/](http://www.delhi.gov.in/wps/wcm/connect/doi_t_labour/Labour/Home/Minimum+Wages/) (last Visited on 5/04/17)

In the case of *In Arun Garg v. State of Punjab*<sup>37</sup> relating to the offense of Section 304 B (Dowry Death), the Session judge ordered a fine of Rs. 2,000 along with the imprisonment, which was later increased to Rs. 2 lakhs by the high court. Interestingly, on appeal, the Supreme Court completely set aside the fine which was ordered. The disparity in application of the fine by judges at the three levels reflects the utter lack of sentencing guidelines.

### 3. **Fine as an Alternative to imprisonment**

There also may be instances where the amount of fine has been increased by the court in exchange of a shorter period of imprisonment. In *Bipin Bihari v. State of MP*,<sup>38</sup> case, high court on appeal increased the fine amount from Rs. 5,000 to Rs. 30,000 and in lieu of it, reduced the imprisonment. This case was an example of Section 68 of the IPC. This brings us to the proposition of whether fine can work as a viable alternative to imprisonment and can it possibly commodify an offense. In cases where the word 'or' is used in provisions to give court the option of either levying a fine or sentencing the offender for imprisonment is a clear practice of the imposing monetary sanctions as an alternative to imprisonment. There is an inherent difference between fine and imprisonment, that is, the former involves money, whereas the latter involves cessation of personal liberty, stigma, monetary loss, and other social costs such as loss to reputation, and so on, which puts imprisonment on a much higher threshold than fine and even if considered as a price paid for offense, is not so beneficial and lucrative. For offences like culpable homicide, death by negligence, and sexual harassment, fine alone cannot deter the effect not can it achieve retribution. Hence in my opinion, it is clear that fine and imprisonment cannot be used interchangeably as mechanisms of Punishment in Criminal law. Because if it is, by paying fine, it is essentially the price paid for buying the offence just as a commodity.<sup>39</sup>

However, there are numerous other instances wherein the court has increased the fine imposed on the offender in exchange for a shorter duration of time served in prison-

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<sup>37</sup> (2004) 8 SCC 251

<sup>38</sup> Appeal (crl.) 986 of 2006

<sup>39</sup> Malley, P. *The currency of justice: Fines and damages in consumer societies*. Abingdon: Routledge-Cavendish. (2009)

- In a recent case *Allanoor & Anr. v. The State Of M.P.*<sup>40</sup>, the charge was of attempt to murder (section 307 of IPC) which resulted in amputation of both the hands of the victim besides other injury, the Madhya Pradesh high court, being bound by a precedent order by the Supreme Court reduced the rigorous imprisonment of 7 years to 3 years (less than half of what was awarded initially) and to justify this they increased the fine from Rs. 2,000 to Rs. 10,000.
- In *Jitender v. State of Madhya Pradesh*<sup>41</sup>, where the accused was charged for death by negligence for rash and negligent driving which led to death of the victim, section 304 A, the punishment was reduced to 1 month (less than half of initial sentence) in exchange of enhanced fine of Rs. 5,000 instead of Rs. 500 (10 times the initial amount).

#### **4. Sentence of imprisonment for non-payment of fines**

Section 64 provides for the Courts to resort to imprisonment in cases where the offender is sentenced to fine and has defaulted in doing so. Section 65 to 67 further describes the duration of imprisonment which the offender shall suffer in cases where the offence is a) Punishable with both fine and imprisonment and b) punishable with fine only. In the former scenario, Imprisonment shall not exceed one-fourth of the term of imprisonment originally prescribed.<sup>42</sup> Cases concerning the latter kind of punishment shall be only subject to simple imprisonment not exceeding 6 months no matter how much ever the fine may amount to. In the *Queen-Empress v Yakoob Sahib*<sup>43</sup> Benson J, said –

*“The wording of section 64, it must be admitted is not happy, but I am of the opinion that the legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases where fine can be imposed.”*

This section enables the court in every case in which an offender is sentenced to fine, to direct that in default of payment of fine, imprisonment may be imposed. The jurisdiction of the trial court is to impose a sentence of imprisonment in default payment of fine. Such imprisonment

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<sup>40</sup> CRA No.719/1999

<sup>41</sup> CRA No.719/1999

<sup>42</sup> Section 65 of the Indian Penal Code, 1860

<sup>43</sup> 22 ILR Mad, 238 p 240

does not serve as a discharge or satisfaction of the fine, but is imposed as a punishment. The fine would remain alive for collection for six years after passing of the sentence. Even his death will not discharge from the liability, any property which would after his death be legally liable for his debts.<sup>44</sup> Imprisonment in default of payment of fine should be long enough to induce the accused to pay the fine rather than suffer imprisonment. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.<sup>45</sup>

While sentence imposed in default of payment of fine has not to be misconstrued and taken as an imprisonment for commission of the offence, it does increase the burden on the courts and the executive wing of the government to be burdened in the process of imprisonment of the defaulter. Suggestion to combat this, in my opinion would include secondary punishments like community service. So it will be a way of paying back the state for the crime not committed but not by using monetary sanctions. This will benefit the society at large and put the offenders to a more productive use.

## CONCLUSION

We have seen that fine as a form of punishment while is a legit mechanism, it requires serious considerations and revisions with respect to the provisions in the Indian Penal Code, 1860. Punishments are awarded not only because of the fact that it has to be an eye for an eye or tooth for a tooth, rather having its due impact in the society, while undue harshness is not required but an inadequate punishment may lead to sufferance of the community at large. Even though the shift to a more progressive approach like fine was important in the judicial system in order to make sure that the penological goal is achieved, it must be implemented properly. Fines may not always be possible however I am of the strong opinion that imprisonment should not be resorted to when fine as a mechanism fails. Other options should also be looked like community service. I am also of the strong believer that fines should be replaced with compensation to the victims except in cases where the crime committed is directly against the state as by and large

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<sup>44</sup> State v Krishna Pillai Madhavan Pillai AIR 1953 TR & Coch 233, p 234

<sup>45</sup> *Supra* at 42

most of the wrongs done under IPC can be categorized under the purview of private wrongs. These offences would include, sedation, vandalism etc. Courts have resort to fine in various instances and their discretionary power can only be kept a check on when there are proper sentencing guidelines. Sentencing guidelines should not be only limited to the term of imprisonment but also the mount of fine that an offender should pay depending upon the facts and circumstanced of the case. Sentencing guidelines should also be formulated so that the fine levied on the offender is neither to excessive not too low for him to not even feel the pinch of shelling out his money. It is hard to replace a mechanism like fine since it has been instilled in our judicial system for decades now. However, there is no doubt that reforms are necessary in order to ensure effective functioning of the system itself.

