# CHAPTER 6

# OF PUNISHMENT

The object of punishment is the prevention of crime, and every punishment is intended to have a double effect, viz., to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes.[1] The main object of awarding punishments for offences is to create such atmosphere which may become a deterence for the people who have propensities towards crime and thereby prevention of offences so that the society in which all the members have to live may not feel suffocated, disturbed, unsafe and prune to unhealthy environment. The measures of punishment must therefore, vary from time to time according to the condition of a particular crime and other circumstances. The object of punishment being preventive, penal policy of State should be to protect the society. The four different theories of punishment are the following:

Theories

**1. Deterrent :** According to this theory the punishment is awarded to deter people from committing the crime. Emotion of fear plays a vital role in man's life. The people fear to commit the offence because it will render them to suffer. The fear of punishment puts a check not only on criminal from committing further crime but also on all other evil-minded. In spite of its weakness this has not entirely been eliminated from the policy of modern Court of criminal jurisdiction. Hegel strongly supported this theory.

**2. Retributive :** This theory is based on the principle of an eye for eye and tooth for tooth. The offender should be punished according to the nature of injury caused by him to the victim. In other words punishment should be in proportion to the injury caused by the accused. This theory does not look to the motive but to the intention in committing the crime. According to Salmond, "To suffer punishment is to pay a debt due to the law that has been violated".

**3. Preventive theory :** This has also been called "Theory of disablement" as it aims at preventing the crime by disabling the criminal. In order to prevent the repetition of the crime the offenders are punished with death, imprisonment for life or transportation of life. For example a murder is committed by A. and he is punished. Here A is punished not for having

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1. Halsbury's Laws of England, 3rd Ed., Vol. X, p. 487.

committed the murder, but in order that no further murder be committed. This theory has been criticised by many writers on the ground that prevention of crime can also be done by reforming the behaviour of the criminals.

(4) **Reformative theory :** The object of punishment according to this theory should be to reform the criminals. The crime is a mental disease which is caused by different anti-social elements. Therefore, there should be mental cure of the criminals instead of awarding them severe punishment. Much truth lies in the statement that to open a school is to close a prison. If persons of criminal character are so educated and trained that they are made competent to carry on well in society, there will be little or not at all possibility of any crime being committed by them. The punishment should, therefore, be curative or corrective because nobody can cure by killing. In modern times much importance is given to reformation or rehabilitation of the criminals, specially the young offenders in whose case this theory has very successfully been applied. This theory has, however, failed in cases of professional and habitual offenders.

From the above discussion this is clear that neither theory can be adopted as sole standard of punishment for the perfect Penal Code. The correct view therefore seems to be that the perfect system of criminal justice is the result of a compromise between the underlying principles of all the theories.

**Punishment under Penal Code :** The scheme of the punishment is laid down from Sections 53 to 75 of the Penal Code out of which five sections (Sections 56, 58, 59, 61 and 62) have already been repealed. Different types of punishment, rules for their assessment and enhancement in subsequent offence form the subject-matter of this topic.

**Punishment in Islam :** The punishment in Islam in its nature, is deterent as well as reformative. Recent researches reveal that imprisonment is and has, in fact, proved itself to be a source of producing criminals, besides bringing a burden on public exchequer. Fine, as prescribed in various modern legislative enactments, has miserably failed to achieve the desired result. It neither brings any reformatory virtue to the criminal nor put any deterring effect on him. Specially in these days, when the money-value has tremendously gone down, the century old scale of fines fails to produce any effect on the mind of the criminal. The present writer would, therefore, humbly suggest that the provisions relating to imposing of fine



and/or prescribing imprisonment in various enactments of Indo-Pak sub-continent may be reconsidered in the light of their effect on reforming the criminals *vis-a-vis* the Islamic principles of punishment. It is certain that if the question is reviewed in this perspective the fine will either be increased at least 20 times or will receive a good-bye. The imprisonment should rather be substituted by imposing physical punishments. Personally speaking, I am in favour of imposing physical punishment instead of long and fruitless, rather harmful, imprisonment or fines.

Islamic Law has also known additional forms of punishment. The man who is convicted of false accusation of fornication for example, is deprived of the right of testimony, a penalty which corresponds to some extent to the loss of civil status which accompanies some convictions today. The offences which fall under each of these categories of punishment are well established in Islamic Law.

Punishments under Islamic Law are indeed very strict and deterrent but very strict proof is also required to find one guilty. These punishments are not only redressive and retributive but also reformative. Punishments in Islam are of three kinds:

(1) Hadd; (2) Qisas; and
(3) Tazir

According to the case of *Bhai Khan* v. *State*, **PLD 1992 SC 14 (c)**, object of Section 57, P.P.C. was to lay a basis for the remission system for the purpose of working out the remission.

According to Section 53 as amended by the Criminal Laws (Amendment) Ordinance, 1994 of the Code the offenders are liable to the following punishments:

(1) Qisas.
(2) Diyat.
(3) Arsh.
(4) Daman.
(5) Ta'zir.
(6) Death.
(7) Imprisonment for life.
(8) Imprisonment which is of two descriptions, namely:-
(*i*) Rigorous, *i.e.*, with hard labour;
(*ii*) Simple.

(9) Forfeiture of property.

(10) Fine.

According to the case of *Muhammad Ashraf* v. *State*, **PLD 1991 Lah. 347**, the substitution of the Islamic Penal Law in Pakistan Penal Code by the Ordinance is not a mere change in the form of nomenclature but change in substance, content, meaning and the consequences flowing therefrom. Any apparent similarity in two provisions, *e.g.*, culpable homicide amounting to murder and qatl-i-amd is not to mislead.

The Code as originally enacted, contained one more type of punishment known as "Transportation for life". This punishment has now been substitute by imprisonment for life by the Law Reforms Ordinance, VII of 1972. So now, wherever, there is any reference to "Transportation for life", it shall be construed as a reference to imprisonment for life by the Law Reforms Ordinance, VII of 1972.

The following are the cases where death sentence may be awarded at the discretion of the Court:

(*a*) Waging war against the Government (*Sec. 121*).

(*b*) Abetment of mutiny committed (*Sec. 132*).

(*c*) Fabricating or giving false evidence as a result of which an innocent person suffers death (*Sec. 194*).

(*d*) Murder (qatl-i-amd) (*Sec. 302*).

(*e*) To abet an insane, minor or intoxicated to commit suicide (*Sec. 305*).

(*f*) Dacoity with murder (*Sec. 396*).

There is only one case where death sentence is a must, *i.e.*, when life prisoner in attempt to murder causes hurt. (*Sec. 307*). In all other cases life imprisonment is alternative to death sentence. Imprisonment for life for the purpose of calculation means imprisonment for 25 years. (*Sec. 57*). According to the case of *Zargul* v. *State*, **1989 SCMR 529**, the appellant committed offence before enforcement of the Law Reforms Ordinance, 1972, when expression used in Section 57, P.P.C. was "transportation for life" (servitude for 20 years) and not "imprisonment for life" (servitude for 25 years) but convicted after enforcement of Ordinance and sentenced to imprisonment for life. Penalty prescribed at the time of commission of offence being transportation for life sentence altered to transportation for life (servitude for 20 years), in circumstances. Appropriate Government can commute the punishment of death for any other punishment and



imprisonment for life for any kind of imprisonment for a term not exceeding 14 years. Appropriate Government here means Federal Government or Provincial Government of a Province and commutation of punishment should be done without consent or the offender such sentence shall not be commuted without the consent of the heirs of the victim. This amendment has been made by the Criminal Law (Amendment) Ordinance, 1994 (*Secs. 54, 55 and 55-A*). It is the duty of the Court to direct in the sentence that imprisonment awarded by it is either rigorous or simple or partly rigorous and partly simple (*Sec. 60*) The maximum term of imprisonment that can be awarded should not exceed 14 years (*Sec. 55*) and be not less than 24 hours (*Sec. 510*). If the accused is charged under Sections 397 and 398 (causing hurt in the course of committing robbery or dacoity or being in possession of deadly weapons on such occasion) the imprisonment awarding shall to be less than 7 years. There are certain offences where only rigorous and in another only simple imprisonment will be awarded by the Court.

In case of rigorous punishment the prisoner is put hard labour while in simple imprisonment he is confined to only.

There is also a third type of confinement known solitary confinement. This can only be awarded to perso punished with rigorous imprisonment with the condition th whole period of solitary confinement should not exceed thre months. Thus the solitary confinement can only be awarde for the offences under the Penal Code in most exceptiona cases. Sections 73 and 74 lay down the rule about solitar confinement.

Solitary confinement according to Section 73 should be awarded in the following manner:

| *If term of imprisonment is* | *Solitary confinement should not exceed* |
|---|---|
| (*a*) 6 months | 1 month |
| (*b*) 1 year | 2 months |
| (*c*) More than 1 year | 3 months |

The solitary confinement shall not, according to Section 74, exceed (*a*) 3 months in all (*b*) 14 days at a time with intervals of not less than 14 days and (*c*) 7 days in a month, with intervals of at least 7 days if term of imprisonment exceeds 3 months. Solitary confinement can be awarded by a

Magistrate I Class and it is illegal to inflict it for the whole term of imprisonment.

The punishment as provided for certain offences can be enhanced in case of old offenders. According to Section 75 if a person having been convicted of an offence against coins, stamps, or property punishable with imprisonment for 3 years or more is again found guilty of the same offence, he shall be punished with imprisonment, for life or for 10 years. The previous conviction must have been by a Local Court and subsequent charge must be under the same chapter.

According to the case of *Umar Ali* v. *The State*, **1968 P.Cr. LJ 1857**, it has been held in a number of cases that Section 75 cannot be made applicable to a mere attempt to commit the offence.

Forfeiture of property under the Code was provided for in Sections 61 and 62 which have been repealed in 1921. However, under the following sections the forfeiture of property can be ordered:

(*i*) Property used or intended to be used in committing depredations on the territories of a friendly country. (*Sec. 126*).

(*ii*) Property received with the knowledge that the same has been taken by waging war or committing depredations under Sections 125 and 126 respectively. (*Sec. 127*).

(*iii*) Property purchased by public servant who is legally prohibited to purchase or bid for such property. (*Sec. 169*).

**Fine**: Where no specific amount to be imposed as fine is mentioned, it shall be discretionary but not excessive. If punishment awarded for offence is fine only or imprisonment with fine, Court should direct that in default of payment of the fine, the accused shall be imprisoned for a certain term which should be in addition to imprisonment already awarded (*Secs. 63 and 64*). According to the case of *Ashfaq Ahmed* v. *The State*, **PLD 1968 Lah. 1124**, directing that the accused shall suffer further imprisonment in default of payment of fine, it is not mandatory. According to the case of *Hidayat Shah* v. *Shabbir Shah alias Shabbir Hussain Shah*, **1991 PCr. LJ 255**, sentence of imprisonment in default of payment of fine cannot be made to run concurrently. According to the case of *Bagh* v. *The State*, **PLD 1979 Kar. 261**, the provisions of Section 64 of the Pakistan Penal Code do not make it imperative on a Court



to award imprisonment in default of payment of fine but imprisonment in default of fine should as a rule be awarded in cases where the Court is competent to award it, in order to induce the accused to pay it up. This section, therefore, generally confers upon the Court the powers of imprisonment in default of payment of fine which often acts as a screw to make the offender choose the lesser of the two evils. In the absence of alternative sentence, the sentence of fine would in effect be incapable of execution and the only procedure left open for the recovery of the fine would be that laid down in Section 386, Cr.P.C. The trial Courts should exercise a careful discretion in the matter of super-imposing fines upon long substantive term of imprisonment. It would not be proper to add to a very long term of substantive imprisonment a fine which there is no reasonable prospect of the accused persons being able to pay and for default in payment of which they will have to undergo a still further term of imprisonment. In exceptional cases it may, however, be suitable and appropriate to inflict a fine as well as a substantive term of imprisonment. In cases where the Court, thinks that the justice of the case will be met by inflicting a substantial fine and a short term of imprisonment in addition thereto or in cases where it is desired to compensate the complainant or the heirs of the deceased or in case where the accused had profited financially by his wrongful act, it may be appropriate to inflict fine in addition to a substantive term of imprisonment, it is unnecessary to impose fines on persons who have been sentenced to death. Sections 65 to 70 deal with rule of imprisonment in default of fine. If offence is punishable with fine and imprisonment the term of imprisonment in default of payment of fine should not exceed one-fourth of the maximum term fixed for the offence. According to the case of *Mulazim Hussain* v. *The State*, **1984 PCr. LJ 898**, sentence of imprisonment awarded in default of payment of fine, held, cannot exceed one-fourth of maximum of term of imprisonment fixed for offence.

According to the case of *Mulazim Hussain* v. *The State*, **1986 PCr. LJ 249**, sentence of imprisonment in default of payment of fine, held, could not exceed one-fourth of maximum imprisonment fixed for offence. Sentence was accordingly reduced. According to the case of *Sharaftullah* v. *The State*, **1986 PCr. LJ 1**, sentence in default of fine, cannot exceed one-fourth of maximum sentence provided for offence. If maximum term fixed for an offence is 2 years, in default of payment of fine, imprisonment awarded should not be for a

term exceeding 6 months. As soon as payment of fine is made the prisoner shall be set free. If offence is punishable with fine only, the imprisonment in default of payment of fine shall be simple in the following proportion:

| *Amount of fine* | *Term of Imprisonment* |
|---|---|
| Up to Rs. 50 | Not more than 2 months |
| Up to Rs. 100 | Not more than 4 months |
| Exceeding Rs. 100 | Not more than 6 months |

According to the case of *State* v. *Muhammad Sadiq*, **1975 PCr.LJ 246**, the trial Court imposed a fine but awarded no sentence, in default of its payment the order being in contravention of this section was held to be not maintainable.

Fine imposed by the Court can be realized within 6 years or during the imprisonment when the term of the same is longer than 6 years. The death of prisoner does not discharge from liability and his property will be liable for his debt. It has been laid down by the Supreme Court that limitation of 6 years prescribed under Section 70 does not apply to fine imposed for contempt of the High Court. **AIR 1972 SC 858.** The imprisonment in default is not a substitute of fine but it is punishment for default.

The law of cumulative punishments is contained in Sections 71 and 72. Section 72 covers those cases where the accused is guilty of several offences but certainty of the particular offence of which he is guilty is doubtful. In such case the offender shall be punished for the offence for which lowest punishment is provided for. The object of Section 71 is to restrict the punishment to a reasonable extent. According to the case of *Muhammad Ramzan* v. *The State*, **1989 SCMR 1405**, where two different cases registered on two different occasions by means of two separate F.I.R.'s resulting in the conviction of the accused by two separate judgments. Sentences in both the cases were to run consecutively. Petition seeking order that sentence in both cases to run concurrently was dismissed. In the case of *State of M.P.* v. *Gulam Mir*, **AIR 1956 M B 141**, it was observed that an offence under Section 279 (rash driving) is distinct from an offence under Sections 337 and 338 (causing hurt and grievous hurt by act endangering life or personal safety) and as such accused can be convicted not only under 279 but also under 337 and 338. If two offences are committed in the same transaction, Section 71 becomes applicable. Section 71 lays down:



(*i*) Where an offence is made up of several offences, each of which is itself an offence, the accused shall be punished only for one offence. If A gives 50 strokes to B with a stick he will be punished not for each blow but for one offence of voluntarily causing the hurt;

(*ii*) Where offence falls within two or more separate definitions under any law; or

(*iii*) Where several acts, of which one or more would constitute an offence, constitute when combined a different offence, the offender shall not be punished with more severe punishment than the concerned Court could award for any of such offences.

**Remission of sentence of life imprisonment:** A sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals under the Prisons Act cannot supersede the statutory provisions of the Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion or remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure, 1898. **(1976) 3 SCC 470.**

According to the case of *Abdul Latif* v. *Superintendent, Cantral Jail, Faisalabad*, **NLR 1980 UC 361**, no vested right accrues in favour of a life convict to be released automatically and unconditionally. He can be released only in exercise of powers under Section 401. It is for the Provincial Government to consider rolls of prisoners for necessary action under Section 401 for remissions to be the ordinary, special, or amnesty remissions.

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