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Law

THEORIES OF PUNISHMENT AND ITS APPLICATION IN THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN INDIA – AN ANALYSIS

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ABSTRACT

The administration of criminal justice system can be effectuated through sanctions or punishments. This article discusses about the theories of punishment and its application in India from its ancient period to till date. This research paper mainly focused on five theories which relates to punishment and its importance. It mainly focused on how for it is useful in the administration of criminal justice system in India with a detailed outline along with proper legislation supporting these theories of punishment.

INTRODUCTION

In the administration of criminal justice system sanctioning of punishment is important. At the same time offender should not be punished by the authority as per their own wish and whims. The offender should be punished only based on the theories of punishment. Certain theories are followed in ancient times and certain theories are followed as on date. Prominent theories followed from ancient period to till date are as discussed below one by one.

Retributive Theory Of Punishment

It is a revenge theory or retaliation. That means Eye for an eye, and a Tooth for tooth. The main purpose of this theory is that the person who inflicted pain should also incur the same pain. This was followed in ancient time. This theory is not recognized and not followed nowadays in India.

Deterrent Theory Of Punishment

The main object of this theory is not only punishing the offender but also gives a **lesson** against the society at large. If an offender is punished for committing crime and in similar way if anyone will commit a crime in future then they will also be punished in a same way. It gives a lesion to both the offender not to commit any crime in future and society. This theory gives a punishment based on the nature of crime. The punishment will be varied from crime to crime. It also justifies that even an exemplary punishment i.e death penalty can also be given to the rarest of rare cases. Bharathiya Niyaya Sangitha, 2023 (BNS) is a clear example for deterrent theory of punishment. BNS is based on the deterrent theory of punishment. Punishment is determined based on the nature of crime. Till date India has retained death penalty and imposed to the accused only on rarest of rare cases.

Preventive Theory Of Punishment

The main object of this theory is Prevention is better than cure. Preventive theory has been used in two modes. One is that if there is an imminent danger occurs in near future, then the accused can be under the penal clutches of law under preventive detention laws. Another one is that already a violation occurred. If we are not look into that issue then the problem will be aggravated. For example special Acts like Food Adulteration Act and Narcotic Psychotropic Substances Act.

Reformative Theory Of Punishment

The main object of this theory is to reform or to rehabilitate the offender. The first time offender will be given a benefit of probation. In case of probation the offender will be treated within the society. The sole intention of the legislature in passing probation laws is to give persons of a particular type a chance of reformation which they would not get if sent to prison. The type of persons who are in the contemplation of the legislature under the probation laws are not hardened or dangerous criminals but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation the

court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Another one is Parole. Parole is also known as a pre-mature release of offenders after a strict scrutiny of long term prisoners, under the rules laid down by various Governments. Pre mature release from prison is conditional subject to his behaving in society and accepting to live under the guidance and supervision of parole officer. The Open Air Prison system also developed only for the reformation of the offenders. Our Chief Justice of Supreme Court of India has rightly said that "Criminals are made by circumstances. No one is born a criminal. The path towards criminality is often as a result and consequence of experience and circumstances mostly shaped by neglect, external influences or lack of guidance." Hence the criminals should be treated or corrected and not to be punished.

Compensational Jurisprudence

Generally under the criminal justice system the accused can only be punished. The victim can get only self-satisfaction and not more than that. The victim will not be getting any monetary benefit. If the victim wants to get any monetary benefit it is possible only in civil cases. But it is not possible all the criminal cases are not in civil nature. Some cases contain both civil as well as criminal nature. The victim compensation is of recent origin. Nowadays the victims are getting compensation as well as the accused will be given a punishment.

The Supreme Court has laid down the principle for award of compensation by the Court under Article 32 and 226 to the victim of State action. It held that the object to award compensation in public law proceedings under Article 32 and 226 is different from compensation in private tort law proceedings. Award of compensation in proceeding under Article 32 and 226 is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply even though it may be available as a defence in private law in an action based on tort. The purpose of public law is not only to civilize power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. In Aravind Singh Bagga v. State of Uttar Pradesh, the Supreme Court awarded compensation of Rs. 10,000 to the victim of police atrocities. In this case the police arrested a married woman on the pretext of her being a victim of abduction and rape. She was threatened and commanded to implicate her husband and his family in a case of abduction and forcible marriage thereafter. The police officer subjected her to physical, mental and psychological torture to make her submit to the demand of the police and to abandon her legal marriage.

Victim Compensation scheme under Section 396 of Bharatiya Nagarik Suraksha Sanhita (hereafter it is referred as BNSS), 2023, The State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for

the purpose of compensation to the victim who have suffered loss or injury and who require rehabilitation. When the Court recommends for compensation to victim, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation. And when the trial court considers that the compensation awarded under section 395 is not adequate for rehabilitation of victim, or in case of acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. The Victim can also make an application for compensation to the State or the District Legal Services Authority where the offender is not traced or identified, and where no trial takes place. The State or the District Legal Services Authority shall award adequate compensation on such application by conducting enquiry within two months. And on the certificate issued by the officer in charge of the police station or a Magistrate concerned, the State or the District Legal Services Authority, may also order immediate first-aid facility or medical benefits to be made available free of cost to the victim. The compensation so payable shall be in addition to the payment of fine to the victim under section 65, section 70 and sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023. (Section 357A, 367B CrPC).

Nalsa's Compensation Scheme For Women Victims/Survivors Of Sexual Assault/Other Crimes - 2018:

The Hon'ble Supreme Court of India in Nipun Saxena and Another v. Union of India and others ((2018) 15 SCALE) vide order dated 12.10.2017 directed NALSA to set up a committee and to prepare a model victim compensation scheme for survivors of sexual offences and Acid attacks. And accordingly the above scheme was prepared. The Hon'ble Supreme Court observed that, while nothing should be taken away from the scheme, but it does not preclude the State Governments and Union Territories administrations from adding to the scheme.

The scheme aims at setting up a fund as "WOMEN VICTIMS COMPENSATION FUND" operated by the Hon'ble State Legal Services Authority, from which the amount of compensation, as decided by the Hon'ble State Legal Services Authority or District Legal Services Authority, shall be paid to the women victims or their dependents.

The 'Women Victims Compensation Fund' shall comprise:-

- (a) Contribution received from The Central Victim Compensation Fund (CVCF) Scheme, 2015.
- (b) Budgetary allocation in the shape of Grants-in-aid to SLSA
- (c) Any cost amount ordered by Civil/Criminal Tribunal deposited in this Fund.
- (d) Amount of compensation recovered from the accused under clause 14 of the Scheme;
- (e) Donations/contributions from International/ National/ Philanthropist/ Charitable Institutions/Organizations and individuals permitted by State or Central Government.
- (f) Contributions from companies under Corporate Social Responsibility

A woman victim or her dependents as the case may be, shall be eligible for grant of compensation from multiple schemes applicable to her. However, the compensation received by her in the other schemes will be taken into account while deciding the quantum in such subsequent application. The scheme sets out a schedule for granting compensation to the victims, prescribing the minimum and maximum limit of compensation to be granted under the scheme.

Factors Considered While Awarding Compensation: The Hon'ble State Legal Services Authority/District Legal Services Authority may take into consideration the following factors while awarding compensation:

- (1) Gravity of the offence and severity of mental or physical

harm or injury suffered by the victim;

- (2) Expenditure incurred or likely to be incurred on the medical treatment for physical and/or mental health including counselling of the victim, funeral, travelling during investigation/ inquiry/ trial;
- (3) Loss of educational opportunity as a consequence of the offence, including absence from school/college due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (4) Loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (5) The relationship of the victim to the offender, if any;
- (6) Whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (7) Whether victim became pregnant as a result of the offence, whether she had to undergo Medical Termination of Pregnancy (MTP)/ gave birth to a child, including rehabilitation needs of such child;
- (8) Whether the victim contracted a sexually transmitted disease (STD) as a result of the offence;
- (9) Whether the victim contracted human immunodeficiency virus (HIV) as a result of the offence;
- (10) Any disability suffered by the victim as a result of the offence;
- (11) Financial condition of the victim.
- (12) In case of death, the age of deceased, her monthly income, number of dependents, life expectancy, future promotional/growth prospects etc.
- (13) Or any other factor which the authority may consider just and sufficient.

Procedure: The station House officers shall share soft/hard copy of First Information Reports immediately after its registration with Hon'ble State Legal Services Authority/ District Legal Services Authority for the offences covered in the Scheme and the Hon'ble State Legal Services Authority/District Legal Services Authority, in deserving cases, may suo-moto initiate preliminary verification of facts for the purpose of grant of interim compensation. Or an application for the award of interim/ final compensation can be filed by the Victim and/or her Dependents before the State Legal Services Authority/District Legal Services Authority.

Wherever, a recommendation is made by the court for compensation under Section 357A of Cr.P.C, or on the application made by the victim or her dependent to the Hon'ble State Legal Services Authority or District Legal Services Authority, for interim compensation, it shall prima facie satisfy itself qua compensation needs and identity of the victim. In case of final compensation, it shall examine the case and verify the contents of the claim by conducting inquiry not exceeding the period beyond sixty days, with respect to the loss/injury and rehabilitation and may also call for any other relevant information necessary for deciding the claim. In all acid attack cases, at any time after commission of the offence, either suo moto or after preliminary verification of the facts the Hon'ble State Legal Services Authority/District Legal Services Authority shall grant interim relief as may be required. In cases of acid attack an amount of Rs.1,00,000/- shall be paid to the victim within 15 days of the matter being brought to the notice of DLSA. And the order shall be passed within 7 days of the matter being brought to its notice and the compensation shall be paid by the Hon'ble State Legal Services Authority within 8 days of passing of the order. Thereafter, an amount of Rs.2,00,000/- shall be paid to the victim as expeditiously as possible and positively within two months of the first payment. The scheme provides that in deserving cases, for reasons to be recorded, the compensation awarded may exceed the upper limit. In case of minor victim, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule.

As per the scheme Victims of Acid attack are also entitled to

additional compensation of Rs.1,00,000/- under Prime Minister's National Relief Fund . And they are also entitled to additional special financial assistance up to Rs.5,00,000/- for treatment expenses other than the compensation paid by the respective State/Union territories. The scheme also provides that where the trial court or appellate court finds the criminal complaint or allegations as false, the Legal Services Authority can initiate proceedings for recovery of compensation, if any, granted in part or full under this Scheme, as if it were fine.

Disbursement Of Compensation:

The amount of compensation so awarded shall be disbursed by the Hon'ble State Legal Services Authority by depositing the same in a Bank in the joint or single name of the victim/dependents. In case the victim does not have any bank account, the concerned District Legal Services Authority would facilitate opening of a bank account in the name of the victim or the guardian of a minor victim. In case the minor is in a child care institution, the bank account with the Superintendent of the Institution as Guardian. Interim amount shall be disbursed in full. And the final compensation amount is concerned, 75% shall be put in a fixed deposit for a minimum period of three years and the remaining 25% shall be available for utilization by the victim. In the case of a minor victim, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit. However, in exceptional cases, amounts may be withdrawn for educational or medical or other pressing and urgent needs of the beneficiary at the discretion of the Hon'ble State Legal Services Authority/District Legal Services Authority. The interest on the FDR, shall be credited directly by the bank in the savings account of the victim/dependent, on monthly basis which can be withdrawn by him/her.

Interim Relief To The Victim:

The Hon'ble State Legal Services Authority/District Legal Services Authority, may also order for immediate first-aid facility or medical benefits to be made available free of cost to the victim on the certificate of the officer-in-charge of the police station, or concerned Magistrate or on the application of the victim. On the receipt of application the Hon'ble State Legal Services Authority/District Legal Services Authority, shall disburse an amount of Rs.5000/- or up to Rs. 10,000/- immediately to the victim through pre-loaded cash card from a Nationalised Bank. The interim relief so granted shall not be less than 25 % of the maximum compensation awardable as per schedule. In cases of acid attack a sum of Rs.1,00,000/- shall be paid to the victim within 15 days of the matter being brought to the notice of the Hon'ble State Legal Services Authority/District Legal Services Authority. The order shall be passed within 7 days of the matter being brought to the notice of the Authority and compensation shall be paid within 8 days of passing of order. Thereafter an additional sum of Rs.2,00,000/- shall be awarded and paid to the victim as expeditiously as possible within two months.

Recovery Of Compensation:

The Hon'ble State Legal Services Authority, may institute proceedings before the competent court for recovery of compensation granted to the victim Subject to the provisions of sub-section (3) of Section 357A of Cr.P.C. The amount, so recovered, shall be deposited in Woman Victim Compensation Fund.

The Central Victim Compensation Fund- 2016:

The central victim compensation fund guidelines- 2016 came into force from 06/07/2016 with the objective to support and supplement the existing victim compensation schemes notified by the states/UT administrations. The guidelines aim at reducing the disparity in quantum of compensation amount notified by different States and union territories and also encouraging the States and union territories to effectively

implement the compensation schemes notified by them under section 357 A of Cr.P.C and to continue financial support to the victims of various crimes especially sexual offences including rape, acid attacks common crimes against children and human trafficking etcetera. The sanctioned size of central victim compensation fund is 200 crores. The CVCF is administered by an empowered committee chaired by the Additional Secretary (CS), MHA. The quantum of compensation is provided in the Annexure to the guidelines and the States and Union territories must notify the victim compensation scheme which should not be less than the amount mentioned in the annexure as per the guidelines. The States and Union territories shall get onetime grant from CVCF and the amount so received shall be utilized by the States/Union territories for disbursement under their respective victim compensation schemes.

CONCLUSION

These are the prominent theories of punishment. Retributive theory is not followed and this has been abolished. Bharatiya Nyaya Sanhita, 2023 (Earlier it is Indian Penal Code) is based on deterrent theory of punishment. Preventive Detention Laws are based on Preventive theory of punishment. The correctional administration is purely based on Reformatory Theory of Punishment. Under the Constitution, the Compensation provided under Article 32, 226 and the Victim Compensation Scheme provided under Bharatiya Nagarik Suraksha Sanhita, 2023 (Earlier it is Criminal Procedure Code) is of recent origin of Compensational Jurisprudence for the protection of victim rights.

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