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# Fines as a Punishment in Indian Penal Code, 1860: A Jurisprudential Failure or Commodification of an Offense?

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**Abstract**

The paper discusses the role of punishment in a criminal justice system by elaborating its functions. It focusses mainly on monetary sanctions (fine) as a type of punishment under the criminal law and analyzes its efficiency on the basis of the punishment theories. With specific reference to the Indian Penal Code, 1860 the paper categorizes the placement of monetary sanctions in the statute into three variants: where the amount of sanction is mentioned in the provision, where the amount of fine is not mentioned in the provision and where monetary sanctions stand as an alternative to imprisonment in the provision. The paper critiques the third variant as a commodification of offence and provides suggestions to update the statute to enable the efficiency of monetary sanctions as a type of punishment in criminal law.

**Keywords**

theories of punishment, monetary sanctions, commodification of offence

## Introduction

Under the criminal justice system, punishment forms an essential part. It is a form of expression of social condemnation of crime by collective conscience as stated by Durkheim (Spitzer, 1975). It finds its basis under moral anger and disgust which formulate the social theory of punishment (Harris, Evans, & Beckett, 2011). The article

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deals with the role of punishment under criminal law and the goals it seeks to achieve within the context of India. The purpose and goals of the punishment can be traced through the various theories of punishment which can also be used as a basis to analyze the viability of the punishments as they exist in criminal justice system. The article primarily focuses on monetary sanctions (i.e., fine) as a type of punishment under criminal law and how far it is able to achieve the penological goals. Moreover, in the third part of the article, with specific reference to Indian criminal justice system, the article evaluates the positioning of fine as a punishment in the Indian Penal Code (IPC) and critically evaluates how the dilapidated state of fines in IPC can lead to the commodification of the offenses. The methodology adopted is literature and statutory review for theoretical critique.

## Crime and Punishment

Punishment is a socio-legal concept. It derives its goals and purpose from sociological perspective and gains its legitimate recognition and enforceability through a legal framework. In any given society, there are a set of norms conceived through the social set up which are later recognized by laws and converted into statutory laws which require an institution of regulation to protect the compliance of these socio-legally established norms (Spohn, 2009). Punishment is not considered as a corollary of law but of law breaking (Mabbott, 1939). 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 (Greenawalt, 1983). It is considered as a medium of expression of social values as well as helps to meet penological ends (Ashworth, 2012). This unpleasant consequence reflects various purposes and contexts which can be identified as goals of punishment which it exhibits and seeks to achieve.

According to H. L. A. Hart (1978), there are certain essential elements of a punishment: It 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 (Spohn, 2009). There have been lot of critiques of this definition as it fails to acknowledge the features which distinguish between the punishment given for civil wrong vis-à-vis criminal wrong which may be different in nature and gravity depending upon the nature of the wrong committed with former being compensatory in nature whereas latter being punitive. However, in the context of current research, the definition provides as a good starting point to understand the meaning of punishment (Sverdlik, 1988).

The types and forms of punishment are varied and have been changing with the development of society (Gupta, 2007). In the earlier times, few punishments exhibited extreme brutality and was later condemned as they transgressed humanitarian grounds. Earlier death as a punishment was allowed for even minor offenses, but gradually other forms of punishments such as imprisonment, community work, and fines were considered apt for achieving the purposes of punishment with specific emphasis that it

should fit the wrong committed (Skuy, 1998). In the case of *Hazara Singh v. Raj Kumar (2013) 9 SCC 516*, the court has observed that it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offense. The benchmark of proportionate sentencing can assist the judges in arriving at a fair and impartial verdict. The court further 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. The Supreme Court repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases. Punishment is an evolving concept as its relevance is determined by the existing idea of the wrongful acts and social justice at a given point in the society.

In the contemporary Indian context, the various forms of widely employed punishments are as listed under the Section 53 of the IPC, 1860: death, life imprisonment, simple or rigorous imprisonment, fine, and property forfeiture. Their applicability depends on the gravity of the wrong committed and the goals which are intended to be achieved. The article focuses mainly on "fine" as a type of punishment under the criminal law and how it is able to fulfill its role of being a punishment. To analyze the role and efficiency of fine as a punishment in criminal law, it is essential to understand the dynamics of "fine" as a concept and to put it through the jurisprudential test of penological goals.

Fine is a type of punishment which is used in various fields of law (e.g., civil and criminal). However, because the generic goals of punishment differs depending on the nature of the offense, so does with respect to fines as a form of punishment. The article in the following section deals with the concept of fine with a brief reference to its historical development. It then creates a link between fine and the goals of punishment to judge how efficiently fines have been able to achieve the goals of punishment. This theoretical analysis will further be studied in specific context of IPC with respect to how fine as a punishment has been placed statutorily and whether it has passed the test of achieving goals defined for punishment at large in the criminal law context.

Fine can be defined as a price paid for a certain behavior. One of the field studies was conducted on the parents in a day care school where in the initial weeks, there was no fine imposed if the parent came late to take its children; however, for the next few weeks, a certain amount of fine was imposed, which, interestingly, resulted in the hike in number of parents coming late (Gneezy & Rustichini, 2000). The conclusion that can be drawn from the field study is that imposition of fine to an activity does change the perception favorably or unfavorably of the people who are part of that environment in which they operate. As pointed out in the analysis of the field study report that the existing literature on the imposition of punishment focuses mainly on reduction in the commission of offense due to punishment without analyzing the other effect, which is the increase in the law breaking when punishment is treated as a price paid for the offence leading to its commodification, as has happened in the above discussed field study.

In the early settlements, before criminal laws were framed, fines played a very essential role in dispute resolution. Private disputes were solved by a settlement through compensatory fine which was strong enough to not just make up for the loss suffered but also to avoid retaliation through blood feuds. Fines served the dual compensatory as well as punitive purpose. The Mosaic law, early Roman laws, and Anglo Saxon laws exhibited the similar framework where even if private disputes were given a public regulation, still the dominant remedy was compensatory through monetary sanctions (Pollock & Maitland, 1895). With the gradual development of public regulation, the idea of treating few private wrongs as wrongs toward public/state was accepted, which demanded compensation to the state as a remedy because the injury was now deemed to be caused to the state. With the new change in conquests, trend started to change, and soon in the reign of William, the conqueror, punishment took a harsher leap where as a result of commission of a wrong, the guilty was left at the mercy of the king (Pollock & Maitland, 1895). This led to the concept of permanent cessation of personal liberty to make up for the wrong committed. This "permanent" imprisonment however in the early common law could be reduced to an early release through a private settlement with the kings by paying price which was formally termed as "fine." This was used as a strategy by kings to furnish themselves funds rather than to meet any penological objectives or theoretical purposes of punishment (Westen, 1969). It was an act of 1383 which certified the change in the character of fine from being a settlement mechanism to being punitive. The linguistic changes were soon observed in other statutes and commentaries (Pollock & Maitland, 1895).

Fines/monetary sanctions have been primarily an essential punishment under the civil law (Malley, 2009). It is believed widely that where on one hand criminal law aims to punish, on the other hand civil law seeks to compensate. Imprisonment is considered as a distinctive feature of criminal law (Mann, 1992). The concept of damages/compensation is well served by fines in torts law, contracts, and other civil law cases.

However, fines have also found its place in the criminal law remedies as a part of the punishment. In the Indian context, going by the ancient criminal laws based on religion, the punishment given to the accused was not pecuniary in nature; instead it was imprisonment and death penalty, and cases where monetary sanctions (fines) were inflicted, it used to be in form of fine and not compensation as it would go to the royal treasury (Gupta, 2007). Nowadays, victim compensation even in criminal law has gained momentum, and fine is awarded as compensatory as well. Censure formed a very important type of punishment where verbally the outrage toward the offender was exhibited, and this component lacked in fine as a punishment (Gupta, 2007). But with the changes in the ideology relating to punishment and gradual shifts in the type of punishment, fine has become part of punishment for almost every crime despite the wide discretion involved on part of the judiciary (Skuy, 1998).

In practice, fine is considered as a form/type of punishment, but Mr. J. R. Lucas had pointed out interestingly that there is difference between punishment and penalty. In this categorization, fine forms part of penalty. According to him, punishment is for mala in se offenses, whereas penalty is mala prohibita in nature. R. J. Spjut points out that if the classification of offences for which punishment and penalties are imposed

does not exhibit any qualitative difference, then the mala in se and mala prohibita classification stands weak. In that case, the difference will be of degree (severity) wherein punishment is considered to be severe and penalty less severe (Spjut, 1985). 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 (Spjut, 1985). 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 inflcited 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 (Feinberg, 1965). 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 a 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 (Feinberg, 1965). Punishment is not merely reflective of disapproval but also carries an expression of vindictive resentment. Another difference is in the regulative and punitive approach, where penalty is largely regulatory, whereas punishment carries the punitive approach (Ashworth, 2012). However, the article in its following discussion does not differentiate between fine as a punishment or as a penalty.

It is often argued that fine is an ideal penal measure as it has the potential of exhibiting varied degrees of severity and liability (Ashworth, 2012). Judith A. Greene proposed that if fines are efficiently structured, they can be successfully employed as an intermediate penalty (Greene, 1988). Fines have the potential of carrying deterrence, compensatory, and other goals of a punishment. It is flexible enough to adjust according to the severity of the offense and also carries less administrative and supervisory costs (Hirsch & Ashworth, 1992). However, if a punishment has to flow in form of a fine, then the fine should be of equivalent worth to satisfy the means which are achieved by imprisonment (Posner, 1985). It should be able to satisfy the goals of punishment as are discussed in the following part of the article.

## Penological Goals and Fines: A Critical Analysis

Depending on the nature of the wrong (criminal sanctions are generally harsher than normal civil sanctions) to which it is applied, the goals and means to achieve it are likely to differ. Although achieving a crime-free society may seem to be a distant dream or rather an unrealistic goal to achieve, more practical approach should be to minimize the harm caused due to the commission of crime. Punishment under criminal law, as already stated above, can play a major role in prevention of commission of offense by posing such obstacles to the offenders (and potential) which correspond to both the amount of harm done to society and the temptation faced by the offender

(Beccaria, 2009). Maintaining proportionality between crime and punishment might not be an easy task as it requires certain parameters which form the basis of ascertaining proportionality such as the harm caused to the society by the crime, or alternatively the gain obtained by the offender, and so forth, and the parameters also need to be quantifiable (Beccaria, 2009). The concept of punishment requires various aspects to be considered to achieve the goals optimally. The concerns with imposition of punishment are the following: (a) philosophical, that is, the meaning and the concept of punishment; (b) political and legislative, that is, the authority to impart punishment; (c) eligibility, that is, to standard to identify who will be punished and on what grounds; (d) sentencing, that is, to decide the type and quantum of punishment in relation to the proportionality aspect; and (e) administration, that is, how efficiently it is carried out. It is often stated that it is not the punishment but its efficient administration that leads to optimal attainment of goals (Davis, 2009). What is essential is the certainty, severity, and celerity of the punishment, especially in case of deterrence (Spohn, 2009).

It is often argued that imposition of punishment is a backward-oriented approach (Brooks, 2012) because it involves imparting evil (through punishment) on the offender for the evil done by him. This, however, is one of the various perspectives and is countered by the social justice, utilitarian goals achieved by such imposition of punishment which are forward looking in their approach as they provide justice to the society, safegaurd it by creating deterence and also have reformative effects (Spohn, 2009). It is a fact that in the concept of punishment there is an intentional imposition of unpleasant consequences in form of pain or deprivation, and such intentional imposition can maintain its legitimacy when it is supported by justifications (Greenawalt, 1983). The justifications can be categorized into two types, namely, legal—punishment is given by state (authority)—and moral—which is based on ethical principles (Spohn, 2009).

The goals of punishment provide that justification which forms the basis of legitimacy for any type of punishment to be valid. It is important to observe the expectation of the people (society) and the victim particularly from the punishment before analyzing its goals from a theoretical jurisprudential perspective. Uli Orth (2003) elaborated upon the expectation of crime victims from the punishment and the goals identified by them. It is observed that victim's approach is mostly retributive in nature as criminal victimization instills the urge of revenge within them (Orth, 2003). This is understandably because the sensitivity to befallen injustice results in moral aggression, thereby demanding revenge and status restoration rather than rehabilitation which is in support of the offender. Besides retributive, they also demand for deterrence because repeated victimization is one of the post-trauma effects and moreover they do not want others to go through the same misery as they are facing. In the following section, the article identifies the primary goals of punishments under criminal law by linking it to primary theories of punishment. Besides, the article analyzes whether fine, in particular, is able to achieve the penological goals when employed as a punishment under criminal law.

1. Punitive: To punish the wrongdoer and compel him to pay a price for the wrong committed in terms of proportionality (Brooks, 2012). It primarily indicates

the infliction of suffering on the offender which imparts justice to the victim (Gendin, 1967). This partly relates to, retributive (desert based) theory of punishment. There are mixed interpretations about retribution. Although there is one extreme view of lex talionis (eye for an eye), as Moore puts it, retribution can be justified in two forms, that is, punishment is justified based on what the populace think is correct and the second is that the offender is punished because he deserves it. Going by the second form of desert, this fails to fit in the utilitarianism justification of punishment (Moore, 1984). But as Mabbott argued, it is not always a correct approach to determine the justification of a particular punishment by the "good" it is doing to the society (Mabbott, 1939). He proposes that the merits of punishment as part of legal system should be considered however for its acceptance; if required, in few cases, the utilitarian consideration may have to be surrendered (Mabbott, 1939). Moreover, even going by the old idea of tooth-for-a-tooth approach, the punishment need not necessarily be a mirror image of the crime committed; it should rather "fit" the crime committed (Spohn, 2009). In words of Anthony Quinton, the offender needs to be "guilty" to be punished under this theory. Once a person is guilty, it imposes a moral duty on the state to impose punishment because the commission of offense elevates the standard of the offender with respect to the victim or the society at large. So to bring back the balance and to set off the benefit achieved by the offender, retribution theory warrants punishment to do justice to the disruption of the fabric of society caused by the crime (Kramer, 2011). Kant has identified retribution as one of the main justifications of punishment which has further been widely criticized. Retribution stands in conflict with other goals of punishment such as utility; moreover, for Kant punishment is a form of justice and the criticism stands strong, because justice is impersonal and retribution is personal (Hodges, 1957). For fine as a punishment to meet this goal may be difficult to be satisfied in case of offenses other than financial crimes or where the harm caused cannot be monetarily quantified as retribution theory calls for "eye for an eye" approach. However, where the offense is financial crime and the harm is quantifiable, fine would fit as the most appropriate punishment. In *Bhagwan and anr. v. State of Haryana 1986 CriLJ 1860*, the high court makes a 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.

2. Social justice: It is believed that through infliction of punishment the gap/imbalance created by the offender is restored by bringing the two on the same level again. The legally imposed punishment transforms the transient public sentiment into a legally pronounced punishment (Brooks, 2012). It punishes those who have violated the norms as they created the unfair distribution of

benefits and burdens by acquiring an unfair advantage over others. It facilitates justice as it fosters equilibrium by depriving the offender of what he owed to the rest by creating that unfair distribution (Morris, 1976). Fine may fall weak in fulfilling this aim as victims of crime usually do not get the sense of justice by mere pecuniary punishment on the offender, especially if the offender can easily afford to pay it. Whether fine has been able to achieve this goal or not will be contingent on the gravity of offense committed.

3. Social condemnation (censure): By punishing a wrongdoer, a message is conveyed to the society as well as the offenders that the act done is unacceptable and is highly condemned. As Feinberg puts it, because expression/communicative aspect is one of the features of punishment, it is an expression of social condemnation (Sverdlik, 1988). Besides conveying the message of condemnation, it also reinforces the norm whose breach it seeks to condemn. When a crime is denounced by punishment, it helps reaffirming the sense of social cohesion (Moore, 1984). Punishment is taken to be emphatic social denunciation of the crime (Hart, 1978). It is important for it to express the condemnation which fits the offense punished. The proportionality between the offense committed (determined by the harm caused) and the punishment given (determined by the harshness) should reflect the desired condemnation and disapproval (Feinberg, 1965). As the word *denounce* means to reject, similarly the denunciation theory means that if the conduct of any person is such which is rejected by the society at large and affects them, this theory warrants a punishment for such an act. The punishment reflects outrage of the society and reinforces their moral standards and norms by inflicting punishments and denouncing the acts which goes against their prescribed conduct. In addition, it also aims to "get even" with the offender by communicating their denunciation (Kramer, 2011).
4. Demotivation (deterrence): The imposition of punishment conveys various messages such as condemnation and punitive; as a result, it tends to deter the potential offenders and helps them refrain from such wrongful acts (Brooks, 2012). This leads to prevention of further crime as deterrence in collective as well as individual (offender; Hodges, 1957). The word "deter" ordinarily means to discourage/put off. The deterrence theory of punishment means that when a crime is committed, the punishment following it should be such that it lays an impact on the criminal and on the rest of the society (the potential offenders), thereby discouraging them toward committing such an offense. A punishment succeeds in being deterrent once it is able to instill the sense of fear in the mind of the offender and the potential offenders (Kramer, 2011). According to Kant, punishment is inherently deterrent in effect. If the punishment is such which is unable to deter, then in the version of Kant that would fail to stand as a sanction or punishment. In the context of this goal, fine as a punishment needs to be able to instill "fear" in the mind of the offender and the potential offenders such that it is able to discourage them. In case of minor offenses, this may work efficiently, but in case of grievous crimes or the ones affecting human body, privacy, or liberty, fine may not always be a strong

enough punishment to cause deterrence (Malley, 2009). It does satisfy the deterrence goal to a certain extent in few cases but only "specific deterrence" for the offender alone and not to the public at large, thereby failing in achieving the main aim of the deterrence theory. To revamp the seriousness of penalty under criminal law while ordering fine, the option left is to increase the amount of the fine to an extent that it reflects the punitive, deterrent, denunciatory, and restorative (Young, 1987). But if the fine ordered is beyond the reach of the offender, then it loses its objectivity in long run; however, it may partially succeed in deterring a few.

5. Reparation: This goal relates to compensation and repair of the harm that has been done through the crime. To compensate the harm, it needs to be quantifiable else the goal becomes redundant. It is easily achievable in civil cases where the damages are liquidated. 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 successful when the harm caused can be repaired quantifiably. 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 (Wheeler, Hissong, Slusher, & Macan, 1990). Mostly it is seen that fines are ordered in minor offenses where they are able to achieve both the deterrence and the compensatory effect, but if in any legislation, fine is considered as a penalty for major offenses, then it is required that the fines are studied more deeply and are administered efficiently to ensure achieving penological goals (Gillespie, 1988-1989). However, in heinous offenses such as murder and rape, fine may not be enough to compensate or repair the loss suffered by the victim or its family.
6. Utilitarianism: To achieve this goal, the positives of punishment should outweigh the negatives or the harm caused. The marginal usefulness is taken into consideration (Greenawalt, 1983). The ends of utilitarianism can be achieved through accomplishing other theories of punishment as they lead toward the benefits (social gain) arising from the punishment which in turn helps achieve the state of utilitarianism in the present context (Moore, 1984). Imprisonment serves varied purpose in terms of theories of punishment, whether it is deterrence, punitive, retributive, or incapacitative. However, as observed in the above analysis, fines primarily serve the purpose of restoration and at times punitive as well in cases of petty crimes. In fact, in cases of petty crimes, fine serves as a viable alternative to imprisonment because the impact of imprisonment on the life of the offender is quite bearing and also increases the burden on the state and its expenditure on the offender while he is in the prison (Westen, 1969). It is well accepted that the goal of criminal law is to achieve deterrence, retribution, prevention of future crimes, inter alia, but there is no

> denying of the fact that this ends up as a costly affair for the state. The cost benefit analysis of the ends (social gain) achieved and the costs borne indicates that the net social gain achieved turns out to be quite expensive (Brown, 2004). The good part of including fine as a punishment is that the social loss suffered from the crime is reduced because the costs involved in administering imprisonment is eliminated in this case, as a result it proves economically beneficial to the state (Becker, 1974).

The aforementioned goals of punishment are generic in nature. When a crime is committed, it affects not just the victim but the society at large. It also creates a sense of insecurity to the peaceful coexistence of the society and goes against the institution of state ("Fine and Fining," 1953). Punishment has varied purposes; it not just serves the punitive aim but also aims to secure the authoritative stake of the institutional authority (Binder, 2002). In Kant's version, it is stated as a sanction because there is deprivation of the pleasure (gain) that the offender might have received in case he had been successful in violating the norm. It should be able to frustrate the immoral ends which were aimed to be achieved. As per Bentham's classical theory of hedonism, the pain given due to sanction/punishment should be more than the pleasure received due to the crime committed ("Fine and Fining," 1953). It does deter the offender and brings a heavy cost along for their career, family, and social standing (Brown, 2004). For this, the sanction should be proportionate to the crime committed such that the benefit achieved is deprived (Kant, 1998).

Because punishment is treated like an institution, it involves a lot of analysis and administration for its optimal realization. It also necessitates the theoretical and economic analysis of criminal offenses and their punishment to answer essential questions such as which acts should be termed as criminal and how should they be punished (Malley, 2009). With every act termed as a crime, its commission ignites social loss in the form of the harm caused and in the form of the costs involved to regulate such crime pre and post commission. To make up for the social loss suffered, state imposes punishment on the criminal; however, this punishment should be able to satisfy the basic penological goals which were elaborated above (Becker, 1974).

Fines have largely been considered potent for restitutive and compensatory ends (Malley, 2009). With the advent of victim movements, its importance have been re-emphasized. However, when fine is awarded to achieve these ends, it loses its punitive nature and get reduced to a non- or quasi penal. In his work, Gary Becker however distinguishes between civil violation and a crime on the basis of the penalty. According to him, if it is a fine then it has to be part of civil law because it is one of the basic tenets of criminal law to award imprisonment as a punishment (Harcourt, Becker, & Ewald, 2013). It is a hidden postulation that fine is considered "less serious" than imprisonment such that if fine is ordered as a punishment in criminal law, it reduces the sanctity and effect of the concept of punishment in criminal law (Posner, 1985). If the justification of monetary criminal sanction is compensatory, then the arising concern is the commodifying treatment of the crime committed, whereas if the

justification is found in the deterrence or the punitive theory of punishment, then it is highly essential that the sanction awarded is substantial enough to cause the deterrent effect or satisfies its role of being punitive and also crosses the affordability test. It has been argued by few theorists that fine as a penalty does have various benefits and is quite effective. But the caveat is that there needs to be a viable distinction in the penalty depending on the type of offense committed. If it is a heinous/grave crime, then fine may not suffice on the threshold of the theories of punishment. However, if it is a petty/minor offense, then fine can prove as an effective penalty which not just satisfies the penological objectives but also saves on the administration costs. To ensure the compliance of the punishment, especially in cases of fine, it should be taken care of that the fine awarded is affordable by the offender and is also proportional to the crime committed. This is an essential balance to seek but is quite complex in practice. If the fine ordered is too heavy and is unable to appreciate the disparity in the affordability, then it raises questions on the ends aimed to be achieved by the court and on their credibility and fairness (Wheeler et al., 1990).

The following part of the article elaborates the placement of fine as a punishment under the IPC, 1860. It categories it into three categories, and in the backdrop of the analysis made above of fine and its viability in achieving penological goals, the article highlights the existing jurisprudential failure and the impending need for an updation in the IPC.

## Monetary Sanction Under IPC: A Jurisprudential Failure or Commodification?

Lord Macaulay who headed the commission for drafting the IPC based it on the English law. Post-independence, the inheritors chose to continue with the original draft in the new India, thereby keeping it attached to the colonial period (Subramanya, 2013). It will be wrong to say that the code based on the English law has been detrimental entirely as many good aspects and good drafting in the code have also been derived from the same English law. However, we are still stuck with few archaic parts which pose as colonial hangovers. Is it correct to blame the British for the archaic law which we have been following for over a century? Despite having various opportunities when the judiciary and the legislature could have done away with laws which were not apt for the changing society, we ourselves chose to be stuck with what is now called a colonial hangover (Venkat, 2014).

The monetary sanctions, as it stand today in the India Penal Code (IPC) is in a dilapidated state which is akin to jurisprudential worry. There are three points that require deliberation. Fine under IPC, 1860 is found in different formats, and for the sake of clarity, in this article, it has been categorized into three variants.

### *1. Monetary Sanctions Where the Amount Is Mentioned*

In this type, those provisions of IPC are discussed where in the punishment, the legislative drafting indicates the amount of fine (with a maximum limit). The provisions

**Table 1.** Illustrative list of provisions under IPC, 1860 where the amount of fine is mentioned.

| Section number | Provision/offense | Punishment (where amount of fine is mentioned) |
|---|---|---|
| 137 | Deserter concealed on board merchant vessel through negligence of master | May extend to Rs. 500 |
| 140 | Wearing garb or carrying token used by soldier, sailor, or airman | May extend to Rs. 500 |
| 160 | Punishment for committing affray | May extend to Rs. 100 |
| 171 | Wearing garb or carrying token used by public servant with fraudulent intent | May extend to Rs. 200 |
| 171H | Illegal payments in connection with an election | May extend to Rs. 500 |
| 172 | Absconding to avoid service of summons or other proceeding | May extend to Rs. 500 |
| 173 | Preventing service of summons or other proceeding, or preventing publication thereof | May extend to Rs. 500 (In case of Para I) |
| 174 | Non-attendance in obedience to an order from public servant | May extend to Rs. 500 (In case of Para I) |
| 180 | Refusing to sign statement | May extend to Rs. 500 |
| 184 | Obstructing sale of property offered for sale by authority of public servant | May extend to Rs. 500 |
| 185 | Illegal purchase or bid for property offered for sale by authority of public servant | May extend to Rs. 200 |
| 186 | Obstructing public servant in discharge of public functions | May extend to Rs. 500 |
| 187 | Omission to assist public servant when bound by law to give assistance | May extend to Rs. 200 (Para I)<br>May extend to Rs. 500 (Para II) |
| 188 | Disobedience to order duly promulgated by public servant | May extend to Rs. 200 (In case of Para I) |
| 263A | Prohibition of fictitious stamps | May extend to Rs. 200 |
| 276 | Sale of drug as a different drug or preparation | May extend to Rs. 1,000 |
| 277 | Fouling water of public spring or reservoir | May extend to Rs. 500 |
| 278 | Making atmosphere noxious to health | May extend to Rs. 500 |
| 283 | Danger or obstruction in public way or line of navigation | May extend to Rs. 200 |
| 290 | Punishment for public nuisance in cases otherwise not provided for | May extend to Rs. 200 |
| 334 | Voluntarily causing hurt on provocation | May extend to Rs. 500 |
| 336 | Act endangering life or personal safety of others | May extend to Rs. 250 |
| 337 | Causing hurt by act endangering life or personal safety of others. | May extend to Rs. 500 |

*(continued)*

**Table 1. (continued)**

| Section number | Provision/offense | Punishment (where amount of fine is mentioned) |
|---|---|---|
| 341 | Punishment for wrongful restraint | May extend to Rs. 500 |
| 352 | Punishment for assault or criminal force otherwise than on grave provocation. | May extend to Rs. 500 |
| 358 | Assault or criminal force on grave provocation | May extend to Rs. 200 |
| 447 | Punishment for criminal trespass | May extend to Rs. 500 |
| 491 | Breach of contract to attend on and supply wants of helpless person | May extend to Rs. 200 |
| 510 | Misconduct in public by a drunken person | May extend to Rs. 10 |

with such a prescribed amount of fine have been provided in Table 1 for reference. The table is illustrative and covers only few provisions of IPC, 1860.

To critically analyze the provisions where the amount of fine which can be awarded as punishment is mentioned in IPC, it is essential to understand how redundant the amount is in today's scenario. IPC was drafted in 1860; there is lack of sources to trace the value of rupee in 1860, but there are resources which state the value of rupee in 1947 and how it changed over decades (Forecast, 2015). The value of Rupee has been stated in terms with US dollar. This may not give us a certain change rate of value of currency but does offer a fair estimate. In 1947, 1 USD was equal to 1 INR, whereas in 2016, it is about 67 INR. This gives us an alarming picture that the fine which is mentioned as 10 INR in IPC should actually be 670 INR and the ones mentioned as 100 INR should be 6,700 INR, and so forth. It may not be possible to amend the IPC after every few years to update the fine but arrangements can be made to issue circulars or rules which give an amended chart. It has been very wisely noted that the decision regarding what type of punishment has to be inflicted should be determined by the aims that are to be achieved through such an infliction. In case of retribution (desert: as offender deserves), the fine imposed achieves its retributive goal only if the greed (benefit received by the offender) involved in the offense is equivalent to the amount of fine mentioned in IPC, since the offender "deserves" the punishment on the basis of the crime he committed. Unfortunately, in today's scenario the fines as low as Rs. 10, 100, 200, or 500 fail miserably to satisfy any of the penological goals. Rs. 10 cannot deter any person from doing misconduct in public after being drunk. A crime as serious as making fictitious stamps is punishable with an upper limit of Rs. 200 fine which instead of being deterrent or retributive is rather quite a convenient and facilitative form of punishment. The other means that can be achieved through fine is compensation to victim, revenue to state ("Fine and Fining," 1953). With Rs. 250 being the upper limit punishment for an act "endangering life and public safety" is like a mockery of the gravity of the offense 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. Monetary Sanction Where the Amount 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. The need for sentencing guidelines has been a cause of concern for decades in India. The practice of imposing punishment for a crime is an institutional one. For the smooth and consistent application of this practice, there is a requirement for sentencing guidelines. Mostly the guidelines are considered to be vague but as long as the fundamentals of sentencing are followed while giving sentence, the consistency is ensured to a certain level (Spjut, 1985).

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. In the absence of such structured sentencing guidelines, it leads to undue uncertainty and indiscriminate imposition of imprisonment and fine. The need gets reinforced when an analysis of the legislative drafting of IPC is done where the punishments stated are with a huge flexible range with limits on the maximum punishment and at times on the lowest punishment as well. It is the judge's harshness or leniency that does the guesswork for lawyers in the punishment that will be awarded instead of the objective factor such as factual circumstances of the case (Library of Congress, n.d.). Even with respect to fine, exercise of unguided discretion for the determination of amount of fine in the absence of sentencing guidelines can lead to arbitrariness and inconsistency in decision making. In *Arun Garg v. State of Punjab (2004) 8 SCC 251* 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. This is an interesting case as it deals with 304 B, which is one of the rare offenses in the IPC where imposition of fine is not prescribed at all. Moreover, the disparity and inconsistency in the application of fine by judges at the three levels reflect the utter lack of sentencing guidelines particularly with regard to the amount of fine and its need.

In *Bipin Bihari v. State of MP, Appeal (crl.) 986 of 2006* 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 brings us to the proposition whether fine can work as a viable alternative to imprisonment and does it commodify the offense. In *Omanakuttan v. State of Kerala (2006) 10 SCC 197* case, the fine given by the trial court and the high court of Rs. 50,000 was reduced by the Supreme Court to Rs. 1,000 because the courts failed in justifying the imposition of such a heavy fine. The illustrative cases discussed

above are just a drop in the ocean of uncertainty and inconsistency in the application of fine as a penalty.

The variation in the amount awarded is no longer just on the basis of the offense committed but also on the basis of the temperament and approach of the particular judge. If the fine awarded is insufficient, then it affects the justice that is tried to be achieved through this form of penalty. If it is excessive, then it loses its purpose if the offender is unable to pay the fine; however, it may create a deterrent effect for a few (Court Rule File).

### *3. Where the Monetary Sanction Stands as an Alternative to Imprisonment*

The most worrisome variant of fine in IPC, 1860 are those provisions where fine is mentioned as an alternative to imprisonment. The use of the word "or," that is, either imprisonment *or* fine, gives an option to the court to give just fine to the offender as a form of punishment (See table 2). The article has previously established that how in case of minor/petty offenses where the harm can be quantified in monetary terms or where the deterrence required is quite small, fine does play an efficient role as it qualifies in achieving penological goals and also proves to be cost effective in its administration. Had it been such that in IPC, such alternative option was provided only for petty offenses, it would have been acceptable, but not for the offences such as "Culpable Homicide, Death by Negligence, voluntarily causing grievous hurt, sexual harassment, assault, etc. where the nature of offense is not by far imagination petty or minor (See Table 2). When a death is caused, a fine alone cannot create a deter effect, nor can achieve retributive effect. In such cases, the loss suffered by the victim or its families cannot be quantified in monetary terms as it deals with privacy, humanitarian, and liberty rights. Fine as a punishment in such cases, and especially when and if the amount mentioned is as low as discussed in the article previously, leads to commodification of the crime.

One of the most important and bothering observation based out of accepting fine alone as a penalty under criminal law is whether this would lead to the commodification of the crime. Can it be concluded that by paying fine, it is essentially the price paid for buying the offense just as any other commodity (Malley, 2009). However, this argument can even be stretched for other type of punishment, that is, imprisonment. But 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. Moreover, when fine is accepted as a penalty for heinous crimes such as murder and rape, it demeans the harm and the pain caused to the victim and the society's collective conscience at large (Becker, 1974). Not just it demeans, it will indirectly provide a price and a license for commission of such offenses in exchange of a price (Malley, 2009). If the price (fine) set is

**Table 2.** Illustrative provisions under IPC where fine stands as an alternative to imprisonment.

| Section number | Provision/offense |
|---|---|
| 119 | Public servant concealing design to commit offense which is his duty to prevent |
| 120B (2) | Punishment of criminal conspiracy |
| 124A | Sedition |
| 125 | Waging war against any Asiatic Power in alliance with the Government of India |
| 136 | Harboring deserter |
| 143 | Punishment (for being a member of an unlawful assembly) |
| 144 | Joining unlawful assembly armed with deadly weapon |
| 146 | Rioting |
| 146 | Rioting, armed with deadly weapon |
| 153 | Wantonly giving provocation with intent to cause riot—if rioting be committed—if not committed |
| 153A. (Para I) | Promoting enmity between different groups on grounds of religion, race, place of birth, residence language, etc. And doing acts prejudicial to maintenance of harmony |
| 153B. | Imputations, assertions prejudicial to national integration |
| 167 | Public servant framing an incorrect document with intent to cause injury |
| 170 | Personating a public servant |
| 171E. | Punishment for bribery |
| 186 | Obstructing public servant in discharge of public functions |
| 201 (Para III) | Causing disappearance of evidence of offense, or giving false information to screen offender—if punishable with less than ten years' imprisonment |
| 213 (Para III) | Taking gift, etc., to screen an offender from punishment—if the offense is punishable with imprisonment not extending to 10 years |
| 214 (Para III) | Offering gift or restoration of property in consideration of screening offender—if the offense is punishable with imprisonment not extending 10 years |
| 217 | Public servant disobeying direction of law with intent to save person from punishment or property with forfeiture |
| 218 | Public servant framing incorrect record or writing with intent to save person from punishment or property with forfeiture |
| 219 | Public servant in judicial proceeding corruptly making report, etc., contrary to law |
| 269 & 270 | Negligent/malignant act likely to spread infection of disease dangerous to life, respectively, for 269 & 270 |
| 275 | Sale of adulterated drugs |
| 279 | Rash driving or riding on a public way |
| 280 | Rash navigation of vessel |
| 295 | Injuring or defiling place of worship with intent to insult the religion of any class |

*(continued)*

**Table 2. (continued)**

| Section number | Provision/offense |
|---|---|
| 297 | Trespassing on burial places, etc. |
| 298 | Uttering, words, etc., with the deliberate intent to wound the religious feelings of any person |
| 384 | Punishment for extortion |
| 418 | Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect |
| 448 | Punishment for house trespass |
| 489 | Tampering with property mark with intent to cause injury |
| 489C | Possession of forged or counterfeit currency notes or bank notes |
| 489E | Making or using documents resembling currency notes or bank notes |
| 500 | Punishment for defamation |
| 317 | Exposure and abandonment of child under 12 years, by parent or person having care of it |
| 318 | Concealment of birth by secret disposal of dead body |
| 304 | Punishment for culpable homicide not amount to murder |
| 304 A | Causing death by negligence |
| 308 | Attempt to commit culpable homicide |
| 315 | Act done with the intent to prevent child being born alive or to cause it to die after birth |
| 323 | Punishment for voluntarily causing hurt |
| 324 | Voluntarily causing hurt by dangerous weapons or means |
| 332 | Voluntarily causing hurt to deter public servant from his duty |
| 334 | Voluntarily causing hurt on provocation |
| 335 | Voluntarily causing grievous hurt on provocation |
| 336 | Act endangering life or personal safety of others |
| 337 | Causing hurt by endangering life or personal safety of others |
| 338 | Causing grievous hurt by endangering life or personal safety of others |
| 341 | Punishment for wrongful restraint |
| 342 | Punishment for wrongful confinement |
| 343 | Wrongful confinement for three or more days |
| 352 | Punishment for assault or criminal force otherwise than on grave provocation |
| 353 | Assault or criminal force to deter public servant from discharge of his duty |
| 354 A (2) | Sexual harassment and punishment for sexual harassment |
| 354 A (3) | Sexual harassment and punishment for sexual harassment |
| 355 | Assault or criminal force with intent to dishonor person, otherwise than on grave provocation |
| 356 | Assault or criminal force in attempt commit theft of property carried by a person |
| 357 | Assault or criminal force in attempt wrongfully to confine person |
| 358 | Assault or criminal force on grave provocation |
| 374 | Unlawful compulsory labor |

high, then it will discriminate between those offenders who can afford it and those who cannot, thereby making it a luxury of rich people. Moreover, if fines are accepted as an alternative to imprisonment, then the fundamental of criminal theory, which mandates imprisonment as a punishment, will also have to be revisited and modified.

Below are few illustrative cases where fine was used as a medium to reduce imprisonment:

1. In a recent case Allanoor & Anr. v. The State Of M.P. CRA No.719/1999, 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.
2. In *Jitender v. State of Madhya Pradesh Criminal Revision No:: 1028/2013*, 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).
3. In *Vasant Maruti Waiker v. State of Maharashtra (1991) 93 BOMLR 510*, where the accused being a public servant was charged for corruption (bribery) the learned judge reduced the sentence of rigorous imprisonment of 6 months to just 1 day and in exchange increased the fine amount from 1,000 to 10,000.

Considering the gravity of the offenses committed in the cases, it appears as if fine is employed as a cost to bargain lesser imprisonment, which reflects the dearth of deterrence/reformation/social justice goals being achieved. Therefore, in cases of serious crimes, for the optimal realization of the concept of punishment, imprisonment becomes essential to do justice with the offense. Very interestingly, the US system acknowledges that the penological goals of deterrence, compensation, restoration, vengeance, and denunciation, all cannot be achieved through one means of punishment. What is required is a combination of punishments to achieve the penological goals efficiently (Becker, 1974).

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 rest will become the hybrid of civil criminal liability (Becker, 1974).

## Conclusion

Crime and punishment have a direct co-relation. Punishment not just rectifies the damage caused by the crime but also aims to prevent the potential damage. There are

various penological goals as discussed in the article which provide justification for the infliction of punishment. The article primarily dealt with the placement of fine as a punishment in criminal law and analyzed it against the penological goals. The different variants of provisions as provided in the IPC were discussed, and it can be concluded that where on one hand, fine can work as an effective punishment in case of petty or financial offenses (Malley, 2009), on the other hand, it gets hard to comprehend how it can achieve penological goals in case of grievous offenses, especially when it is presented as an alternative to imprisonment (Malley, 2009). The article in its conclusion suggests the following:

1. There is an urgent need of updating (or provide updated figures of fine after a fixed interval) with respect to IPC as it is still suffering from the colonial hangover and outdated amounts of fine.
2. Certain sentencing guidelines with respect to the application of fines should be drafted where criteria such as calculable loss, restoration amount, wealth of the offender, and administrative costs can be made the criteria for ascertaining the amount of fine (Malley, 2009).
3. The provisions where fine is provided as an alternative to imprisonment should be amended at the earliest so that there is no gross violation of the principles of criminal justice where imprisonment becomes essential. Even if this may be justified for petty offenses, then the amendment should take place for grave crimes such as culpable homicide and death by negligence.

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## References

Ashworth, A. (2012). *Sentencing and criminal justice* (5th ed.). Cambridge, UK: Cambridge University Press.

Beccaria, C. (2009). *On crime and punishments* (5th ed.). New Brunswick, NJ: Transaction Publishers.

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* (pp. 1-54). New York: National Bureau of Research.

Binder, G. (2002). Punishment theory: Moral or political? *Buffalo Criminal Law Review*, *5*, 321-372.

Brooks, T. (2012). Punishment and moral sentiments. *The Review of Metaphysics*, *66*, 281-293.

Brown, D. K. (2004). Cost-benefit analysis in criminal law. *California Law Review*, *92*, 344-345.

Davis, M. (2009). Punishment theory's golden half century: A survey of developments from (about) 1957 to 2007. *The Journal of Ethics*, *13*, 73-100.

Feinberg, J. (1965). The expressive function of punishment. *The Monist*, *49*, 397-423.

Fine and fining—An evaluation. (1953). *University of Pennsylvania Law Review*, *101*, 1013-1030. Retrieved from http://www.jstor.org/stable/3309906

Forecast. (2015). Retrieved from http://www.slideshare.net/MaAnU16/the-journey-of-indian-rupee-since-1947-and-forecast-2015

Gendin, S. (1967). The meaning of "punishment." *Philosophy and Phenomenological Research*, *28*, 235-240.

Gillespie, R. W. (1988-1989). Criminal fines: Do they pay? *The Justice System Journal*, *13*, 365-378.

Gneezy, U., & Rustichini, A. (2000). A fine is a price. *The Journal of Legal Studies*, *29*, 1-17.

Greenawalt, K. (1983). Punishment. *The Journal of Criminal Law and Criminology*, *74*, 343-362.

Greene, J. A. (1988). Structuring criminal fines: Making an intermediate penalty more useful and equitable. *The Justice System Journal, 13*(1), 37-50.

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

Harcourt, B. E., Becker, G. S., & Ewald, F. (2013, September). *Becker and Foucault on crime and punishment: A conversation with Gary Becker, François Ewald, and Bernard Harcourt: The second session*. (University of Chicago Public Law and Legal Theory working paper). Chicago: University of Chicago Law School Chicago Unbound.

Harris, A., Evans, H., & Beckett, K. (2011). Courtesy stigma and monetary sanctions: Toward a socio-cultural theory of punishment. *American Sociological Review*, *76*, 234-264.

Hart, H. L. A. (1978). *Punishment and responsibility* (2nd ed.). Oxford, UK: Oxford University Press.

Hirsch, A. V., & Ashworth, A. (1992). *Principled sentencing*. Boston, MA: Northeastern University Press.

Hodges, D. C. (1957). Punishment. *Philosophy and Phenomenological Research*, *18*, 209-218.

Kant, I. (1998). *Groundwork of the metaphysics of morals*. Cambridge, UK: Cambridge University Press.

Kramer, M. H. (2011). *The ethics of capital punishment: A philosophical investigation of evil and its consequences*. Oxford, UK: Oxford University Press.

Library of Congress. (n.d.). *Sentencing guidelines India*. Retrieved from https://www.loc.gov/law/help/sentencing-guidelines/india.php

Mabbott, J. D. (1939). Punishment. *Mind*, *48*(190), 152-167.

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

Mann, K. (1992). Punitive civil sanctions: The middleground between criminal and civil law. *The Yale Law Journal*, *101*, 1795-1873.

Moore, M. S. (1984). A taxonomy of purposes of punishment. In M. S. Moore (Ed.), *Law and psychiatry: Rethinking the relationship* (pp. 233-239). Cambridge, UK: Cambridge University Press.

Morris, H. (1976). *Persons and punishment*. Los Angeles: University of California Press.

Orth, U. (2003). Punishment goals of crime victims. *Law and Human Behavior*, *27*, 173-186.

Pollock, F., & Maitland, F. (1895). *A history of English law* (2nd ed.). Cambridge, UK: Cambridge University Press.

Posner, R. A. (1985). An economic theory of the criminal law. *Columbia Law Review*, *85*, 1193-1231.

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*, *32*, 513-557.

Spitzer, S. (1975). Punishment and social organization: A study of Durkheim's theory of penal evolution. *Law & Society Review*, *9*, 613-638.

Spjut, R. J. (1985). Criminal law, punishment, and penalties. *Oxford Journal of Legal Studies*, *5*, 33-46.

Spohn, C. (2009). *How do judges decide? The search for fairness and justice in punishment* (2nd ed.). Thousand Oaks, CA: Sage.

Subramanya, R. (2013, January 4). The colonial hangover of India's rape laws. *The Wall Street Journal*. Retrieved from http://blogs.wsj.com/indiarealtime/2013/01/04/the-colonial-hangover-of-indias-rape-law/

Sverdlik, S. (1988). Punishment. *Law and Philosophy*, *7*, 179-201.

Venkat, V. (2014, September 7). Colonial yoke or bureaucratic insouciance? *The Hindu*. Retrieved from http://www.thehindu.com/sunday-anchor/sunday-anchor-colonial-yoke-or-bureaucratic-insouciance/article6386714.ece

Westen, D. A. (1969). Fines, imprisonment, and the poor: "Thirty dollars or thirty days." *California Law Review*, *57*, 778-821.

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*, 63-77.

Young, P. J. (1987). Punishment, money and legal order: An analysis of the emergence of monetary sanctions with special reference to Scotland. *Law Thesis and Dessertation Collection*. Edinburgh: Edinburgh Research Archive.

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