

## CHAPTER 3 PUNISHMENTS

**Section 53:** Punishment can be defined as suffering upon the offender by the court when he is adjudged guilty under the law. There are 5 types of punishment under this section.

### Theories of Punishment

1. Deterrent theory
2. Preventive theory
3. Retributive theory
4. Reformatory theory
5. Expiatory theory

### Punishments

1. Death
2. Imprisonment for life
3. Transportation for life (was omitted by Amendment Act of 1955 w.e.f.1/1/1956) (Kala Pani ki saja) Imprisonment here was only Rigorous.
4. Imprisonment - Rigorous or Simple
5. Forfeiture
6. Fine

- Types of punishment – 6

### Death

The death penalty may be awarded in the following cases:

Sec.121: waging or attempting to wage a war against government.

Sec.132: Abetting mutiny and it actually being committed.

Sec.194: Giving or fabricating false evidence upon which an innocent suffers death.

Sec.195A: Giving false evidence under threat or inducement upon which innocent suffers death.

Sec.302: Murder

Sec.305: Abetment of suicide to a minor, insane, delirious, idiot or an intoxicated person who commits suicide.

Sec.307: Attempt to murder a person under a sentence of imprisonment for life if hurt is caused in such attempt.

Sec.364A: kidnapping for ransom.

Sec.376A,376AB,376DB,376E: Rape.

Sec.396: Dacoity accompanied with murder.

Sec.354 CRPC: The court has to give special reasons in awarding the death penalty.

### **Bachan Singh vs. State of Punjab(1980)**

SC held that the death sentence to be awarded in the “*rarest of the rare case*” and not otherwise.

### Imprisonment for life

Life here means the whole life or till the natural death occasions.

The question of lifetime was addressed in the case of UOI vs. Sriharan & others Nayab Singh vs. State of Punjab.

### Transportation for life

This punishment has been abolished and instead it is now read as imprisonment for life. This was converted as a rigorous life imprisonment.

### Imprisonment

They are divided in two of the categories: 1. Rigorous / 2. Simple

### Forfeiture of property

Sec.126

### Fine

Sec.154

**Section 53A:** This section was inserted in IPC by CRPC (Amendment) Act,26 of 1955 in order to abolish 'transportation for life' as a form of punishment and substituted "imprisonment for life" in its place.

**Section 54:** empowers the appropriate government (i.e. central govt. in cases where (O) is committed in UT's and state govt. Where (O) is committed in a state) to commute (without the consent of the offender) sentence of death to any other punishment provided in the code.

This section has to be read with S.433 CrPC and an exception to the general rule under these sections is provided in 416 of CrPC.

NHRC has no jurisdiction to recommend any commutation of death sentence as held in ***Bani Kanta Das vs. State of Assam***(2009).

Power to grant pardon is a constitutional power vested with the President(Article 72) and Governor(Article161). Such clemency petition can be filed by the convicted person, his relatives or others concerned.

***Sher Singh vs. State of Punjab***(1983): SC held that delay in execution of death sentence exceeding two years itself does not entitle a person of sentence to demand quashing of death sentence and convert the same into life imprisonment.

***Jagdish vs. State*** (2009): The division bench of SC stated the prisoner's wait to execution is very frightful, the longer the wait the convict should get the chance of commutation of sentence from death to life imprisonment.

**Section 55:** empowers the same appropriate govt. to commute (without the consent of the offender) the sentence of imprisonment for life to imprisonment of either description of a term not exceeding 14 years.

Sec.55 distinguishes between Commutation and remission of punishment. Former is alteration of the original punishment to some other sort of punishment, whereas the latter is reduction of the original punishment without changing its very nature & character.

**Section 55A:** Appropriate Govt. In respect of any sentence to which UT's power extends there the central govt. Will be termed as appropriate govt. And where state executive's power extends there state govt., Will be termed so.

**Section 56:** this section was repealed by Removal of Racial Discriminations Act 1949.

**Section 57:** fractions of terms of punishment – The word ‘life’ have been interpreted by various courts for the sake of this section i.e. a Person’s natural life. Life imprisonment does not mean to be a term of 14 years or 20 years but the whole life, unless it has been remitted, suspended or commuted by the appropriate govt.

***Gopal Vinayak Godse vs. State of Maharashtra*** (1961), the SC through its constitutional bench unanimously held that there is no provision in the law where by a sentence for life imprisonment with no formal remission by an appropriate govt., can be automatically treated as one for a definite period. Sec.57 does not say imprisonment for life shall be deemed of 20 years for all purposes.

**Section 63:** (O) and penalty must be proportionate to the nature of crime. The paying capacity of the accused has to be borne in mind while imposing such fines, so that he is in a position to pay.

**Section 64:** Imprisonment for non payment of fine – punishments inflicted under this section: 1. Imprisonment as well as fine.

2. Imprisonment or fine.

3. With only fine.

Awarding a sentence for default of payment of fine is court’s discretion; here the provision of set-off stated under sec.428 CrPC is not applicable. Therefore, a person can be let free for the period of imprisonment after set-off but in the case of default of fine.

**Section 65:** Limit to imprisonment for non payment of fine – the maximum punishment for default of fine -  $1/4^{\text{th}}$  of the imprisonment for the offence.

**Section 66:** description of imprisonment for non-payment of fine could be of any description to which the offender is sentenced.

**Section 67:** Imprisonment in default of payment of a fine can only be simple imprisonment. The scale in this section refers to fines actually imposed by the court. It states where the amount of fine is under Rs.50/- the imprisonment cannot be morethan 2 months; amount under Rs.100/- then not morethan 4 months and in other cases not morethan 6 months.

**Section 68:** Imprisonment imposed for default of payment of fine shall be terminated as soon as the payment of fine is done or is levied by the process of law under Sec.421 CrPC.

**Section 69:** Termination of imprisonment on payment of proportional part of fine. This means the section states for the proportional remission of imprisonment on payment of proportionate part of fine.

**Section 70:** Fine liveable within 6 years, or during the period of imprisonment; if death is caused then that doesn’t discharge an offender’s liability the fine will be realised from the property of such offender.

**Section 71 & 72:** Limit of punishment of offence made up of several offences:

- Where an offence is made up of parts, each of which constitutes an offence, the offender shall not be punished for more than one offence unless expressly provided for separate punishment in such cases.
- Where a particular act falls within two or more separate definitions of offences the offender shall not be furnished with the most severe punishment then the one the

court could award for any of that offence. The accused will be punished only for one offence as this section is based on the principle of double jeopardy as enshrined under the article 20(2).

- Where several acts of which (one or more than one) would by itself or themselves constitutes an offence, when combined constitute a different offence, the accused shall not be punished with a more severe punishment than the one, that the court could award for any one of such offences.
- Where it is doubtful as to which of the several offences a person is guilty of, he shall be punished for the offence for which the least punishment is provided.

**Section 73:** Solitary Confinement - Solitary confinement is an isolation of the Prisoner from other co Prisoners and complete segregation from society. It is granted in exceptional cases, unparalleled brutality and atrocity.

*Sunil Batra vs. Charles Shobraj* : Any harsh isolation of a Prisoner from the society of fellow prisoners by cellular detention under the Prisons Act, 1894 is penal under sec.29 and 30 of such act and so must be inflicted only in accordance with fair procedure and in absence of which the confinement it will be violative of article 21.

*Sunil Batra vs Delhi Administration(1978):* Supreme Court addressed the question of prisoner's right to live with dignity in jail.

**Section 74:** Limit of solitary confinement