
ANALYSIS OF THE ROLE OF LEGISLATURE TO REVIEW AND REVISE THE INDIAN PENAL CODE PERIODICALLY CONSIDERING THE EFFECT OF INFLATION

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ABSTRACT

'*Crime*' we hear this word more often and there is no doubt that crime rate in India is increasing day-by-day. According to the report published by the National Crime Records Bureau in 2020, 66,01,285 FIRs in toto were registered.

There is a saying, '*change is the only constant thing*' and Legislature to cope up with the situation and to control the increasing crime has enacted various laws providing stringent punishments. Amongst all the laws, Indian Penal Code, 1860 is the old legislation covering almost all sorts of crimes.

During the years 1834-1838, a committee headed by the Lord Macaulay drafted this piece of legislation which can still effective even in 21st century. The legislation is an example of vision and intellect of human. However, it's been more than 160 years' since this legislation had enacted. No doubt, Legislature has amended the legislation many times to tackle crime. However, looking at the increasing inflation, the question arises in mind that if there is a need to review and revise the Indian Penal Code?

INTRODUCTION

‘Crime’ is defined as, “An illegal act for which someone can be punished by the government especially for the gross violation of the law”¹. There is a famous Latin Maxim “*Actus Non Facit Reum Nisi Mens Sit Rea*” this maxim tells us that generally a man cannot be guilty of crime unless the two important aspects are present, which are – ‘*actus reus*’ meaning guilty act and ‘*mens rea*’ meaning guilty mind. Every crime which occurs on this planet includes these two aspects. Therefore, we can assume that the origin of the Crime and the Criminal Law lies in a primitive system. In ancient times, all wrongs are to be redressed by the private revenge as Retributive Theory of Punishment suggests i.e. ‘An eye for an eye’ and likewise treatment, some sort of retaliation.

As described by the Thomas Hobbes in his famous book ‘*The Leviathan*’, there was no systematic law in the uncivilised society i.e. in ‘State of Nature’ as he described it. Every man was liable to be attacked by the another person on his person or property and there was a constant conflict in a society. Everyone was in conflict with everyone, ‘all against all’ sort of situation arose. The person attacked was either died from the effect of injury or overpowered his opponent. This lead to Retribution and revenge for all wrongs sort of idea developed. Retributive Theory of Punishment was a forerunner of criminal justice. Then, as time advanced, injured person agreed to accept compensation instead of killing the other person².

Subsequently, ‘State’ emerged and functions of the State were highlighted everywhere in the world. One of which is to administration of justice i.e. process by which legal system of the government is executed. Various legislations were enacted and various offences were also defined and punishments thereof also provided.

Significance of Study

In India, the roots of the criminal jurisprudence can be traced to ancient texts like *Shrutis*, *Smritis* and the execution of which can be traced from the time of ‘Manu’³. There were various crimes as Robbery, Assault, theft etc. which were included by ‘Manu’ in category of Crimes and the punishments were prescribed for the same. In olden days, King protected his subjects i.e. civilians/citizens of his kingdom and the citizens paid him revenue. The king administered

¹ Dictionary, Marriam-Webster, available at [Crime | Definition of Crime by Merriam-Webster](#)

² 156th Law Commission Report, *Indian Penal Code*, (August 1997) 2

³ 156th Law Commission Report, *Indian Penal Code*, (August 1997) 3

the Justice himself and if the criminal found guilty, he was punished with fine. Then this fine went to king's treasury⁴.

Based on the similar idea, the Indian Penal Code was enacted and the 'Fine' was included in Sec. 53 as a form of Punishment. The researcher in the present article intends to depict that increasing inflation in India gives negative impact on the 'amount of fine' prescribed as a punishment for an offence.

Research Questions

- 1) Whether the Legislature has succeeded in reviewing and revising the Indian Penal Code periodically considering the increasing inflation in India?
- 2) Whether inflation affects the existing laws in India partially or *in toto*?

Literature Review:

1) Indian Penal Code, 1860 –

In 1833, Lord Macaulay moved in the House of Commons to codify the whole criminal law in India and bringing about the uniformity. He was of the opinion that, "No country was in need of Code as India and there never was a country in which the want might be so easily supplied." And thus Charter of 1833 was introduced and single Legislature was established for the whole British India⁵. The Legislature had power to legislate for Hindus and Mohammedan alike for presidency towns as well as for mofussil areas.

By the charter of 1833, the governor-general of India was empowered to legislate for the whole of India. Lord Macaulay constituted of himself and two members' committee to assist the governor-general in this task. During the years of 1834-38, committee comprised of Lord Macaulay himself and Mr. Millet and Sir John M'leod drafted a draft which afterwards became the famous 'Indian Penal Code'. During the period 1838 -1860, it was a mere draft and then after undergoing the elaborate revision by the legislative council; it was passed into law and became the Act XLV of 1860.

⁴ Ibid

⁵ 156th Law Commission Report, *Indian Penal Code*, (August 1997) 9

Sections from Indian Penal Code Which Provide Relatively Less Fine

Total Section – 511 in Indian Penal Code

Sr. No.	Sections	Punishment ('Fine' in particular)
1.	Sec. 53 - Punishments	<p>Firstly – Death,</p> <p>Secondly – Imprisonment for Life</p> <p>Fourthly – Imprisonment, which is of two descriptions, namely – a) Rigorous, that is, with hard labour, and b) Simple</p> <p>Fifthly – Forfeiture of Property</p> <p>Sixthly - Fine</p>
2.	Sec. 171 – Wearing Grab Or Carrying Token Used By Public Servant With Fraudulent Intent	Fine may extend to Rs. 200/-
3.	Sec. 171H – Illegal Payments In Connection With An Election	Fine may extend to Rs. 500/-
4.	Sec. 171I – Failure To Keep An Election Accounts	Fine may extend to Rs. 500/-
5.	Sec. 172 – Absconding To Avoid Service Of Summons By Public Servant Or As Such	a) Summons by public servant or as such – Fine may extend to Rs. 500/-

		b) Produce document or electronic record in court of justice – Fine may extend to Rs. 1000
6.	Sec. 173 – Preventing Service Of Summons Or Other Proceedings, Or Preventing Publication Thereof	<p>a) Intentionally prevents lawful affixing, intentionally removes such summons, intentionally prevents lawful making or proclamation – Fine may extend to Rs. 500/-</p> <p>b) Produce document or electronic record in court of Justice – Fine may extend to Rs. 1000/-</p>
7.	Sec. 174 – Non-Attendance In Obedience To An Order From Public Servant	<p>a) Intentionally omits to attend – Fine may extend to Rs. 500/-</p> <p>b) Attend in person or by agent in court – Fine may extend to Rs. 1000/-</p>
8.	Sec. 175 – Omission To Produce Document To Public Servant By Person Legally Bound To Produce It	<p>a) Intentionally omits – Fine may extend to Rs. 500/-</p> <p>b) Document or electronic record has to be produced or delivered up to court of justice – Fine may extend to Rs. 1000/-</p>

9.	Sec. 176 – Omission To Give Notice To Or Information To Public Servant By Person Legally Bound To Give It	Fine varies from Rs. 500 to 1000/-
10.	Sec. 177 - Furnishing False Information	a) Legally bound to furnish information on any subject to any public servant – fine may extend to Rs. 1000/- b) Information which he is legally bound to give respects the commission of the offence – may punished with fine
11.	Sec. 178 – Refusing Oath Or Affirmation When Duly Required By Public Servant To Make It	Fine may extend to Rs. 1000/-
12.	Sec. 180 – Refusing To Sign Statement	Fine may extend to Rs. 500/-
13.	Sec. 183 - Resistance To Taking Of Property By The Lawful Authority Of Public Servant	Fine may extend to Rs. 1000/-
14.	Sec. 184 – Obstructing Sale Of Property Offered For Sale By Authority Of Public Servant	Fine may extend to Rs. 500/-
15.	Sec. 185 – Illegal Purchase Or Bid For Sale By Authority Of Public Servant	Fine may extend to Rs. 200/-
16.	Sec. 186 – Obstructing Public Servant In Discharge Of Public Function	Fine may extend to Rs. 500/-

17.	Sec. 187 – Omission To Assist Public Servant Bound By Law To Give Assistance	Fine ranges from Rs. 200 – 500/-
18.	Sec. 188 – Disobedience To Order Duly Promulgated By Public Servant	a) If it tends to cause obstruction - Fine may extend to Rs. 200/- b) If it causes danger to human life - Fine may extend to Rs. 1000/-
19.	Sec. 272 Adulteration Of Food Or Drink Infected For Sale	Fine may extend to Rs. 1000/-
20.	Sec. 273 - Sale Of Noxious Food Or Drink	Fine may extend to Rs. 1000/-
21.	Sec. 274 - Adulteration Of Drugs	Fine may extend to Rs. 1000/-
22.	Sec. 275 - Sale Of Adulterated Drugs	Fine may extend to Rs. 1000/-
23.	Sec. 276 - Sale Of Drugs As Different Drugs	Fine may extend to Rs. 1000/-
24.	Sec. 277 - Fouling Water Of Public Spring Or Reservoir	Fine may extend to Rs. 500/-
25.	Sec. 278 - Making Atmosphere Noxious To Health	Fine may extend to Rs. 500/-

26.	Sec. 279 - Rash Driving On Public Way	Fine may extend to Rs. 1000/-
27.	Sec. 280 - Rash Navigation Of Vessel	Fine may extend to Rs. 1000/-
28.	Sec. 282 - Conveying Person By Water For Hire In Unsafe Or Overloaded Vessel	Fine may extend to Rs. 1000/-
29.	Sec. 283 - Danger Or Obstruction In Public Way Or Line Way Of Navigation	Fine may extend to Rs. 200/-
30.	Sec. 284 - Negligent Conduct With Respect To Poisonous Substance	Fine may extend to Rs. 1000/-
31.	Sec. 285 – Negligent Conduct With Respect To Fire Or Combustible Substance	Fine may extend to Rs. 1000/-
32.	Sec. 286 - Negligent Conduct With Respect To Explosive Substance	Fine may extend to Rs. 1000/-
33.	Sec. 287 - Negligent Conduct With Respect To Machinery	Fine may extend to Rs. 1000/-
34.	Sec. 288 - Negligent Conduct With Respect To Pulling Down Or Repairing Buildings	Fine may extend to Rs. 1000/-
35.	Sec. 289 – Negligent Conduct With Respect To Animal	Fine may extend to Rs. 1000/-

36.	Sec. 292 - Sale Of Obscene Books	a) on first conviction fine may extend to Rs. 2000/- and b) on second conviction - Fine may extend to Rs. 5000/-
37.	Sec. 293 - Sale Of Obscene Objects To Young Person	c) on first conviction fine may extend to Rs. 2000/- and d) on second conviction - Fine may extend to Rs. 5000/-
38.	Sec. 294A - Keeping A Lottery Office	Fine may extend to Rs. 1000/-
39.	Sec. 323 - Punishment For Voluntarily Causing Hurt	Fine may extend to Rs. 1000/-
40.	Sec. 334 - Voluntarily Causing Hurt On Provocation	Fine may extend to Rs. 500/-
41.	Sec. 335 - Voluntarily Causing Grievous Hurt On Provocation	Fine may extend to Rs. 2500/-
42.	Sec. 336 - Act Endangering Life Or Personal Safety Of Others	Fine may extend to Rs. 250/-
43.	Sec. 337 - Causing Hurt By Act Endangering Life Or Personal Safety Of Others	Fine may extend to Rs. 500/-

44.	Sec. 338 - Causing Gracious Hurt By Act Endangering Life Or Personal Safety Of Others	Fine may extend to Rs. 1000/-
45.	Sec. 341 - Punishment For Wrongful Restraint	Fine may extend to Rs. 500/-
46.	Sec. 342 - Punishment For Wrongful Confinement	Fine may extend to Rs. 1000/-
47.	Sec. 352 - Punishment For Assault Or Criminal Force Otherwise Than On Grave Provocation	Fine may extend to Rs. 500/-
48.	Sec. 447 - Punishment For Criminal Trespass	Fine may extend to Rs. 500/-
49.	Sec. 448 - Punishment For House Trespass	Fine may extend to Rs. 1000/-
50.	Sec. 489E - Making Or Using Documents Resembling Currency Notes Or Bank Notes	a) making bank notes - Fine may extend to Rs. 500 b) person whose name appears on a document the making of which is an offence, refuses, without lawful excuse to disclose to police officer - Fine may extend to Rs. 200
51.	Sec. 491 – Breach Of Contract To Attend On And Supply Wants Of Helpless Person	Fine may extend to Rs. 200/-
52.	Sec. 510 – Misconduct In Public By A Drunken Person	Fine may extend to Rs. 10/-

2) 156th Law Commission Report on Indian Penal Code:

The report is by the Chairman of the National Law Commission, Justice Jaychandra Reddy. The said commission brings to a conclusion one of the major tasks assigned by the Government of India.

The recommendations have been made with a view to plugging the loopholes and making the provisions of the Indian Penal Code, 1860 more effective

3) Code of Civil Procedure, (Amendment) Act, 1999:

The Amendment to the Code of Civil Procedure in 1999 was made with view to simplify the procedure and reduce the delays. The amendment was significant and introduced radical changes in the Code.

4) Inflation rate in India by Statista.com:

The said report was published on Oct. 27, 2021 and accessed by the researcher on Nov. 10, 2021. The said report depicts the Inflation rate in India from 1986 to 2020, with projections up until 2026.

5) Naresh Kanwar, Inflation and the Indian Economy, Vol. 16 (Issue 1 Ver. 1) | Journal of Business and Management, PP. 28-34, 2014:

In this above-mentioned Research Paper, the researcher analyses the inflation and its factors, the challenges that it brings and provided a summary of inflation since Independence.

6) Could inflation in developed countries have a spillover effect on India? By Poonam Gupta, Director General at the National Council of Applied Economic Research, NCAER, Published in the Economic Times, Oct. 12, 2021:

The above said article provides insights regarding whether inflation India has become too high, or too entrenched? Whether it is necessary for India to change the course of monetary policy?

7) Amresh Samantaraya & R. K. Pattanaik, Indian Experience of Inflation | Vol. 41 Issue 4 | Economic & Political Weekly:

The said article talks about the inflation record of India from 1970s onwards till 1990s. the article also talks about the factors which affected inflation and increased it in India.

8) Sweta Kumari & G. P. Samanta, Monetary Policy Transparency and Anchoring of inflation expectations in india, RBI Working Paper Series PP. 1 (03/2021), Reserve Bank of India, 2021:

The abovementioned paper provides a measure of degree of monetary policy transparency in India using text-mining techniques and, examines the impact of transparency on anchoring of Inflation expectations.

9) Prices and Inflation, Economic Survey 2020-21, Vol 2 PP. 162-203:

The abovementioned survey is conducted by National Council of Applied Economics Research, NCAER. The survey finds out the sole focus on CPI-C inflation during COVID-19. Due to COVID-19 induced disruptions, an overall increase in price momentum is witnessed, driving inflation since April 2020, whereas, positive base effect has been a moderating factor. The survey further analyses and compares the situation of inflation.

10) R. V. Raveendran, Anomalies in Law and Justice, [Eastern Book Company Ed. 1 2021]:

The abovementioned book is a compilation of several lectures by the author on various anomalies in law and justice. The author talks about some anomalies in law and justice which cannot be corrected due to inherent limitations of the legal system.

Objectives of Study:

- To understand the role of Legislature in reviewing and revising statutes periodically.
- To understand as how inflation plays a crucial role in affecting existing laws in India.
- To understand the punishments prescribed in Indian Penal Code and the rationale behind it.
- The understand the importance of punishment.

Scope and Limitations:

In the present article, researcher intends to describe the role of legislature to review and revise the statutes with changing time particularly, Indian Penal Code, 1860. The researcher will be focusing on the aspect that how 'Fine' forms an important part of the punishment. The present article deals with the increasing inflation in India and how the 'inflation' is a crucial factor 'affecting the amount of fine' prescribed as punishment for any offence in the Indian Penal Code.

The scope of the present article is limited to studying the amount of fine prescribed as a punishment and how inflation is affecting the fine.

Research Methodology:

Looking at the Research Questions it can be assumed that a Doctrinal Method would be appropriate way to solve the problem and find an exact solution to the problem. Doctrinal Research is best known as traditional approach towards the problem. It is a library based research. It has been proved that this method is a systematic approach to arrive at the solution of the problem. It includes the study of various case laws, study of available literature this helps researcher to understand the background of the topic in hands and helps him to grab the important aspects from the available literature.

Summary of Chapters:

1.7.1. Chapter I – Rise of Indian Penal Code, 1860:

The origin of crime and criminal law is as old as the history of *Homo Sapiens*. In India, it can be traced in *Shrutis, Smrutis, and Puranas*, we can see that *Manusmriti* provided various forms of crimes and punishments were also prescribed therein⁶. Later, kingdoms formed and people became subjects of King. The king protected his subjects and subjects in return provided him revenue.

Later on, this concept was replaced by the concept of 'State' and 'Government' and slowly, people began to understand the importance of Government. Various laws were enacted for the betterment of the society. Acts which are prohibited by the law are being stated and one who violates them will be punished as punishments were prescribed.

⁶ 156th Law Commission Report, *Indian Penal Code*, (August 1997) 2

1.7.2. Chapter II – Punishments and their Importance:

There are various theories of punishments prevailing in the world and various jurists have provided their thought on these theories.

In India, Lord Macaulay, in 1833 moved in House of Commons to codify the criminal laws in India and provide a uniform law for India and to bring uniformity in India⁷. Various kinds of practices were prevailing in India at that time for giving punishments to a wrongdoer. Therefore, to provide uniformity and certainty, a new Code was enacted which had every aspect of theories of punishments included in it.

1.7.3. Chapter III – Analogy of ‘Imprisonment’ and ‘Fine’ as a Punishment:

Sec. 53 of the Indian Penal Code, 1860, provides the punishments to which offenders are liable under the provisions of this Code. It provides imprisonment for life, death, imprisonment of two descriptions simple and rigorous, forfeiture of property and fine etc. In this chapter I will be providing the co-relation of the ‘imprisonment’ and ‘fine’.

1.7.4. Chapter IV – Inflation in India:

Inflation is general rise in prices of services and goods in a particular country, resulting in fall in value of money, the rate at which this happens⁸. After the independence, there has been gradual increase in price level which weighted the average of prices of individual goods and services and ultimately resulting decrease in value of money⁹.

1.7.5. Chapter V – Effect of Inflation on concept of Fine:

An assessment of the inflation record of India provides that India has seen a gradual increase from 1970 onwards till 1990¹⁰. And in 21st century, we are still witnessing the increase of prices of goods and services in India. This is affecting the value of money and thereby decreasing the value of money at national level and at international level also. And Indian Penal Code, was proposed and it was passed into a law in 1860 as Act of XLV of 1860. And since then, 161 years have passed by and the value of fine was prescribed considering at that time only.

⁷ 156th Law Commission Report, *Indian Penal Code*, (August 1997) 9

⁸ *Inflation*, Oxford Learners Dictionary, available at [inflation noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com](https://www.oxfordlearnersdictionaries.com/definition/english/inflation)

⁹ Amaresh Samantaraya & R. K. Pattnaik, Indian Experience of Inflation | Vol. 41, Issue 4 | Economic and Political Weekly, [Indian Experience of Inflation : | Economic and Political Weekly \(epw.in\)](https://www.epw.in/)

¹⁰ Ibid

1.7.6. Chapter VI – Conclusion:

Considering the inflation and its gradual increase it can be concluded that it is definitely affecting the value of money and thereby affecting the ‘fine’ prescribed for the offence under Indian Penal Code, 1860. As we are living in 21st century and it is the need of the hour to make ‘certain’ and ‘just’ changes in the Indian Penal Code, 1860 for effective implementation of the Code and creating the fear of punishment in the mind of criminal.

RISE OF INDIAN PENAL CODE, 1860

“Everything begins with an idea”

- *Earl Nightingale*

The quote is given by the Earl Nightingale, an American Radio speaker and author who was an expert of human character development, but this quote probably come in mind of Vasco Da Gama, a Portuguese explorer who discovered way to India by way of Cape of Good Hope. And since then, Portuguese started to carry on trade with India, and later on, Britishers came in India and began to carry on trade by way of East India Company, established under Charter of 1600. The same Charter gave East India Company to make laws for the betterment¹¹. The said Charter was again revised and renewed by Charles I and Charles II in 1609 and in 1661 respectively.

Then came Charter of 1668 which transferred Bombay to East India Company, and directed that proceedings in the court should be like unto those that were established in England. Then, courts were established in 1672 and tried offences and provided punishment to offences like robbery and theft etc. Later on, in 1726 Mayors’ Courts were established to for proper administration of justice in India. But the laws administered were arbitrary because the Mayor and Alderman were servants of company. Then after realizing the situation, in 1772 Warren Hastings took steps for proper administration¹². He established Fouzdari Adalat in each district for criminal trials and in these courts, Kazis, Muftis were sat to expound the law and determine the how far criminal is a guilty, and the Collector of each district was a supervisory authority. Sadar Nijamat Adalat was also established in addition to Fouzdari Adalat to revise and confirm the sentences of Fouzdari Adalat in cases and offences involving fines exceeding Rs. 100/-

¹¹ Ratanlal and Dhirajlal, Indian Penal Code, 1860, PP. i (1982)

¹² Ibid

Result of this was, Warren Hastings did apply English law to India and also, he treated Hindu law and Muslim law equally.

In 1773, the Regulating Act, was passed and promptly affected the administration of criminal justice. Under this Act, a Governor – general was appointed and he was to be assisted with the councilors. A Supreme Court was also established at Fort William. This court took cognizance of the all civil matters, criminal matters, admiralty matters etc. and appeal from the Supreme Court lay to King-in-council. Although, there were some defects in that Act and to cover those defects, Act of 1781 i.e. amending Act which provided and defined the powers of Governor-general. Lord Cornwallis in 1793, come with new idea to give a fresh look to existing system in presidency areas of Bombay, Madras and Calcutta till year 1833.

Now, in 1833 Lord Macaulay moved in the House of Commons to codify the whole criminal law in India. This is obvious because there were lacunas and the laws in India are not uniform. Lord Macaulay was of the opinion that, “No country was in need of Code as India and there never was a country in which the want might be so easily supplied.” And thus Charter of 1833 was introduced and single Legislature was established for the entire British India¹³.

Therefore, it is clear from the above discussion that, the legal system and administration of justice was not easy at that time and a need for uniform code was recognized. And therefore, the charter of 1833 was regarded as a remarkable benchmark in history of the Indian Penal Code, 1860 as it empowered the governor-general of India to legislate for the whole of India. Lord Macaulay constituted of himself and two members’ committee to assist the governor-general in this task. During the years of 1834-38, committee comprised of Lord Macaulay himself and Mr. Millet and Sir John M’leod drafted a draft which afterwards became the famous ‘Indian Penal Code’. During the period 1838 -1860, it was a mere draft and then after undergoing the elaborate revision by the legislative council; it was passed into law and became the Act XLV of 1860¹⁴.

PUNISHMENTS AND THEIR IMPORTANCE

Merriam-Webster Dictionary defines a word ‘Punishment’ as *a penalty inflicted on an offender through judicial procedure*¹⁵. And providing punishment to a human being is relatable

¹³ *Supra* 5 at 5

¹⁴ 156th Law Commission Report, *Indian Penal Code*, (August 1997) 10

¹⁵ *Punishment*, Merriam-Webster Dictionary available at [Punishment Definition & Meaning - Merriam-Webster](#)

throughout the history of crime. There are various jurists who have provided their thought regarding the punishment. For an example, John Austin in his legal theory provides that the essence of all laws is the command of sovereign addressed to subjects and it should be coupled with a threat of sanction if the command is disobeyed¹⁶.

There are theories of punishments which have evolved around the globe. This evolution of these theories depicts the journey how barbaric nature of man changed into a believer of reformation. I will be explaining this journey in this chapter.

Basically, there are five theories regarding the punishments which evolved during the time namely,

1) Deterrent Theory:

The term '*Deter*' used in the above word means to abstain from doing a wrongful act i.e. crime. The main objective of this theory is to prevent criminals from doing any crime or attempting that crime in future. It provides for minimizing the crime by creating a fear of punishment in the mind of criminal. It looks forward to set an example in a society by punishing a criminal so that a fear of punishment to be created in people's mind for such punishment. To put it simply, if someone commits a crime then he is punished with a severe punishment so that awareness is being spread in the society regarding the punishment for repeating that crime.

This theory is utilitarian in nature because of its object. A man is punished not because he has committed a crime, but he is punished because to ensure that a crime may not be committed. Jurists who supported this theory are Jeremy Bentham, Thomas Hobbes and John Austin. According to them, the punishment should be a severe one, it must be certain and it should be instant. They provide that Severity, Certainty and Instant punishment are crucial while awarding punishment in order create fear in mind of people.

As I stated above, the John Austin provides that law is command of sovereign and law should provide sanction to those who disobey it. To understand it properly, we can take simple example of people stopping at signal. There are several people who stop at signal and understand that it is for proper traffic management and aspect of safety is also hidden in it, but there are people who stop at signal because to avoid the fine or fees etc. which can be levied upon individual if he breaks signal and does not follow it. Hence, from this example we can

¹⁶ See Atchuthen Pillai, Jurisprudence and Legal Theory, (3rd Edition, Reprinted in 2019)

draw an inference that it is acceptable that there is a fear in mind of people regarding the payment of fine or fees as prescribed by the law.

2) Preventive Theory:

This theory is based on the objective that to disable criminal to prevent crime. Preventive theory serves as an effective deterrent which is based on factors of promptness. The theory significantly suggests that the goal of the punishment must be to prevent crimes¹⁷.

3) Retributive Theory:

This theory is additionally referred to as the 'theory of vengeance'. The theory is based on the maxim called '*Lex Talionis*' which means an eye for an eye or a tooth for a tooth. This theory depicts the barbaric nature of human. This theory is not accepted as it is found to be archaic, barbaric. Although it prevailed in olden times, but modern human rights philosophy definitely slams it and rejects this theory.

4) Reformatory Theory:

Mahatma Gandhi said, "*Condemn the Sin, not a Sinner*". Therefore, the approach must be changed. This theory is all about that approach. The theory suggests we must change the behavior of the criminal by way of the individualization. If we think on the saying of Mahatma Gandhi we understand the morale behind it. No matter what the crime a criminal does, he is a person at the end of the day. And in this way, efforts should be taken to change his bad behavior into a 'good one' during the time of punishment. Therefore, efforts to be made to transform him, change his mind set and make him a better person during the time of punishment. And keeping this thing in mind, the concepts like '*parole*' and '*probation*' evolved and they have been accepted around the globe.

5) Expiatory Theory:

The theory also known as the '*compensatory theory*' is a blend of deterrent theory and retribution theory. The theory suggests that a criminal who has inflicted an injury to a person must pay compensation for the loss done or injury caused to the victim or victim's family. Based on this idea, Code of Criminal Procedure Code, 1973 was amended in the year 2009 and sec. 357A was introduced which provides Victim compensation scheme. The sub-section (1)

¹⁷ *Theories of Punishments*, MCR HRD Institute, available at [THEORIES OF PUNISHMENT \(mcrhrdi.gov.in\)](http://THEORIES OF PUNISHMENT (mcrhrdi.gov.in))

of section 357A states that every state govt. in co-ordination with the central govt. shall prepare the scheme for providing funds for the aim of the compensation to the victim or his dependents who have suffered a loss or an injury as a result of crime and who require rehabilitation¹⁸.

These abovementioned theories have provided and encouraged a thought that a punishment is an important aspect of crime and by way of punishment only, we can provide and maintain law and order in the society.

ANALOGY OF ‘IMPRISONMENT’ AND ‘FINE’ AS A PUNISHMENT

A proper administration of justice and criminal law is an essential for a proper functioning of constitutional democracy. The criminal law of India is a protector as it protects society from the deliberate and blameworthy acts of the individual(s).

It is well settled principle that a prevention is better than cure. Criminal law prescribes preventive measures for betterment of the society. As discussed in prior chapter, the purpose of the punishment is (i) Retribution, (ii) preventive, (iii) Deterrence and (iv) reformative. Punishment varies depending upon the gravity of crime. There are certain offences against property and person which stood firm even in 21st century.

If we look at the section 53 of the Indian Penal Code, 1860, it provides punishments and can be read as –

“The punishments to which offenders are liable under the provisions of this Code are - First - Death;

Secondly - Imprisonment for life

Thirdly – Omitted

Fourthly - Imprisonment, which is of two descriptions, namely: (1) Rigorous, that is, with hard labour; (2) Simple;

Fifthly - Forfeiture of property;

Sixthly - Fine¹⁹. ”

¹⁸ See, Code of Criminal Procedure, Sec. 357A (1973)

¹⁹ Indian Penal Code, Sec. 53, (1860)

As, we are living in a modern world where there is no room for retribution and more importantly, state as a punishing authority never thinks in that direction. The Indian Penal Code, provides freedom to the courts in awarding prescribed sentence. The aim is to teach offender a lesson and show people that a particular crime attracts such kind of punishment thereby creating deterrence.

The freedom given to the courts of law for inflicting a punishment is in form of '*discretion*' which depicts the relation between the 'imprisonment' and 'fine'. To understand this, I will be stating an example as – A has committed a crime of hurt to B, A is punishable under sec. 323 of the IPC i.e. Punishment for voluntarily causing hurt²⁰. Here, it is up on court to decide whether to give 'A' an imprisonment of either description for a term which may extend to one year or fine which may extend to thousand rupees or both.

Now, in this example, the '*discretion*' is upon the court which can vary from situation to situation where, court by checking and examining the circumstances decides to give A imprisonment which may extend to one year. Here, depending on circumstances of the case, court may award punishment of 1 month also or 1 year also or court may reject the idea to give imprisonment to him and may opt for awarding him fine which may extend up to Rs. 1000/-. Here, court is the one to decide whether to award him Rs. 100 /- or Rs. 1000/- as a fine as a punishment, or court may decide both i.e. to award him one month's imprisonment and Rs. 100/- or one year's imprisonment and Rs. 1000/- fine.

Therefore, from the above example, it is clear that court has a discretion to provide punishment as prescribed which ultimately describes a relationship between the imprisonment and fine as a punishment.

INFLATION IN INDIA

Inflation in India is common and it is so common as that of common cold. You sleep tonight and wake up in the morning and having your coffee, and reading newspaper and first line you read is "*Petrol prices are increased by Rs.7*". This is the simple and might be a frustrating example stating the inflation in India.

Inflation is a rise in general level of prices of goods and services in an economy over a period of time. When the general price level rises, each unit currency buys fewer goods and services.

²⁰ See, Indian Penal Code, Sec. 323, (1860)

Consequently, inflation reflects a reduction in purchasing power per unit of money a loss of real value in medium of exchange²¹.

Inflation is a permanent characteristic of Indian economy. After second world war, there has been a strong inflationary curve on economy, because of the high demand and low supply because of rapid growing Indian population²². Inflation in India can be calculated in majorly two aspects namely, (a) Inflation in Pre-Independence Era, and (b) Inflation in Post-Independence Era. As for the first one, it was a British Period and Britishers were governing India. By the Act of 1935 i.e. Government of India Act, 1935, we understand that the Governor-General of India was to exercise power vested in him, nominating the directors of the Reserve Bank of India and in removing from office any director so nominated by him. Governor – General of India, may, in his discretion, appoint and remove from the office the Governor and Deputy Governor of the Reserve Bank of India.²³ And the Government of India were so keen in establishing the Reserve Bank because the Reserve Bank Bill was rushed through the Legislature in a special session and placed on statute book on 6th March 1934.²⁴ Therefore, it is hard to establish the inflation rate in that era.

As to speak about the Post-Independence Era, India saw political crisis, partition of the country and huge massacres due to this, inflation remained bottled-up during the period from 1949 - 1969²⁵. During this time, India witnessed nationalization of 14 banks.

From 1969 – 1991, period of inflation and economy landing into balance of payment crisis and forced to adopt reaching economic reforms covering various sectors of economy. The four year's period i.e. 1971 – 1972, 1974 – 1975 was the period of hyper-inflation in the country with inflation rate touching at 15.25% but the government measures brought back the high inflation rate on track. In decade 1980, the inflation rate was approximately at 7.5%, comparatively low to that of 1971 – 1972 & 1974 – 1975. In 1990 – 1991, the inflation rate again moved in upward direction as it was at 10%.²⁶

²¹ Naresh Kanwar, Inflation and the Indian Economy, Vol. 16 (Issue 1, Ver. 1) | Journal of Business and Management pp. 28-34, 2014, available at [E01612834.pdf \(iosrjournals.org\)](https://iosrjournals.org/E01612834.pdf)

²² Ibid

²³ See, Government of India Act, 1935 available at [ukpga_19350002_en.pdf \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1935/0002/en.pdf)

²⁴ Formative Years: 1935 – 39 – Reserve Bank of India available at [Microsoft Word - 001 \(rbi.org.in\)](https://rbi.org.in/Microsoft%20Word-001.pdf)

²⁵ Id at 21

²⁶ Ibid at 21

Later, from 1991 - 2009, liberalization of imports, adoption of flexible exchange rate system, convertibility of rupee, deregulation of interest rate, and abolition of industrial licensing and the restrictive provisions of Monopolies and Restrictive Trade Practices Act, 1969 are some of reforms introduced by the government and they have changed the entire Indian Economy. Because of these measures, the inflation rate in initial years was at 10%. The second half of this, i.e. years from 2000 to 2009 witnessed a remarkable decrease in inflation rate as it was almost constant at 5.08%. This was possible due to RBI policy, cooling of global inflation, and depreciation of rupee was slowed down²⁷.

Reserve Bank of India conducted two surveys regarding the inflation expectations in India namely; Inflation Expectations Survey of Households (IESH) and Survey of Professional Forecasters (SPF). With the help of these surveys RBI attempted to examine how well the inflation expectations are being anchored in India from time to time, particularly during the period when the degree of transparency remained reasonably stable around a high level²⁸. Both the surveys namely, SPF and IESH were conducted at a quarterly frequency in earlier periods, though their frequency has been made six-times a year or aligned with bi-monthly monetary policy review window in recent years²⁹.

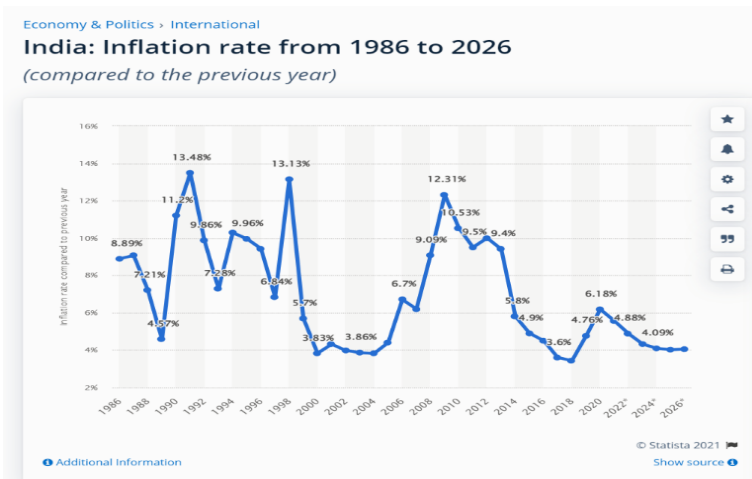
The survey depicts the inflation from 2009-10 to 2018-19, the said survey provides inflation has been within the comfort zone of inflation target, and the expectation also appear to follow declining path before stabilizing around new low values. Kindly refer this below provided graph, it provides and includes the surveys conducted by the Reserve Bank of India for understanding trends of inflation.³⁰

²⁷ Naresh Kanwar, Inflation and the Indian Economy, Vol. 16 (Issue 1, Ver. 1) | Journal of Business and Management pp. 28-34, 2014, available at [E01612834.pdf \(iosrjournals.org\)](https://iosrjournals.org/E01612834.pdf)

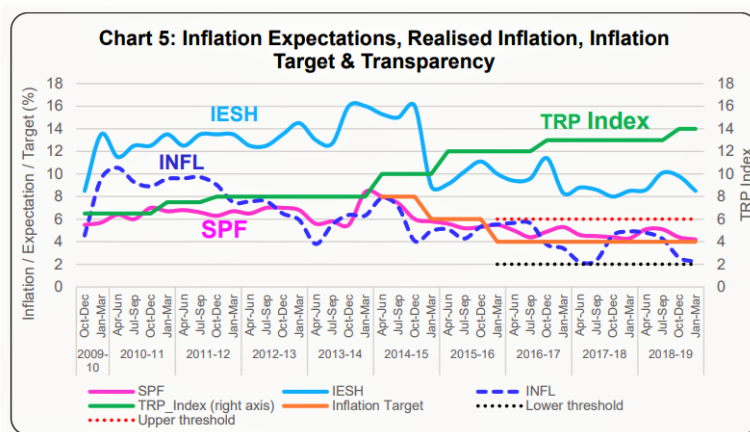
²⁸ Sweta Kumari & G. P. Samanta, Monetary Policy Transparency and Anchoring of Inflation Expectations in India, RBI Working Paper Series, PP. 17 (03/2021), Reserve Bank of India.

²⁹ Ibid at 19

³⁰ See Sweta Kumari & G. P. Samanta, Monetary Policy Transparency and Anchoring of Inflation Expectations in India, RBI Working Paper Series, PP. 22 (03/2021), Reserve Bank of India.



For the better understanding of inflation in India after independence, I am providing attaching a report published by Statista depicting overall inflation in India since 1986 and the said report provides predictions till 2026.³¹



Source: RBI and Authors' Calculations.

EFFECT OF INFLATION ON CONCEPT OF FINE

Whenever a law specifies a fine, fee, penalty etc. it has to be periodically revised by the legislature by taking note of effect of inflation. When legislature fails to do so, they lead to anomalies. Provisions of law, perfectly reasonable and logical when enacted, may, with passage of time, become either irrelevant or absurd or meaningless. Worst case scenario, they

³¹ Inflation Rate in India, available at Statista, • [Inflation rate in India 1984-2024 | Statista](#)

may also become unreasonable or unfair or cease to serve the purpose for which they were enacted.³²

Now, from above discussion in earlier chapter, it is clear that inflation has increased in India post-independence. Now, taking this rising inflation into consideration, the legislature was duty bound to revise and review the Indian Penal Code, 1860 from time to time. This is because levy of fine is one of the mode of punishment as provided in sec. 53 of the Code. Levy of fine is either a punishment in itself or is a punishment in addition to or as an alternative to imprisonment. Levy of fine apart from being a punishment for the offence committed, is also projected to be deterrent against the commission of similar offence.

When Indian Penal Code come into force in 1860, amount of prescribed by way of fine as an alternative to imprisonment was intended to be a severe deterrent against similar future crimes, which in its effect was equivalent to punishment of imprisonment. To understand it in more appropriate manner, I am giving an example – Sec. 274 and 275 of the Code provides for punishment of imprisonment of either description for a term which may extend to six months or with a fine extending to Rs. 1000/- or with both, to any person who adulterated drugs or sells adulterated drugs. For understanding this more properly, refer the chart on page 5 *Supra*.

From the year 1860 till 2021, it's been 161 years passed by and from the discussion in earlier chapter it is clear that value of money is gradually decreasing because of inflation. Therefore, to compare, today Rs. 1000/- bears no value as that of in 1860. If we try to evaluate the difference between 'Rs. 1000/- in 1860' and 'Rs. 1000/- in 2021', the difference is huge. Hence, to equate it properly, when an offender is punished with a fine of Rs. 1000/- in 1860, for the same offence, an offender should be punished with a fine not less than Rs. 1,00,000/-. When the provision of fine was made in 1860, the amount was so high as to be an effective alternative punishment, and many offenders undergo the imprisonment if they could not afford to pay it³³.

Hence, Indian Penal Code was brought into effect about 160 years ago, the fine levied then was adequate punishment for crime and adequate deterrent against future crime. But, the value of money is decreased gradually over these years and due to which the deterrent effect fixed by

³² R. V. Raveendran, *Anomalies in Law and Justice*, 6 [Eastern Book Company, Ed. 1, 2021]

³³ See R. V. Raveendran, *Anomalies in Law and Justice*, 8 [Eastern Book Company, Ed. 1, 2021]

the Code in 1860 by prescribing Rs. 1000/- to a person who adulterated drugs or sells adulterated drugs, has become nil today.

To Understand this properly, we need to look at the Amendment made to the Code of Civil Procedure in year 1999. The amendment was significant and introduced radical changes in the Code. When we see the section 4 of the said Amendment, it provides that, “*in section 32 of the Code of Civil Procedure, in clause (c) for the words [not exceeding five hundred rupees] the words [not exceeding five thousand rupees] shall be substituted.*”³⁴ And if we see the section 5 of the said amendment, it provides that, “*in sec. 58 of the Code of Civil Procedure, in clause (a) of sub-section 1, for words [one thousand rupees] with the words [five thousand rupees] shall be substituted. And clause (b) was substituted with [where a decree is for the payment of sum of money not exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks] shall be substituted. And in sub-section 1A of the sec. 58 for the words [five hundred rupees] the words [two thousand rupees] shall be substituted.*”³⁵

These changes were brought for simplifying the procedure and reduce the delay, and if we read these sections we understand the rationale of the legislature that, the prior to the amendment it was not very logical to look at those provisions keeping in the mind the increasing inflation.

To put it simply, what is the value of Rs. 1000/- in today’s scenario? The answer to this question can be an extra-large 24-inch pizza with several toppings on it or a breakfast at luxurious restaurant. But then question arises whether offender is paying Rs. 1000/- as a fine in 2021 as a punishment for a crime or is he buying a pizza or having a breakfast? Today, it is as good as letting him go away without any punishment. There is no deterrent effect survives for the amount of fine prescribed by the Indian Penal Code.

This failure of legislature to revise and review the Code periodically taking into consideration effect of inflation on fine, is a serious lacuna, anomaly in the law and it has certain adverse effects which are as follows:

- 1) It encourages crime as fine is ceased to be an adequate deterrent punishment for an offender

³⁴ Code of Civil Procedure, (Amendment) Act, 1999 available at [coc-1999.pdf \(chdsla.gov.in\)](http://coc-1999.pdf(chdsla.gov.in))

³⁵ Code of Civil Procedure, (Amendment) Act, 1999 available at [coc-1999.pdf \(chdsla.gov.in\)](http://coc-1999.pdf(chdsla.gov.in))

- 2) It creates mentality that even though an offender commits a crime, he can get away easily by paying the amount of fine prescribed under Code and eventually, turning that particular person a habitual offender, perhaps worse, a hardened criminal
- 3) The question arises in mind of common people that is this a mockery of law?

Ultimately, defeats the purpose of discretion given to the court for awarding the punishment prescribed, rather in this situation, the courts are bound to provide imprisonment as a punishment which again lead to overcrowding in prisons in India.

CONCLUSION

Now, we are at the concluding stage of the article and after the above discussion, we can answer the research questions framed at the start of this article. As to the first question, we can see that legislature has not succeeded in reviewing and revising the Indian Penal Code periodically considering the increasing inflation in India. This is because, over the years, the price of money decreased and fine prescribed in 1860 is not just in 2021 and we can definitely say that the deterrent effect which was created in that era is now dead in 2021 and the sole reason is inflation and failure on part of legislature to revise and review the Code periodically. The Law Commission in its 156th Report has also recommended that the amount of fine to be changed at least twenty times and accordingly, a provision in Code of Criminal Procedure regarding the powers of Judicial Magistrates First Class to impose such fine.³⁶

As to answer the second research question, the answer is in positive that inflation does affect the existing laws in India and that too *in toto*. This because if a law specifies a fine, fee, penalty etc. it has to be periodically revised by the legislature by taking note of effect of inflation. And from above discussion in previous chapters it is clear that inflation and amount of fine prescribed have direct relationship with each other and the same needs to be considered by the legislature.

³⁶ 156th Law Commission Report, *Indian Penal Code*, (August 1997) pp. 342-343

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