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177. Subs. by Act 26 of 1955, sec. 117 and Sch., for "transportation" (w.e.f. 1-1-1956).
178. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation" (w.e.f. 1-1-1956).
179. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
180. *State of MP v Ratan Singh*, 1976 Cr LJ 1192 : AIR 1976 SC 1552 [LNIND 1976 SC 215] ; see also *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LJ 1345 ; *Gopal Vinayak Godse*, AIR 1961SC 600 : (1961) 1 Cr LJ 736 : (1961) 63 Bom LR 517 [LNIND 1961 SC 11] SC.
181. *Life Convict, Laxman Naskar v State of WB*, AIR 2000 SC 2762 [LNIND 2000 SC 1180] : 2000 Cr LJ 4017 .
182. See the comments under section 45 and section 55.
183. *Chandrakant Vithal Pawar v State of Maharashtra*, 2011 Cr LJ 4900 (Bom); *Syed Ghouse Alias Babu v State of AP*, 2009 Cr LJ 311 (AP)(DB).

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CHAPTER III OF PUNISHMENTS

[s 58] Offenders sentenced to transportation how dealt with until transported.

[Rep. by the [Code of Criminal Procedure](#) (Amendment) Act, 1955 (26 of 1955), sec. 117 and Sch. (w.e.f. 1-1-1956).]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 59] Transportation instead of imprisonment.

[Rep. by the [Code of Criminal Procedure](#) (Amendment) Act, 1955 (26 of 1955), sec. 117 and Sch. (w.e.f. 1-1-1956).]

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 60] Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

COMMENT—

Life imprisonment means rigorous imprisonment for life.¹⁸⁴ A distinction between 'imprisonment for life' and 'imprisonment for a term' has been maintained in the [Indian Penal Code](#) in several of its provisions. Second, by its very terms section 60 is applicable to a case where 'an offender is punishable with imprisonment which may be of either description' and it is only in such case that it is competent for the Court to direct that 'such imprisonment shall be either wholly rigorous or wholly simple or that any part of such imprisonment shall be rigorous and the rest simple'. And it is clear that whenever an offender is punishable with 'imprisonment for life' he is not punishable with 'imprisonment which may be of either description', in other words section 60 would be inapplicable. The position in law as regards the nature of punishment involved in a sentence of imprisonment for life is well settled and the sentence of imprisonment for life has to be equated to rigorous imprisonment for life.¹⁸⁵

¹⁸⁴. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] : AIR 2005 SC 3440 [LNIND 2005 SC 701] .

¹⁸⁵. *Naib Singh case*, (1983 (2) SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536.

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CHAPTER III OF PUNISHMENTS

[s 61] Sentence of forfeiture of property.

[Rep. by the [Indian Penal Code](#) (Amendment) Act, 1921 (XVI of 1921), sec. 4.]

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CHAPTER III OF PUNISHMENTS

[s 62] Forfeiture of property in respect of offenders punishable with death, transportation or imprisonment.

[Rep. by the [Indian Penal Code](#) (Amendment) Act, 1921 (XVI of 1921), sec. 4.]

COMMENT—

These sections were deleted by the [Indian Penal Code](#) (Amendment) Act of 1921. They imposed the sentence of forfeiture of property. The Court recommended reintroduction of these sections because they have become necessary to combat the cancerous growth of corruption. These provisions would have a determined effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their position of power.¹⁸⁶

¹⁸⁶. *Shobha Suresh Juman v Appellate Tribunal, Forfeited Property*, [AIR 2001 SC 2288](#) [[LNIND 2001 SC 1184](#)] : [2001 Cr LJ 2583](#) .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 63] Amount of fine.

Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

COMMENT—

A fine is fixed with due regard to circumstances of the case in which it is imposed and the condition of life of the offender. When the legislature has not fixed any upper limit for the quantum of fine in respect of a particular offence, the Court has freedom to fix any amount but then the Court must see that the fine imposed is not excessively high or repulsively low. Financial capacity of the accused, enormity of the offence and extent of damage caused to the victim of the offences etc. are relevant considerations in fixing up the amount.^{187.}

[s 63.1] Fine not to be harsh or excessive.—

The general principle of law running through sections 63 to 70 is that the amount of fine should not be too harsh or excessive. Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases.^{188.} Section 63 does not prescribe any limit to the amount of fine, but it should not be excessive. In the present case having regard to the gravity of the offence and the illegal gains made by the accused, the fine imposed to the tune of Rs. 60 crores was held to be not excessive.^{189.}

[s 63.2] Applicability in other Statutes.—

Sections 63–70 [IPC, 1860](#) and provision of [Cr PC, 1973](#) relating to the award of imprisonment in default of payment of fine would apply to all cases wherein fines have been imposed on an offender unless 'the Act, Regulation, Rules or Bye-law contains an express provision to the contrary'.^{190.}

^{187.} *Sebastian v State of Kerala*, [1992 Cr LJ 3642](#) (Ker) : [1992 \(3\) Crimes 864](#) (Ker)

^{188.} *Shahejadhkhan Mahebubkhan Pathan v State of Gujarat*, [JT 2012 \(10\) SC 8](#) [[LNIND 2012 SC 630](#)] : [2012 \(10\) Scale 21](#) [[LNIND 2012 SC 630](#)] : [AIR 2012 \(SCW\) 5875](#) (In this judgment the SC

quoted the previous edition of this book). See also *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 .

189. *Association of Victims of Uphaar Tragedy v Sushil Ansal*, AIR 2017 SC 976 .

190. *Shantilal v State of MP*, (2007) 11 SCC 243 [LNIND 2007 SC 1171] : 2008 Cr LJ 386 : (2008) 1 SCC (Cr) 1.

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 64] Sentence of imprisonment for non-payment of fine.

¹⁹¹. [In every case, of an offence punishable with imprisonment as well as fine, ¹ in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable ¹⁹² [with imprisonment or fine, or] with fine only, in which the offender is sentenced to a fine,] it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

COMMENT—

The term of imprisonment in default of payment of fine is not a sentence. It is a penalty which a person incurs on account of non-payment of fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole either in appeal or in revision or in other appropriate judicial proceedings or "otherwise". A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. It is, therefore, not only the power, but also the duty of the Court to keep in view the nature of offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of fine.¹⁹³ A default sentence is no punishment under law. It is only a method of enforcement of the direction for payment of amounts directed to be paid as fine. Wherever the Criminal Court has the jurisdictional competence to impose a fine, sections 64–70, IPC, and [section 30 Cr PC, 1973](#) stipulate that the Court can recover the same by imposition of a default sentence. The jurisdiction to impose a default sentence is only incidental to the power to impose a fine and the duty of the Court to recover the same.¹⁹⁴ The wording of the section is not happy, but the Legislature intended by it to provide for the award of imprisonment in default of payment of fine in all cases in which fine can be imposed to induce the offender to pay the fine.

The cases falling under this section are:—

Where the offence is punishable with (a) imprisonment with fine, or (b) imprisonment or fine, or (c) fine only, and the offender is sentenced to (i) imprisonment, or (ii) fine, or both, the Court may sentence the offender to a term of imprisonment in default of payment of fine. A term of imprisonment for non-payment of fine is not a substantive sentence. It is only a penalty for the default. It cannot be added to the substantive sentence so as to see whether the maximum imprisonment that could be awarded for the offence is not being exceeded.¹⁹⁵

1. 'Imprisonment as well as fine.'—Magistrates cannot award compensation in addition to fine.¹⁹⁶

The full Bench of Madras High Court held that imprisonment in default of payment of fine cannot be directed to run concurrently with substantive sentence because both the sentences are distinct in view of [sections 53](#) and [64 IPC, 1860](#).^{197.}

[s 64.1] Sentence and penalty distinguished.—

The term of imprisonment in default of payment of fine is not a sentence. It is penalty incurred for non-payment of fine. A sentence is a term of imprisonment, which the offender has to undergo unless it is remitted in a further judicial proceeding or otherwise. A term of imprisonment on default in payment of fine stands on a different footing. The further imprisonment is due to non-payment by refusal or otherwise. The convict can pay the amount and get rid of further imprisonment.^{198.}

[s 64.2] Fine and Compensation.—

There exists a distinction between fine and compensation, although, in a way it seeks to achieve the same purpose. An amount of compensation can be directed to be recovered as a 'fine' but the legal fiction raised in relation to recovery of fine only, it is in that sense 'fine' stands on a higher footing than compensation awarded by the Court.^{199.}

[s 64.3] Power of Magistrate to impose Sentence of imprisonment in default of fine.—

As per [section 30 of Cr PC, 1973](#) the Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law: provided that the term is not in excess of the powers of the Magistrate under [section 29 Cr PC, 1973](#); and shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine. The imprisonment awarded may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under [section 29 of Cr PC, 1973](#). The default sentence is not to be in excess to the limitations imposed under [section 30 Cr PC, 1973](#).^{200.}

[s 64.4] Default sentence on non-payment of Compensation.—

Undoubtedly, there is no specific provision in the Code which enables the Court to sentence a person who commits breach of the order of payment of compensation. But in *Hari Singh v Sukhbir Singh*,^{201.} Supreme Court held that since the imposition of compensation under [section 357\(3\) Cr PC, 1973](#) was on account of social concern, the Court could enforce the same by imposing sentence in default, particularly when no mode had been prescribed in the Code for recovery of sums awarded as compensation in the event the same remained unpaid. The position is re-iterated in *Sugnathi Suresh Kumar v Jagdeeshan*.^{202.} The provisions of sections 357(3) and 431 [Cr PC, 1973](#) when read with [section 64 IPC, 1860](#) empower the Court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.^{203.}