

**DISTRICT COURT BHANDARA**  
**SECOND WORKSHOP**

**SUMMARY OF LEGAL WORKSHOP PAPER ON THE SUBJECT**  
**“SENTENCING POLICY AND PUNISHMENT”**

Punishing the offenders is a primary function of all civil States. The incidence of crime and its retribution has always been an unending fascination for human mind. However, during the last two hundred years, the practice of punishment and public opinion concerning it has been profoundly modified due to the rapidly changing social values and sentiments of the people. The crucial problem today is whether a criminal is to be regarded by society as a nuisance to be abated or an enemy to be crushed or a patient to be treated or a refractory child to be disciplined ? Or should he be regarded as none of these things but simply be punished to show to others that anti-social conduct does not finally pay.

It is in this perspective that the problem of crime, criminal and punishment is engaging the attention of criminologist and penologists all around the world. Punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. It is this principle which underlies the doctrines concerning the desirability and objectives of punishment.

There are valid reasons for justification of punishment to offenders who are convicted for an offence. They may briefly be stated as follows :-

1. **Deterrence.**- Punishment dissuades a person from future wrong doing by making punishment severe enough so that the benefit or pleasure derived from the offence is outweighed by the pain and probability

of punishment.

2. **Incapacitation.**- Incarceration has the effect of confining the prisoner and physically incapacitating him from committing a crime. The most dangerous criminals may be sentenced to imprisonment for life or even a sentence of death may be invoked for heinous and brutal crimes such as murder etc.

3. **Restoration.**- For some minor offences punishment may in the form of restoration such as fines or payment of compensation to the victims of crime or his/her relatives or families.

4. **Rehabilitation.**- Some punishments are directed to reform the offender and ensure his rehabilitation as a law abiding citizen. It aims at bringing about a change in the offender's attitude to make him socially acceptable.

Major theories of punishment are (1) deterrent theory,(2) retributive theory, (3) preventive theory, (4) reformatory theory.

**Deterrent Theory** :- This kind of punishment presupposes infliction of severe penalties on offenders with a view to deterring them from committing crime. The deterrent theory also seeks to create some kind of fear in the mind of others by providing adequate penalty and exemplary punishment to offenders which keeps them away from criminality.

**Retributive Theory** :- Retributive theory suggests that evil should be returned for evil without any regard to consequences. The theory underlined the idea of vengeance or revenge. It suggest that punishment is an expression of society's disapprobation for offender's criminal act.

**Preventive Theory** :- It is based on proposition 'not to avenge crime but to prevent it.'

**Reformatory Theory** :- Reformatory theory seeks to bring about a change in the attitude of offender so as to rehabilitate him as a law

abiding member of society. Punishment is used as a measure to reclaim the offender and not to torture or harass him. Reformatory theory condemns all kinds of corporal punishments.

With new criminological developments, particularly in the field of penology, it has been generally accepted that punishment must be in proportion to the gravity of the offence. It has been further suggested that reformation of criminal rather than his expulsion from society is more purposeful for his rehabilitation. With this aim in view, the modern penologists have focused their attention on individualisation of offender through treatment methods. Today old barbarous methods of punishment such as mutilation, branding, hanging, subjecting him to pillory or poetic punishment, etc. are completely abandoned.

The present modes of punishment commonly include imposition of monetary fines, segregation of the offender temporarily or permanently through imprisonment or externment or compensation by way of damages from the wrong-doer in case of civil injury.

Dr. P.K. Sen, a well known authority on Indian Penology has given a comparative account of the old and new penal systems. He suggested that punishment must be devised on case to case basis so that it could be free from rigidity and capable of modification with changing social conditions.

Indian Penal system seems to be less effective as a control mechanism because it leaves many a criminals to enjoy the ill-gotten gains of their criminal acts. Undoubtedly, the Indian penal policy is based on individualised system but it seems to be working unjustly in favour of

advantaged group, particularly the political high-ups and those who are in power, with the result the deterrent effect of punishment is considerably diminished. This is more true with punishment in bribery and corruption cases and big financial scams where influential persons are dealt with leniently because they are more articulate and are capable of moneavouing things in their favour. Mild punishment or no punishment in such cases undermines the effectiveness of punishment as a measure of crime control mechanism.

In *Mohammed Jamiluddin Nasir versus State of West Bengal*, AIR 2014 SC 2587 the Hon'ble Supreme Court has laid down six principles of the sentence.

1. The sentence to be awarded should achieve twin objectives **a) Deterrence** and **b) Correction**
2. The Court should consider social interest and consciousness of the society for awarding appropriate punishment.
3. Seriousness of the crime and the criminal history of the accused is yet another factor.
4. Graver the offence longer the criminal record should result severity in the punishment.
5. Undue sympathy to impose inadequate sentence would do more harm to the public
6. Imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.”

Hon'ble Supreme Court in *State of M.P. v. Najab Khan & Ors.* AIR 2013 Supreme Court 2997 held that “in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of

the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”

**In State of Punjab v. Balwinder Singh and Ors. AIR 2012 Supreme Court 861**, Hon'ble Apex Court have held that while considering the quantum of sentence to be imposed for the offence of causing death or injury by rash and negligent driving of automobiles, one of the prime considerations should be deterrence. The persons driving motor vehicles cannot and should not take a chance thinking that even if he is convicted he would be dealt with leniently by the Court. For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt. Order reducing sentence of imprisonment to period of 15 days custody already undergone on ground that fine has been enhanced to Rs.25,000/- each in a case where 5 persons have died because of rash and negligent driving of accused-drivers is improper. Supreme Court modified the order by imposing sentence of R.I. For six months and fine of Rs.5,000/- each.”

## **PROBATION OF OFFENDERS**

The release of offenders on probation is a treatment device prescribed by the Court for persons convicted of offences against the law, during which the probationer lives in the community and regulate his own life under conditions imposed by the court or other constituted authority, and is subject to supervision by a probation officer.

The philosophy underlying probation is based on the assumption that most persons who become criminals do so because of their environment and special circumstances and that in suitable cases it is possible to change the conditions which led to a person's fall from proper standards and reclaim him as a sound normal citizen.

Probation is a treatment reaction to law-breaking and an attempt to mitigate the rigours of the offender rather than making him suffer incarceration in the prison institution. In short, probation offers an opportunity for the probationer to adjust himself to normal society rather than leading an isolated and dull life in the prison.

Section 3 of the Probation of Offenders Act deals with power of Court to release certain offenders after admonition. Section 4 of the Act deals with power of Court to release certain offenders on probation of good conduct. Section 5 of the Act deals with power of Court to require released offenders to pay compensation and costs. Section 6 of the Act deals with restriction on imprisonment of offenders under twenty one years of age. Section 7 of the Act deals with report of probation officer to be confidential and section 8 of the Act deals with variation of conditions of probation.

Section 9 of the Act deals with the procedure in case of offender failing to observe conditions of bond. Section 10 of the Act deals with provisions as to sureties. Section 11 of the Act deals with Courts competent to make order under the Act, appeal and revision and powers of Courts in appeal and revision. Section 12 of the Act deals with removal of disqualification attaching to conviction.

The appropriate stage at which probation order may be made by a Court is at the time of pronouncement of judgment. The Judge may make such an order straightway without calling for a report from the probation officer or he may prefer to call for a report. **(Mohd. Aziz Mohd. Nasir v. State of Maharashtra, 1976 SCC (Cri) 164).**

Unfortunately, the provision of Section 360 of the Code of Criminal Procedure, 1973, being rigid, permits no discretion whereas there is always a need to investigate in each case whether probation will suit to the requirements of the delinquent or not. There may be a case where a teenager might not be suited for probation, while on the other hand, an offender who is otherwise a recidivist, might respond well if he is admitted to the benefit of the probation law.

Unlike Section 360 of Cr.P.C the Probation of Offenders Act has done away with the distinction on the basis of age or sex and as such all the offenders whether below 21 or above 21 years of age are equally entitled to avail the benefit of release on probation of good conduct or after admonition. Moreover, grant of probation is not confined to first offenders as in case of Section 360 of Cr.P.C. The Court is competent to release a previous convict on probation if it thinks it proper to do so having regard to the circumstances of the case including the character of the offender and

nature of the offence. Thus the scope of the Probation of Offenders Act is far more wider than the provisions of Section 360 of the Code of Criminal Procedure, 1973.

One of the important features of the Probation Act is the provision regarding placement of the offender under the supervision of a probation officer. But there is no provision under Section 360 of the Code of Criminal Procedure, 1973. The power to grant probation under the Probation of Offenders Act is discretionary. However, Section 6 lays down a restriction on the Court not to impose a sentence of imprisonment on offenders below 21 years of age when found guilty of offences not punishable with imprisonment for life.

The Supreme Court in **Gulzar v. State of Madhya Pradesh, AIR 2008 SC 383**, clarified that benefit of probation under Section 4 of the Probation of Offenders Act, 1958 and Section 360 of the Code of Criminal Procedure, 1973 cannot co-exist at the same time in same area. The scope of Section 4 of the Probation of Offenders Act is much wider as it applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Again, section 360 Cr.P.C. does not provide for any role of probation officers in assisting the Courts in relation to supervision and other matters whereas Probation of Offenders Act does contain such a provision. As provided by Section 8(1) of the General Clauses Act, where the provisions of Probation of Offenders Act have been applied, the provisions of Section 360 Cr.P.C. would be wholly inapplicable.

In **Jugal Kishore Prasad v. State of Bihar, AIR 1972 SC 2522**, the Supreme Court ruled that an accused though under 21 years of age cannot be released on probation if found guilty under Section 326 and 149,

I.P.C. which is a premeditated offence punishable with imprisonment for life.

The Supreme Court took a strict view of the case involving sex-perversity and refused to allow the benefit of release on probation to the accused in **Smt. Devki v. State of Haryana, AIR 1979 SC 1948**.

The decision of the Supreme Court in **Phul Singh v. State of Haryana, AIR 1980 SC 249** is a pointer to the consistency of judicial trend in disallowing the benefit of probation to offender's guilty of offences violating sex or morality. In the said case, the accused Phul Singh, a youth of 22 years of age without any previous criminal record was overpowered by sex urge and entered his next door neighbour's house in broad day light and committed rape on latter's twenty-four year's wife who was alone in the house. The victim complained to her mother, thereupon the accused was presented and sentenced to four years' rigorous imprisonment by the Sessions Court. The High Court confirmed the sentence. On appeal, the Supreme Court upheld the sentence but reduced it from 4 to 2 years thus blending deterrence with correctional approach. The Court observed that despite the fact that the accused was young offender, that he had no previous criminal record, that he had committed the crime in a fit of momentary impulse and was repentant for his act, that he was related to victim's family who were ready to forgive the molester keeping in view his relationship with them, no leniency can be shown to the accused in cases of such "lust-loaded criminality".

The Supreme Court in **Masarullah v. State of Tamil Nadu, AIR 1983 SC 654**, allowed the benefit of Section 4 and 6 of the Probation of Offenders Act to the appellant who was convicted under Sections 452 and 379 of the Indian Penal Code. Taking a lenient view, the

Court observed that the appellant belonged to a middle class respectable family but unfortunately he fell in bad company of undesirable elements and the criminal influence of movie accentuated the dormant criminal propensity in him and he committed the crime. Under the circumstances, the accused deserved to be treated leniently and therefore, ordered to be released on probation of good conduct.

The crucial question involved in the case of **Sudesh Kumar v. State of Uttarakhand, AIR 2008 SC 1120**, was related to interpretation of Section 6 of the Probation of Offenders Act which provides that when any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment ( but not with imprisonment for life), the Court by which the person is found guilty shall not sentence him to imprisonment, unless it is satisfied, that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or Section 4 and release him on probation. In such case, he shall record his reason for not allowing the benefit of release on probation to the offenders.

While interpreting Section 6 of the Probation of Offenders Act, a three-Judge Bench of the Supreme Court in **Dault Ram V. State of Haryana, AIR 1972 SC 2434** observed that the object of the section being to see that young offenders are not sent to jail for the commission of less serious offences because of grave risk of their attitude to life to which they are likely to be exposed as a result of their close association with hardened and habitual criminals, who may happen to be inmates of the jail.

Another three-Judge Bench of the Supreme Court reiterated the same principle in **Satyabhan Kishore v. State of Bihar, AIR 1972 SC 1554**

and held that Section 6 lays down an injunction as distinguished from discretion under Section 3 and 4 not to impose a sentence of imprisonment on an offender, unless reasons are recorded.

### **PUNISHMENT**

It is well known that punishment is one of the oldest method of controlling crime and criminality. However, variations in modalities of punishment, namely, severity, uniformity and certainty are noticeable because of variations in general societal reaction to law-breaking. In some societies punishments may be comparatively severe, uniform, swift and definite while in others it may not be so.

Punishment may be defined as an act of political authority having jurisdiction in the community where the harmful wrong (crime) is committed. It consists of imposition of some burden or some form of deprivation by withholding some benefit or right to which a person is legally entitled to enjoy.

Punishment under law is the authorised imposition of deprivations of freedom or privacy or other facilities to which a person otherwise has a right, or the imposition of special burdens because he has been found guilty of some criminal violation, typically, though not invariably, involving harm to the innocent.

1. Punishment should not be so severe or torturous as to be inhumane or cruel.

2. It should not be imposed in a manner that results into violation of offender's protective rights. That is, punishment should not only be in accordance with the procedure established by law but also conform to

due process of law.

3. The rule of proportionality should be the guiding principle of sentencing policy. That is, graver the offence, more severe should be the punishment.

4. Where there is doubt as to the choice between two punishments, less severe should be imposed as a general rule.

The history of early penal systems of most countries reveals that punishments were tortuous, cruel and barbaric in nature. It was towards the end of eighteenth century that humanitarianism began to assert its influence on penology emphasising that severity should be kept to a minimum in any penal programme. The common modes of punishment prevalent in different parts of the world included corporal punishment such as flogging, mutilation, branding, pillories, chaining prisoners together, stoning, amercement, fines, exile, solitary confinement, detention, house arrest, custodial sentence, imprisonment for life, capital punishment etc. Simple or rigorous imprisonment, forfeiture of property and fine were also recognised as modes of punishment.

The Indian Penal Code prescribes five types of punishment, namely, (1) Death, (2) Life imprisonment, (3) Imprisonment, which may be (a) rigorous or (b) simple, (4) Forfeiture of property, and (5) Fine. Thus imprisonment for life has been authorised as a form of punishment under Section 53 of the Indian Penal Code as amended by Act 26 of 1955 with effect from 1<sup>st</sup> January, 1956. There are in all fifty-one sections in the Penal Code which provide for sentence of imprisonment for life.

Section 57 of the Indian Penal Code provides that in calculating fractions of term of imprisonment, imprisonment for life shall be reckoned

as imprisonment for twenty years. (**AIR 1997 SC 756**).

The executive authorities are competent under section 55, I.P.C. or under Section 433 (b) of the Code of Criminal Procedure, 1973 to commute sentence of imprisonment for life to one of rigorous imprisonment not exceeding a term of fourteen years. Such commuted sentence of fourteen years inclusive of the period of remissions earned during his incarceration. But in actual practice it is seen that the prison authorities are illegally detaining the life convicts for a much longer period than the aforesaid maximum 14 years holding that the nature of sentence of life imprisonment does not alter by the aforesaid provisions of Indian Penal Code or the Code of Criminal Procedure and the sentence remains a sentence of life imprisonment and does not convert into a maximum sentence of imprisonment for 14 years by these provisions.

A landmark judgment of the Supreme Court handed down in **Kartik Biswas v. Union of India, AIR 2005 SC 3440**, deserves special mention in the context of Section 53 of IPC and section 32 of the Prisoners Act, 1900 which relates to imprisonment for life. The Court made it clear that life imprisonment is not equivalent to imprisonment for 14 years or for 20 years. Elaborating the point further the Apex Court ruled that there is no provision either in IPC or in Cr.P.C. whereby life imprisonment could be treated as 14 years or 20 years without there being a formal remission by the appropriate government. Section 57 of IPC which provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years is applicable for the purpose of remission when the matter is considered by the Government. But the Prison Act and the rules made thereunder do not confer any authority or power to commute or remit the sentence.

The Supreme Court held that the plea that a person convicted for imprisonment for life cannot be kept in jail is not tenable. The Court further ruled that imprisonment for life is to be treated as rigorous imprisonment for life and that it was necessary for the Legislature to specifically say that life imprisonment means rigorous imprisonment for life.

The Supreme Court in **Swamy Shraddananda alias Murli Manohar Mishra v. State of Karnataka, AIR 2008 SC 3040** made it explicitly clear that a convict punished with life imprisonment means imprisonment till his last breath. But once the judgment is pronounced the matter passes into the hands of the executive and is governed by different provisions of law and there is no guarantee that the sentence awarded to the convict by the Court after considerable deliberation would be carried out in actuality. The remissions granted by the executive to a life convict virtually reduces the sentence to not more than 14 years. It is a matter of serious judicial concern that the sentence of life imprisonment awarded to the convict as a substitute for death should be treated alike with the ordinary life imprisonment given as the sentence of first choice.

In **Subhash Chander v. Kishanlal and others, (2001) 4 SCC 458**, four accused persons including Kishanlal were convicted for multiple murders and sentenced to death by the trial Court and the High Court confirmed the sentence. In appeal the Counsel for Kishanlal, on instructions from the convict, submitted that Kishanlal, if sentenced to life imprisonment instead of death, would never claim premature release or commutation of his sentence on any ground i.e., under Section 401 of Cr.P.C., Prison Act, Jail Manual or other Statutes or rules meant for the grant of remission. The Supreme Court agreed to the plea of the Counsel and sentenced Kishanlal

for imprisonment for rest of his life.

In **Mohd. Munna v. Union of India, (2005) 7 SCC 417**, the Apex Court held that in the absence of an order of remission formally passed by the appropriate government, there is no provision in I.P.C. or Cr.P.C. under which a sentence of life imprisonment could be treated as for a term of 14 years or 20 years and that a life convict could not claim remission as a matter of right.

In India, parole and furlough are now being extensively used as a part of penal substitutes for mitigating the rigours of prison inmates. The All India Jail Reforms Committee has further observed that the prisoners should be released on furlough after undergoing a specified period of imprisonment so that they maintain contact with their relatives and friends and may not feel uprooted from society and prevented from the evil effects of prisonisation.

For professional criminals or political terrorists who indulge in ruthless violence and are a potential danger for the community, an extended period of preventive detention after serving the penal sentence may prove appropriate keeping in view the public safety and security against these dangerous hardened offenders. For this purpose, a distinction has to be drawn between hardened criminals and the recidivists. The former are 'positive danger' to society whereas the latter are a nuisance rather than a threat.

The offences committed by public servants should be severely dealt with and deserves no leniency in sentencing. Particularly, a public servant found guilty of accepting or obtaining illegal gratification or

persons guilty of food adulteration or any other socio-economic offence such as hoarding, profiteering, blackmarketing, tax evading etc. must be sternly punished as they are a menace to society. (**Som Prakash v. State of Delhi (1974) 4 SCC 84**).

Judicial sentencing is a personal responsibility of the Judge, a matter for his conscience alone. Any intrusion into his decision should be considered most unreasonable.

Death penalty in case of murder serves as an effective deterrent to remind the murderer about the severity of law towards this heinous crime and certainly helps in reducing the incidence of homicide.

Sd/-

( S.R.Sharma )

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