

SEMINAR OF PRINCIPAL DISTRICT JUDGES ON “SENTENCING ETHICS”

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INTRODUCTORY SESSION BY DR. GEETA OBEROI

The Conference commenced with a brief introduction by Dr. Geeta Oberoi, Director National Judicial Academy, Bhopal. She initiated the inception of the program by referring to Mahatma Gandhi, father of our nation, on the auspicious day of his birth anniversary and his first conviction in 1922 for publishing articles against the British government for a youth magazine, thus relating it with the present topic of sentencing ethics and the changed trends over the period of time. This was followed by an ice breaking session where various participant judges introduced themselves briefly stating their name, state and experience as a judicial officer. Subsequently the speakers were introduced.

Topic: Sentencing in murder trials

Speaker: C.J. Navin Sinha

Justice Navin Sinha, Chief Justice of Chattisgarh high court to commence the first session for the day. Justice Sinha explained the concept of progressive criminology has been adopted by the Indian judiciary while sentencing for offences. The Gandhian philosophy on imprisonment, which is based on the reformatory theory of punishment has been adopted majorly.

According to justice Sinha, the motive of the discussion was to work out new and improved solutions for sentencing on criminal acts in general, and the offence of murder in specific. These changes are necessary to remain in conformity with the changing trends of the society, offenders and crimes committed etc.

Justice Sinha brought forward a critical examination of some old judgments where diversity in thought processes of judges was observed while sentencing for the offence of murder.

Justice sinha observed that how a judge will think in a given situation, depends on various factors like:Grevity of commission of offence, Family background of the offender, Previous criminal record of the offender, The company of the offender etc.However, justice sinha argued, that a judge's view while sentencing an offender would largely be affected by a conflict between his upbringing and sentencing ethics. The precedents established with respect to sentencing in certain offences would somehow clash with the personal sense of a judge with regard to the nature of an offence.According to justice sinha, ideally it should not be so, but in practice the above trend is seen to be prevalent.

On this point, Justice sinhaadvised the judges to never discuss a case or share his personal opinions with regard to a case while hearing the matter, as it may affect his judgment and sentencing ethics.How the court "deals with" sentencing policy in criminal justice system is a major issue for all judicial system. In modern days of criminal justice system extensive need for sentencing policy in India. In India neither the legislature nor the judiciary has issued structured sentencing guidelines. Several governmental committees have pointed to the need to adopt such guidelines in order to minimize uncertainty in awarding sentences. The higher courts, recognizing the absence of such guidelines, have provided judicial guidance in the form of principles and factors that courts must take into account while exercising discretion in sentencing.

Topic: Sentencing in Trials of offences against women

Speaker: Dr. Mrinal Satish

He discusses the sentencing in sexual offences cases: Rape is a stigma which exists in the society from a long time. The dictionary meaning of word rape is "the ravishing or violation of a woman." The rape victim i.e. a woman as woman cannot commit rape due to biological reasons. She is traumatized after the event; it is very difficult for a woman to come out of this trauma. Rape in India is a cognizable offence. There are many provisions in various Acts. The word rape is legally defined u/s 375 of Indian Penal Code, 1860. It defines the rape and also prescribes its punishment. The Judiciary in India is burdened with a lot of work and therefore judgment of the

rape cases comes very late. Sometimes it comes so late that either of the parties had died. So, there should be speedy trials in rape cases so that the victim gets justice as it is rightly stated that “Justice delayed is justice denied.”

As every coin has two sides, in this case also there are two sides. Many a times girls also make fake complaints just to ruin the life of a boy, sometimes the parents of girl compels her to file a complaint against the boy she loves, as the law shows a lot of sympathy towards the girl. The accused is left with nothing, when the complaint is made his life is ruined irrespective of the fact that he was proved guilty or not.

Rape is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, normally, the right to life contained in Article 21.

As observed by Justice ArjitPasayat: “While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.”

Justice Krishna Iyer has observed in a very famous case of Rafiq v. State : “A murderer kills the body but a rapist kills the soul.”

He discusses various Case Study:-

1. Tukarram v. State of Maharashtra, In this case a young girl Mathura, she was working in the defendant’s house. They decided to marry. The brother of Mathura lodged a complaint with the police that Nushi (landlord) and her brother kidnapped Mathura. The police constable Babu Rao called both the parties to the police station and obtained statements of Ashok and Mathura. It was about 10.30 p.m. and Tukaram and Ganpat, two constables, were present in the police station. While the parties were leaving the police station Tukaram told Mathura to wait and asked the rest to leave. Where he had a sexual intercourse with Mathura. Since, Tukaram was drunk, he could not do the act but went away after doing indecent gestures. The Session Court pronounced that there was a sexual intercourse but this was not rape. Mathura, the court said, submitted to the police voluntarily and she had lied there after that she was raped. The High Court and Supreme Court also presume Mathura’s consent so they acquitted the constables.
2. In Bhai Singh v. State of Rajasthan, for raping a Harijan girl of 7 by a boy of 18, the

court sentenced him for 5 years imprisonment only. Its decision given on the ground of that the boy was only 18 years of age.

3. *Bijoy Kumar Mohapatra v. State of Orissa*, in this case a girl studying in S.K.D.A. Women's College, Rourkela was gang raped by 4 men. The HC of Orissa held that since the age of the girl was between 18 and 20, the question whether she had consented did not arise. "Consent must be voluntarily. A mere inevitable compulsion, queisnece, non-resistance or passive giving in when volitional faculty is either crowded by fear or vitiated by duress, cannot be deemed to be consent. Consent on the part of a woman as a defence to all allegation of rape, requires voluntary participation after having fully exercised the choice between the resistance and assent".
4. *SidheswaarGanguly v. State of West Bengal*, In this case it was held that the consent of the victim is immaterial when she happens to be less than sixteen years of age on date of the occurrence, i.e., 20 April 1954, when the accused was alleged to have had sexual intercourse with the girl. Though the ossification test (X-ray examination) is not a sure guide to determine age, in the absence of birth certificate the conclusion as to the age could be drawn from the fact and circumstance including physique of the person and examination.

He also discusses the horrific gang rape incident in Delhi is a result of Criminal law Amendment.

Topic: Sentencing in trials of offences against children

Speaker: C.J. Navin Sinha Justice B. Rajendran

Justice B. Rajendran began the session by welcoming the judges and gave the thematic overview of the conference. The topic is a daily affair for a judge. In cases culminating in conviction of accused, a Judge has to work out his sentencing policy. But, in Indian Criminal Justice Delivery system, there is no framework of policy while sentencing accused. Giving punishment to the wrongdoer is at the heart of the system. But, it is the weakest part of administration of Criminal Justice in our country. To reiterate, there is no legislative or judicially laid down guidelines to assist the trial Court in meeting out the just punishment to the accused facing trial before it, after he is held guilty of the charges. Though the Madhava Menon Committee and Mallimath Committee have recommended introduction of sentencing guidelines, it is yet to be developed in

our country. Sentencing the guilty has been a matter of debate in all the legal systems of the world. Theories of retribution, deterrence, reformation and rehabilitation which have strong underpinnings in political and legal philosophies throw light on imposition of punishments on wrong doers and no developed legal system can ignore them. No theory of punishment is against the punishing the guilty but the theorists differ on the purpose of punishment. Influence of all the theories of punishment can be traced in the sentencing practices of our courts. Though long ago theoretically our legal system watered down the theory of retribution preferring reformation as purpose of punishment, sentences handed down by our courts often reflect retribution albeit under different names such as “just deserts” or “proportionate sentences”. This may be one of the reasons for unacceptable disparity in sentences passed or upheld by our courts and this disparity is an acknowledged fact in our legal system. Our courts refer to sentencing policy and standardization of sentencing practices. Efforts of the Judges at apex court to formulate a sentencing policy have neither materialized nor have they been abandoned.

He emphasized on the need for sentencing policy in India. He also emphasized on some landmark judicial pronouncements like Manu Sharma, PriyadarshaniMattu, Mohd. Farooq Abdul Gafur and Another v. State of Maharashtra. He uses the word “Swinging fortunes”. He ended by stating that the conference hopes a lot from all the participants.

Topic: Sentencing in trials of offences against State

Speaker: Adv. TrideepPais

He discusses the approaches to determining appropriate sentence particularly by the apex court of India. He quoted the opinion of Justice Chinnappa Reddy: “In most of the criminals appeals, the supreme court confines itself to statutory interpretation or to issue of fact determination. It seldom discusses important jurisprudential issues relating to sentencing.” Hence, criminal law and sentencing have become static.

He discusses the Principles and purpose of sentencing: In cases culminating in conviction of accused, a judge has to work out his sentencing policy. Sentencing is that stage of criminal justice system where the actual punishment of the convict is decided by the Judge. But, in Indian no legislative or judicial policy. Giving punishment to the wrongdoer is at the heart of the

system. Sentencing – A neglected field “If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella’s illegitimate baby”

Prevailing Scenario: Law Reform Suggestions: There is glaring absence of much required and anticipated sentencing policy neither by legislature nor by judiciary. Several committees like Madhava Menon and Mallimath have recommended the policy, but is yet to be developed in our country. Even the Law minister Mr. Veerappa Moily said that “we are working on the uniform sentencing policy which is on the lines of ones in place in United States and United Kingdom”

Supreme Court on Sentencing: Justice Chinnappa Reddy: “In most criminal appeals, the Supreme Court confines itself to statutory interpretation or to issues of fact determination. It seldom discusses important jurisprudential issues relating to sentencing.” hence criminal law and sentencing have become static. The apex court time and again emphasized the importance of reforming the black letter law to fit the modern trends in penology and sentencing procedure.

SC in various cases evolving sentencing: Sentence should be determined according to the facts and circumstances of each case. It is not possible to prescribe a straitjacket formula for sentencing. Sentencing has become “Judge-centric.” There is a need for principled sentencing.

Determining the Appropriate Sentence: Law Commission of India (47th Report, 1972) -A proper sentence is a composite of many factors, including the nature of the offence, the circumstances- extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age, background, education, home life, social adjustment, the emotional and mental condition of the offender etc.

Supreme Court on Determining Appropriate Sentence: Modi Ram v. State of M.P, (1972) 2 SCC 630 - Factors pertaining to both the offense and the offender need to be taken into account.

Jagmohan v. State of U.P, (1973) 1 SCC 20 – Aggravating and mitigating factors should be considered. Aggravating factors are in relation to the offence. Mitigating factors like – the minority, old age, provocation, the state of health and sex of the delinquent.

Supreme Court & Theories of Punishment

1970s: Reformation the goal of punishment - Rajendra Prasad (1979), Sunil Batra (1978),

Lingala Vijaya Kumar (1978), Charles Sobhraj (1978), RamashrayaChakravarti (1976), EdigaAnnamma (1974)

1990s: From Reformation to Retribution: -GuvulaChinnaVenkatesu (AIR 1996 SC 1926)

Dhananjay Chatterjee, (1994) 2 SCC 220 – The emergence of “society’s cry for justice”

2000s: “Proportionality” & Proportionality + Society’s Cry.

Rational Behind Sentencing Policy: The “Principle of Equality” in Sentencing. Offenders should not be sentenced differently solely on the basis of factors such as their religion, social status, employment, race, caste etc.

Consistent application of sentencing principles: Advocates equality of approach, not of outcomes – consistent application of mitigating factors across a crime.

Guideline Models, Legislative Model – Minimum sentences, Judicial Model – Appellate Review, Guideline by the Judicial pronouncement, Sentencing Commission Model

Judicial Discretion & Article 14 : UOI v. Kuldeep Singh, (2004) 2 SCC 590

Bhel v. Chandrasekhar Reddy, (2005) 2 SCC 481

Jagmohan Singh (1973), Rajendra Prasad (1979)

Bachan Singh (1980), Mohammed Fraooq Abdul Gafoor(2010)

Lastly he Conclude with the statement of that there is a legislative need to come with effective sentencing policies and practices in our country. Judiciary and other criminal justice agencies should take pro-active steps to reframe and re-align sentencing policies.

03rd October, 2015

Topic: Sentencing in economic offences (Money Laundering)

Speaker: Justice Anjana Prakash

She speaks on the topic of Sentencing in India – The need for a reformatory approach. She starts with the definition of sentencing and procedure of the sentencing in the criminal procedure code, 1973. She also talks about the wide discretionary powers to the judges under the code itself. He refers to the few sections that talk about the sentencing under Cr. P. C, sections 235, 248, 325, 360, 361. Till yet no any sentencing guidelines in India but only through the judicial pronouncement by the apex court as a precedent judge decide the cases. She refers to few of the landmark pronouncements like MohdGiasuddin v. State of Andhra Pradesh (1977) the Supreme Court clearly set out some parameters to be considered before determining the sentence. She refers to the 47th Law Commission of India Report – talks about nature of the offence, circumstances, prior criminal record, age of the offender, professional and social record of the offender etc. She emphasizes the condition of Prison and imprisonment in the state of Andhra Pradesh, Karnataka, Kerala etc. In India some states started their own prison system like Kerala and West Bengal. Some of the statistics on composition of prison inmates (PSI 2013) Convicts: 1,29,608 (31.5 % of total inmates), Under trials: 2,78,503 (67.6 % of total inmates), Detenues: 3,113 (0.8 % of total inmates), others: 568 (0.2 % of total inmates). Number of under trial prisoners and conviction rate – about 2/3rd of prison inmates are under trials that is 2,78,503 (67.6% of total inmates) in 2013. She also talks about the consequences of imprisonment: - Imprisonment causes irreparable damage to the individuals, their families and the community at large. It has a drastic impact on various aspects of life such as – psychological, familial, economic and social etc. Imprisonment impinges several human rights, imprisonment is expensive, imprisonment is overused, imprisonment – the last resort.

She advocates the alternative mode of sentencing – Measured against the standards of human rights protection and expense, the argument against imprisonment, except as a last resort, is very powerful. The vast majority of prisoners will return to the community, many without the skills to reintegrate into society in a law-abiding manner. She also talks about the International standards- United Nations standard minimum rules for non-custodial measures, adopted in 1986, is the principal instrument. The fundamental aim of these rules is to reduce the use of imprisonment. The rules present a set of recommendations that emphasize imprisonment should be considered a last resort and encourage the promotion of non-custodial measures. She suggested some of the alternatives to imprisonment (a) Pretrial stage (b) Sentencing stage (c) Post sentencing stage. Good practices from other countries – alternative to imprisonment or non-

institutional treatment methods are widely used in some countries like Germany & Netherlands adopted the policy of diversion, penal order, fines, day fines, suspended sentences and other community sentences, task penalty.

In the Netherlands, custodial sentence up to 2 years are to be suspended. In Germany, prison sentence of up to 2 years, the court typically suspend the execution of that sentence and place the offender on probation. Lastly She concluded with the statement of in the contemporary era there is a need to revisit the sentencing policies and practices in our country. Judiciary and other criminal justice agencies should take pro-active steps to reframe and re-align sentencing policies.

Topic: Sentencing of Women Offenders

Speaker: Justice R. Basant

He talks about the women offenders. The prison reform movement and sighted various committees recommendations like – Gladstone committee (1895), set up in response to public criticism of harsh prison conditions and the iron rule of Edward Du Cane, Chairman, Prison Commissioners. This committee mad various recommendations to improve the reformative aspects in prisons like individualized treatment, separation of prisoners into first offenders and habitual, productive and collective labour instead of hard labour, administrative reforms to streamline prison administration.

Another committee like John Howard (1726 -1790) – published the state of prisons in 1777, proposals for improvements to enhance physical and mental health of prisoners and the security and order of prisons. Water, sanitation, health, diet, prison staff, rules. Howard League for Penal Reform (1866), John Augustus and PO Act – Augustus a boot maker from Boston (1785-1859) father of probation- presentence inquiry, helped approx. 2000 offenders to reform and rehabilitate, helped spread the probation movement.

He also emphasized on the role of Furlough – Furlough is a facility given to the prisoners to spend time with family. To avoid ill effect of continuous imprisonment to experience social life, counted as remission of system. Furlough is a matter of right but not an absolute right, granted periodically like in 2 weeks, period of Furlough is treated as remission, granted for no particular reason.

Parole – In the western countries – suspended sentence concept. But in India – release in case of serious illness, or death of any member of the prisoners family or his nearest relative or for any other sufficient cause. Parole is not a matter of right, not treated as remission. Parole is granted only on grounds as per rules. Like in the recent case of Sanjay Dutt.

Topic: Sentencing for youth offenders

Speaker: Justice R. Basant

He supported the view of Reformative Justice – Can be used in wide range of crimes ranging from minor (graffiti) to major (assault/ robbery), victim initiates the process, to make the offender realize the harm caused to the victim, to find out the reason for being targeted and ‘put it behind’ to openly forgive the offender. Direct mediation – face-to-face interaction in presence of facilitators and supporters. Indirect mediation – through letters via a facilitator conferencing – supporters of both meet with members of the community along with victim and offender. Wider community – similar to direct mediation but focusing on family support structure for the offender eg. Young offenders,

He suggested the alternative mode of punishment – Community service – alternative to fine and imprisonment, avoidance of short term sentencing, attachment to NGO, hospital, traffic police, hospice, child care institution, etc. Prayas NGO placement programme. Bail hostel/ conditional Bail – Alternative to financial based bail system, condition to stay in the shelter home till trial ends. Moral guarantee by local respected person, NGO, institutions etc

He recommended the idea of Minimum conditions for Rehabilitation – Stable shelter, stable legal income, stable positive relationships, addressing addictions, change of identity etc.

He criticizes the role of media in terms of high profile cases like Sanjay Dutt, Manu Sharma.

Topic: Sentencing in cheque bouncing cases (Fraud and cheating)

Speaker: Justice Anjana Prakash

She talks about the sentencing in socio – economic crimes. The relationship between social economic status and the criminal justice system. In general, people pertaining to the lower class versus the white collar and the elite class are more likely to be: incarcerated, charged, convicted,

sentenced to prison, and punished with longer prison terms. Economic Offences form a separate category of criminal offences. Economic Offences not only victimize individuals with pecuniary loss but can also have serious repercussions on the national economy. Economic offences, such as counterfeiting of currency, financial scams, fraud, money laundering, etc. are crimes which evoke serious concern and impact on the Nation's security and governance. She gives an overview of economic crimes and relevant legislation and the enforcing agency in India. And also deals with economic crimes covered under the Indian Penal Code. Lastly she explains the law on money laundering and focuses upon cyber crimes, which is expanding rapidly with the growing use of the Internet. In conclusion, the Hon'ble resource persons said that now a day sentencing policy is a need for fair and free criminal justice system.

04th October, 2015

Topic: Sentencing in bribery cases

Speaker: C.J. Sunil Ambwani

He discusses Sentencing policy and its contents: There have been numerous propositions and juristic opinion on what would constitute and should constitute sentencing policy.

- The 35th law commission report on capital punishment comprehensively explains various aspects relating to sentencing focusing more closely on capital sentencing.
- The IPC provides us with a broad classification and gradation of punishments. This has been further carved by the various judicial decisions on sentencing. However the rulings of the court suffer from the following disadvantages:
 - (a) Facts specific – [A. Devendran v. State of Tamil Nadu] – case of triple murder. However court held that the trial court was not justified in awarding death sentence as the accused had no pre-mediated plan to kill any person and as the main object was to commit robbery. This case should be compared with [GentelaVijayavardhan Rao v. State of A.P] – The motive in both is to rob the victim. However in one case it has been used as a aggravating factor and the other it is used as a mitigating factor. This shows how the same test has been contradictorily applied.
 - (b) Not followed by the lower courts

- (c) More of a legislative job
- (d) A final reason as to why the judiciary should not frame the rules is that it once again boils down to the whim and fancies of the judge framing it. This would only be a mere extension of the belief of one judge over all others.

The 4 steps proportionality test proposed by Andrew von Hirsch and Nils Jareborg

1. What interests are violated or threatened by the standard case of the crime – physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.
2. Effect of violating those interests on the living standards of a typical victim – minimum well being, adequate well being, significant enhancement.
3. Culpability of the offender
4. Remoteness of the actual harm as seen by a reasonable man

Factors that determine culpability vary depending on which of the following schemes one intends to follow.

- (a) Determinism – eg. Self defense
- (b) Social and Familial background
- (c) The employment, education and economic policy have a major impact on individuals. They result in consequences such as deprivation and marginalization leading to development of criminals in the society.

Topic: Death sentence: Useful or not

Speaker: C.J. Sunil Ambwani

He spoke on the topic of Punishment/ principles and purposes of sentencing. He started with the definition of Punishment? According to Bentham “ Punishment is evil in the form of remedy which operates by fear”. Johan Finnish has said that delinquent behavior of a person needs to be taught lesson not with melody but with iron hand. “ There is the need of almost every member of society to be taught what the requirement of the law- the common path for pursuing the common good.

Purpose of punishment – mere denunciation of crime is not enough; it must be pushed to its logic end that crime does not pay by punishing the offenders. The principal object of punishment is the

prevention of offence, and a national penal policy of the state should aim to protect the society and reclaim the criminal by evolving measures to prevent people from committing crimes.

Punishment in Ancient law – Based on the jurisprudence of “Dharma” or rules right conduct, as outlined in the various manuals explaining the vedic scriptures such as “Puranas” and “Smritis”. In essence, danda functions as the ruler’s tool to protect the system of life stages and castes. The king played a major role in the punishment of his subjects and his duty is discussed in the code of Manu. The criminal justice tenets of Manu are remarkable in its vision and application. Manu was found as early as the Rig Veda (1200 B.C). However the inequality in rendering justice based on Varna system is a chink in the amount of Manu, the first lawgiver of India.

Punishment in Islamic Law – The ultimate objective of every Islamic legal injunction is to secure the welfare of humanity in this world and the next by establishing a righteous society. This is a society that worships God and flourishes on the Earth, one that wields the forces of nature to build a civilization wherein every human being can live in a climate of peace, justice and security. This is a civilization that allows a person to fulfill his every spiritual, intellectual, and material need and cultivate every aspect of his being. The supreme objective is articulated by the Quran in many places. Since the Islamic legal injunctions are aimed at achieving human welfare, they can all be referred back to universal principles which are necessary for human welfare to be secured. These universal principles are:

- (1) The preservation of life
- (2) The preservation of religion
- (3) The preservation or reason
- (4) The preservation of lineage
- (5) The preservation of property

The Bible and Punishment – within the framework of Christianity, there are several possible definitions for religious law. One is the Mosaic law also called divine law or biblical law, the most famous example being the Ten commandments.

Canon law is the body of laws and regulates made by or adopted by ecclesiastical authority, for the government of the Christian organization and its members. It is the internal ecclesiastical law governing the Roman Catholic Church, the Eastern and oriental orthodox Churches, and the

Anglican communion of churches. The way that such church law is legislated, interpreted and at times adjudicated varies widely among these three bodies of churches. In all three traditions, a canon was initially a rule adopted by a church council. These canons formed the foundation of canon law. It is worth mentioning what Jawaharlal Nehru (1990) told about religion in the context of codes and law: “Religious have laid down values and standards and have pointed out principles for the guidance of human life. But with all the good they have done, they have also tried to imprison truth in set forms and dogmas, and encouraged ceremonials and practices which soon lose all their original meaning and become mere routine”

Role of Lord Macaulay with special reference to Hindu and Mohamedan law: The making modern India – Lord Thomas Babington Macaulay (1800-1859) who drafted India penal code, overturning the Hindu Law and Mohamedan Law. The Charter Act 1833 which was enacted by the British Parliament provided for the establishment of a Law commission for consolidation and codification of Indian laws. In 1835, Lord Macaulay was appointed as Chairman of the First Law Commission.

The Indian Penal Code of the present day has done away with almost all its flaws and has evolved into a modern law enforcing document, that takes into consideration the humane side of the personalities of culprits as well. This has escalated the Indian system of Law to greater heights and has led to a firm respect for it in every citizen of the country.

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. ‘The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.’ Punishment has the following features: It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant. It is consequence of an offence. It is applied against the author of the offence. It is applied by an organ of the system that made the act an offence

Theories of Punishment – During the ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these

criminals. In the modern scenario also witnesses the opposition of capital punishment as inhumane, though it was a major form of punishing the criminals earlier.

There are five theories of punishments.

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

Dr. AnupSurendranath

He discusses the Reformatory approach towards sentencing policy is a need for criminal justice delivery system.

Reformatory Theory

He start with the quote "Every saint has a past, every sinner has a future." V. R. Krishna Iyer, J "... the humanistic approach should not obscure our sense of realities." When a man commits a crime against society by committing a diabolical, coldblooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequence of his act. Such a person forfeits his right to life." - A. P. Sen, J

These two statements of the scholarly figures of the Indian judiciary reflects the heated debate going on in the country with regards to the imposition of punishment upon the convicts. A crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraint imposed by character is weaker. The reformatory theory seems to strengthen the character of the man so that he may not become victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine. According to this theory crime is like a disease. This theory maintains that you can cure by killing. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society. But that is the beginning of a new story-

-the story of the gradual Renewal of a man, the story of his gradual regeneration, of his Passing from one world into another, of his initiation into a new Unknown life.

The basic principle of the reformatory theory emphasizes on the renewal of the criminal and the beginning of a new life for him. Efforts started from the year 1956 for the abolition of death penalty with the filing of the bill in Lok Sabha but the same couldn't be achieved till now.

The most recent and the most humane of all theories are based on the principle of reforming the legal offenders through individual treatment. Not looking to criminals as inhuman this theory puts forward the changing nature of the modern society where it presently looks into the fact that all other theories have failed to put forward any such stable theory, which would prevent the occurrence of further crimes. Though it may be true that there has been a greater onset of crimes today than it was earlier, but it may also be argued that many of the criminals are also getting reformed and leading a law-abiding life all-together. Reformatory techniques are much close to the deterrent techniques.

Reform in the deterrent sense implied that through being punished the offender recognized his guilt and wished to change. The formal and impressive condemnation by society involved in punishment was thought to be an important means of bring about that recognition. Similarly, others may be brought to awareness that crime is wrong through another's punishment and, as it were, 'reform' before they actually commit a crime. But, although this is indeed one aspect of rehabilitation, as a theory rehabilitation is more usually associated with treatment of the offender. A few think that all offenders are 'ill' and need to be 'cured' but the majority of criminologists see punishment as a means of educating the offender. This has been the ideal and therefore the most popular theory in recent years. However, there is reason to believe this theory is in decline and Lord Windlesham has noted that if public opinion affects penal policy, as he thinks it does, then there will be more interest shown in retribution in the future. The court in the case of Ramdeo Chauhan alias Rajnath Chauhan v State of Assam, explicitly relied upon the theories of punishment and expressed that 'Though an eye for an eye, a tooth for a tooth and death for death is not true in civilized society but it is equally true that when a man becomes beast and a menace to society he can be deprived of his life according to the procedure established by law.'