

NATIONAL CONFERENCE OF JUDGES OF THE DISTRICT JUDICIARY ON JUST SENTENCING: POLICY & PRACTICE (P-915)

20th to 22nd MARCH, 2015

Programme Report

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The National Judicial Academy organized the “National Conference of Judges of the District Judiciary on Just Sentencing: Policy & Practice” during 20th to 22nd March, 2015. The main objective of the Conference was to enhance the capacity of judges in the area of sentencing. The conference focused on various areas concerning sentencing in courts including Sentencing Issues Related to Administration of Prisons, Alternatives to Custodial Sentences: Reformation & Rehabilitation, Theories of Punishment/Principles and Purposes of Sentencing, Imposition of Fine & Compensation to Victims of Crime, Judicious Approach in Determination of Quantum of Sentence, Sentencing Principles & Guidelines in the Cr.P.C. and the I.P.C., Death Sentence: Evolving Jurisprudence, Sentencing Practices in Offences Relating to Women, Approaches to Determining Appropriate Sentence and Sentencing in Social and Economic Crimes. The resource persons in the conference included Dr. M.R. Ahmed, Dr. Vijay Raghavan, Justice G.M. Akbar Ali, Justice A.K. Patnaik, Justice B. Rajendran, Justice V. Gopalagowda, Justice G.M. Akbar Ali, Mr. V. Sudhish Pai, Dr. Anup Surendranath, Dr. Mrinal Satish and Mr. P.V. Balasubramaniam.

Following are the main issues discussed in the Conference.

Session 1:

Sentencing Issues related to administration of prisons

Mr. Rajesh Suman, the coordinator of the Conference began the Conference by welcoming the guests and speakers and gave the thematic overview of the conference.

Then Dr. M.R.Ahmed spoke on the need for a reformative approach. He discussed the condition of Prison and imprisonment in the state of Andhra Pradesh, Karnataka, Kerala etc. He advocated 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. He suggested some of the alternatives to imprisonment (a) Pretrial stage (b) Sentencing stage (c) Post sentencing stage. 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 he concluded with the statement of in the contemporary era there is a need to revisit the sentencing policies and practices in our country.

Session 2

Alternatives to Custodial Sentences: Reformation & Rehabilitation

Dr. Vijay Raghavan (Tata Institute of Social Science) discussed the prison reform movement and referred to 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 made various recommendations to improve the reformatory 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.

He supported the view of reformatory justice which can be used in wide range of crimes ranging from minor to major, 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. He suggested the alternative mode of punishment i.e. Community service, alternative to fine and imprisonment, avoidance of short term sentencing, attachment to NGO, hospital, traffic police, hospice, child care institution, alternative to financial based bail system and condition to stay in the shelter home till trial ends. He recommended the idea of Minimum conditions for Rehabilitation such as stable shelter, stable legal income, stable positive relationships, addressing addictions, change of identity etc.

Session 3

Theories of Punishment/Principles and Purposes of Sentencing

Justice G.M. Akbar Ali emphasized that mere denunciation of crime is not enough and 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. He discussed principles of punishment in ancient laws 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. He said that 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. He then discussed 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. 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. The Indian Penal Code 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.

He said that punishment has the following features: It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant. 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. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing. Too much disparity in sentencing leads to ineffective Criminal Justice system.

Session 4

Imposition of Fine & Compensation to Victims of Crime

Justice G.M. Akbar Ali starts with the background of the imposition of fine and compensation to victims crime - Criminal Law has always discouraged the acts or omissions which in general can affect right in rem and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. The initial focus of criminologists were only on the aspect of punishment but the focus started shifting when they encountered with the fact that the person who is victim of crime is getting nothing out of the whole process of criminal justice system or is getting a so called satisfaction by seeing the offender punished. Therefore jurists, penologist etc in all countries started giving their full attention to the cause of victim in form of compensation and hence the whole debate started about ways, means and extent of compensation. He discussed the legislative framework in Indian regarding compensation to victim of crime can be trace through two major legislations i.e. Code of Criminal Procedure, 1973 and Probations of Offenders Act and Constitution of India.

Session 5

Judicious Approach in Determination of Quantum of Sentence

Justice B. Rajendran_ stated that the discretion of judicial officers is not arbitrary as the law provides for revision by superior courts of orders passed by the subordinate courts. The discretion given to the judge to sentence an accused convicted of murder either to death or to imprisonment for life is not invalid under article 14 of the Indian Constitution. The judge has to balance all the aggravating and mitigating circumstances of the case and record his reasons in writing for awarding lesser punishment. Similarly, discretion available to the judge in other criminal cases in the sentencing policy and the judicial fluctuations in punishment do not violate article 14. The same principle has been extended to discretion given to quasi-judicial authorities, e.g., rent controller, disciplinary authority etc.

Though Article 14 gives a wide discretionary power in the hand of judiciary, it does not mean that they can exercise this power in totally discriminatory manner. The the judiciary cannot impose two different views in two similar cases without showing reasonable cause for such judgment and if it done so, than it will be violation of Article 14 of the Indian Constitution. Lastly he said in the criminal laws sentencing procedure only talks about minimum and maximum. The differences between minimum and maximum is very wide, so judges applied judicial mind and interpret in light with the principle of natural justice. He said that judges should be open-minded and applied the judicial mind.

Justice A.K. Patnaik discussed that judges are human beings, no one country in the world judgment delivered by the computer. He said that in the Indian criminal justice system wide

different between minimum and maximum, differences between two is very wide and judges are only the instruments to balance between two in light with the principle of natural justice. He said sentencing standards are so utterly absent in the criminal justice system that aberrations frequently occur, shaking the faith of the community in the system of judicial sentencing. There are many theories of sentencing from penal humanitarianism and rehabilitative therapeutics to retributive justice and public denunciation cult. However few judges in India have received training in correctional theories and practices. Judges while well qualified legally, possess few if any penological qualifications. It is imperative that this situation be remedied, if an effective sentencing system is to be achieved. Regular judicial training institutes, conferences at which judges meet with other judges and with correctional authorities, to discuss sentencing standards and learn about the available correctional programmes and the latest reforms in the area of sentencing, are therefore needed.

Session 6

Sentencing Principles & Guidelines in the Cr.P.C. and the I.P.C.[Consecutive & Concurrent Sentences, Meaning of “Life” and Minimum Sentences]

Justice V. Gopalagowda said that Code provides for wide discretionary powers to the judge once the conviction is determined. In Indian criminal justice system the principal sources of sentencing law are two fold, dominantly the legislation and judicial decisions. Statute law, i.e. the IPC and other special and local laws lay down the terms under which a criminal court may pass sentence after conviction. In India various means of penal sanction such as fine, imprisonment, probation and sometimes the extreme punishment of death are available to the courts, under the provisions of law governing a particular kind of offence or offender. He emphasized that at the time of sentencing judges should be think in light with the principles of natural justice and should focus on need for reformative sentencing in modern era. He discusses the evolution of sentencing policy in India through various judicial pronouncements by the Supreme Court of India.

Justice G.M. Akbar Ali said that there have been numerous propositions and juristic opinion on what would constitute and should constitute sentencing policy. The IPC provides us with a broad classification and gradation of punishments. This has been further carved by the various judicial decisions on sentencing. He discussed 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

Session 7

Death Sentence: Evolving Jurisprudence

Mr. V. Sudhish Pai starts with the discussion on evolution on sentencing policy in India through various judicial pronouncements by the apex court of India. He talks about the factors judicial

officers should be consider at the time of determining the sentencing like mitigating as well as the aggravating circumstances placed before it. He said that the importance of Sentencing lies in the fact that it becomes the face of Justice and a future deterrent for the prospective offender of law. Informed Public Opinion should be involved right at the beginning of the formation of Sentencing policy so that a consensus can be arrived at about its actual objective. A well-managed Public debate should be initiated by the authorities on various platforms as it will not only help to remove the Iron Curtain between the Courts and the society but will also improve the level of acceptance of the Court's decision regarding sentencing by the people at large.

Dr. Anup Surendranath_said that 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 restrain imposed by character is weaker. The reformative 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. 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. He emphasized that death penalty defeats the whole purpose of reformation of offender by eliminating him. He highlighted that courts should follow the Bachan Singh guidelines in letter and spirit. Court should see that the state has presented the evidence that accused cannot be reformed or rehabilitated and then only the case will come under rarest of rare case.

Session 8 **Sentencing Practices in Offences Relating to Women**

Dr. Mrinal Satish discussed the sentencing in sexual offences cases and highlighted the use of various social myths by courts in deciding the cases involving sexual offences. He also discussed the emergence of medical jurisprudence concerning sexual offences and the way such jurisprudence introduced various myths in legal system which reflected bias against women. He also highlighted such myths in Modi's Book on Medical Jurisprudence. He discussed various cases where such stereotypical views have been used by the courts. He emphasized on the removal of patriarchal myths in deciding cases involving sexual offences.

Session 9 **Approaches to Determining Appropriate Sentence**

Dr. Mrinal Satish said that sentencing a neglected field and "if the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella's illegitimate baby". He discussed the prevailing Scenario where 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. He highlighted trends in approaches of Supreme Court in enunciating the principles of sentencing. For instance in 1970s the goal was for reformation which includes judgments of Justice Krishna Iyer such as Rajendra Prasad (1979), Sunil Batra (1978), Lingala Vijaya Kumar (1978), Charles Sobhraj (1978), Ramashraya Chakravarti (1976), Ediga Annamma (1974). During 1990s the shift occur from reformation to retribution through judgments such as Guvula Chinna Venkatesu (AIR 1996 SC 1926), Dhananjay Chatterjee, (1994) 2 SCC 220. During 2000s

the goal of punishment moved towards “proportionality” & proportionality + society’s cry. He emphasized the consistent application of sentencing principles which is equality of approach, not of outcomes. There should be consistent application of mitigating factors across a crime.

Session 10

Sentencing in Social and Economic Crimes

Mr. P.V. Balasubramaniam discussed the relationship between social economic status and the criminal justice system. 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. He 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 he explains the law on money laundering and focuses upon cyber crimes, which is expanding rapidly with the growing use of the Internet.
