

TOPIC : Latest view of sentencing policy with reference to the judgment of the Hon'ble Supreme Court & High Court.

INTRODUCTION

1] 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.

Currently India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. In March 2003, the Committee on Reforms of Criminal Justice System (the Malimath Committee), a body established by the Ministry of Home Affairs, issued a report that emphasized the need to introduce sentencing guidelines in order to minimize uncertainty in awarding sentences, stating,

The Indian Penal Code prescribe offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum is prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are

lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing option[s] is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimize uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.

The Committee advised further that, in order to bring “predictability in the matter of sentencing,” a statutory committee should be established “to lay guidelines on sentencing guidelines under the Chairmanship of a former Judge of Supreme Court or a former Chief Justice of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative.” In 2008, the Committee on Draft National Policy on Criminal Justice (the Madhava Menon Committee), reasserted the need for statutory sentencing guidelines. In an October 2010 news report, the Law Minister is quoted as having stated that the government is looking into establishing a “uniform sentencing policy” in line with the United States and the United Kingdom in order to ensure that judges do not issue varied sentences.

In India no uniform sentencing policy exists and sentence awarded to an offender reflect the individual philosophy of the judges. This is evident from the following facts.

2] The following statements given by the three prominent judges of India shows the present condition of sentencing policy of India.

“Every saint has a past, every sinner has a future.”-- Krishna Iyer J

“Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good, but circumstances transform him into a criminal.”-- K T Thomas J

“Reformative theory is certainly important but too much stress to my mind cannot be laid down on it that basic tenets of punishment altogether vanish”.-- D P Wadhwa J

3] Section 53 of the I.P.C in Chapter III deals with the kinds of punishments which can be inflicted on the offenders. They are as follows:

1. Death penalty,
2. Imprisonment for life,
3. Imprisonment,
4. Forfeiture of property and
5. Fine.

The main objectives of the criminal justice system can be categorized as follows:

To prevent the occurrence of crime.

To punish the transgressors and the criminals.

To rehabilitate the transgressors and the criminals.

To compensate the victims as far as possible.

To maintain law and order in the society.

To deter the offenders from committing any criminal act in the future.

RELEVANT PROVISIONS

4] In case of an offender other than a Juvenile, a Magistrate, under section 29 of Cr.P.C., may pass a sentence of imprisonment for a term not exceeding 3 years or fine not exceeding ten thousand

rupees (fifty thousand as per Mah. State amendment) or of both. Here it is important to note that under many categories of offences punishment prescribed is more than the above prescribed limit, however while passing sentence in such cases magistrate cannot exceed the sentencing limits but he has an option under S. 325 Cr.P.C. to forward accused to the Chief Judicial Magistrate. A sentence of imprisonment in default, as per S.30 Cr.P.C., should not be in excess of power u/s 29 Cr.P.C. and should not exceed 1/4th of the term of imprisonment which the magistrate is empowered to inflict. However, it may be in addition to substantive sentence of imprisonment for the maximum term awarded by the Magistrate u/s 29. In case of conviction of several offences at one trial, as per S.31 Cr.P.C., the court may pass separate sentences, subject to the provisions of S.71 of the I.P.C. The aggregate punishment and the length of the period of imprisonment must not exceed the limit prescribed by S.71 I.P.C. S. 71 I.P.C. provides (1) that where an offence is made up of parts each of which parts is itself an offence the offender can be punished only for one of such offences. (2) That where an offence falls under two or more definitions of offences or where several acts, each of which is a offence, constitute when combined a different offence, then the punishment could be awarded only for any one of such offences. These are rules of substantive law whereas S.31 Cr.P.C. is a procedural law.

In case of several sentences to run concurrently it is not necessary to send offender for trial before higher court only for the reason that aggregate punishment for several offences is in excess of punishment which the magistrate is competent to inflict on conviction of single offence. However, proviso to S.31 Cr.P.C. Provides that (a)

in no case shall such person be sentenced to imprisonment for a longer period than 14 years (b) the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for single offence.

RELEVANT JUDGMENTS

5] In Bachansing vs State of Punjab (AIR 1980 SC 898) The hon'ble Apex court while interpreting S. 354(3) and 235(2) Cr.P.C. elaborated two aspects, firstly that the extreme penalty can be inflicted only in gravest cases of extreme culpability and secondly, in making the choice of sentence due regard must be paid to the circumstances of the offender also.

In Machhi Singh v. State of Punjab [(1983) 3 SCC 470], The hon'ble Apex court observed that the accused-appellants, as a result of a family feud and motivated by feeling of reprisal, committed as many as 17 murders of men, women and children. The Court, while justifying the death sentence imposed on the appellants, recollected with approval the principles laid down in Bachan Singh and supplemented them with a few more elaborate guidelines regarding the test of 'rarest of rare' cases as given below :

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?

In the rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of the judicial

power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty, death sentence can be awarded.

Aggravating Circumstances:

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

2. The offence was committed while the offender was engaged in the commission of another serious offence.

3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

4. The offence of murder was committed for ransom or like ^{Kidnapping} offences to receive money or monetary benefits.

5. Hired killings.

6. The offence was committed outrageously (for want only while) involving inhumane treatment and torture to the victim.

7. The offence was committed by a person while in lawful custody.

8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Code of Criminal Procedure.

9. When the crime is enormous in proportion like making an

attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent

harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the load star besides the above considerations in imposition or otherwise of the death sentence.

The Hon'ble Apex Court in Rajendra Pralhadrao Wasnik Vs. State of Maharashtra, (AIR 2012 SC 1377). held that "Stated broadly, ~~these are the accepted indicators for the exercise of judicial discretion~~ but it is always preferred not to fetter the judicial discretion by ~~attempting to make the excessive enumeration~~, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state, it as an absolute rule. ~~Every case has to be decided on its own merits~~. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties".

The Hon'ble Apex court in State of Madhyapradesh-vs-Mehtab, (Cri. Appeal no. 290/2015, dated 13.02.2015) has observed that, "we find force in the submission, it is the duty of the court to award just sentence to a convict against whom charge is proved. While mitigating and aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also the victim and the society."

In Gurubachan Sing Vs. Satpal Singh (AIR 1990 SC 209), the Apex Court cautioned saying that exaggerated devotion to rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion as they destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.

In Norbetro V/s. Mrs. Prema Nalband, (2006 (1), AIR, Bom.R,481) The hon'ble Bombay High Court held that; "Admittedly, post dated cheques dated 30.9.1999 were given to the complainant in June of that year and till date the complainant has not received her dues except for the said sum of Rs.30,000/-. Considering the amount of cheques namely Rs.4.12 lacs, substantive sentence of five days would look lie a flee bite sentence. In my view considering the said amount of Rs.4.12 lacs substantive sentence of 15 days Simple Imprisonment could also not be considered to be adequate and considering the same in my views there is absolutely no scope for further reduction of the said sentence." In this case the Trial Court

has sentenced the accused to undergo Simple Imprisonment for a period of 15 days and awarded the compensation to the complainant from accused of Rs.50,000/-. Till the revision before the Hon'ble High Court, accused had also undergone the period of five (5) days and it was urged from the side of accused that the sentence would be reduced to the said period of five days undergone by the accused. Hon'ble High court giving above observation confirmed the sentence passed by Trial Court.

In Suganthi Suresh Kumar-Vs-Jagdeeshan [2002 (2) SCC 420] The Hon'ble Apex Court held that Court can impose a sentence of imprisonment on the accused in default of payment of compensation ordered u/s 357 (3) of the Code. Similarly, in R. Mohan -Vs- A.K. Vijaya Kumar [2012 Cri.L.J. 3953] the Hon'ble Apex Court observed that accused was convicted for an offence u/s 138 of the Negotiable Instruments Act and sentenced to undergo three month's simple imprisonment and to pay compensation of Rs. 5 lakh to the complainant u/s 357(3) of the Cr.P.C., in default to undergo two month's simple imprisonment. The Judgment was confirmed by the Sessions Judge in appeal. In revision, the High Court was of opinion that no separate sentence could be awarded in default of payment of compensation when substantive sentence of imprisonment in default of payment of compensation. The said order of the High Court was challenged and the Apex Court held that "we find no illegality in the order passed by learned Magistrate and confirmed by the Sessions Court in awarding sentence in default of payment of compensation. High Court was in error in setting aside the sentence imposed in default of payment of compensation"

While dealing with the case in respect of offence of outraging modesty of woman punishable under Sec. 354 of I.P.C., The Hon'ble Bombay High Court in **Bhagwat Ganpat Taide V/s. The State of Maharashtra**, (2006 (3), A.I.R. Bom. R. 250), observed that; "The petitioner/accused was a teacher. Imparting knowledge is a noble profession. The petitioner was in a position of loco parentis to his pupil. Instead of imparting knowledge petitioner was indulging in molestations of young girls of tender age. If the conduct of the petitioner is considered this is not fit case for showing leniency." In this case Trial Court convicted accused for this offence sentencing him to suffer Rigorous Imprisonment for three months and fine of Rs. 2,000/- in default R.I. for 20 days. This sentence was confirmed by the Hon'ble High Court.

In **Shailesh Jasvantbhai and Another v. State of Gujarat and Others**, [(2006)2 SCC 359] The hon'ble Hon'ble Apex Court held that " In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. 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.

In **Alister Anthony Pareira Vs. State of Maharashtra** (AIR 2012 SC 3802) The hon'ble Hon'ble Apex Court held that

“Sentencing policy is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing and accused on proof of crime. The courts have evolved certain principles: twin objectives of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.”

In **Brajendrasingh Vs. State of Madhya Pradesh** (AIR 2012 SC 1552), The hon'ble Hon'ble Apex Court held that “ The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of *Bachan Singh* and thereafter, in the case of *Machhi Singh*. The aforesaid judgments, primarily dissect these principles into two different compartments - one being the 'aggravating circumstances' while the other being the 'mitigating circumstance'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the

classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Code of Criminal Procedure.

In Ankush Maruti Shinde & Ors. v. State of Maharashtra, (AIR 2009 SC 2609) the Hon'ble Apex Court held that, protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be- as it should be- a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. 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. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.

In State of Andhra Pradesh v. Polamala Raju @ Rajarao [(2000) 7 SCC 75] Three-judge bench of hon'ble Apex Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. And observed that "In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section 376, IPC from 10 years imprisonment to 5 years without recording any reasons for the same". This Court said:

"We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence.....To say the least, the order contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind..."

In State of M.P. - v - Bablu Natt [(2009)2 S.C.C. 272] The hon'ble Apex Court held that " Keeping in view the nature of the offence and the helpless condition in which the prosecutrix a young girl of 13/14 years was placed, the High Court was clearly in error in reducing the sentence imposed upon the respondent and that too without assigning any reasons, much less special and adequate reasons. The High Court appears to have overlooked the mandate of the Legislature as reflected in Section 376(1) IPC.

In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly

against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the minimum prescribed by the Legislature under Section 376(1) of the Act."

In State of Karnataka v. Raju [2007 (11) SCALE 114], where the facts of the case were that the Trial Court imposed custodial sentence of seven years after convicting the respondent for rape of minor under Section 376 of the Indian Penal Code; on appeal, the High Court reduced the sentence of the respondent to three and half years.

The hon'ble Apex Court held that a normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' rigorous imprisonment, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' rigorous imprisonment can also be awarded. It was, thus, opined that socio-economic status, religion, race, caste or creed of the accused or

the victim are irrelevant considerations in sentencing policy. To what extent should the judges have discretion to reduce the sentence so prescribed under the statute has remained a vexed question.

In State of Punjab -Versus -Prem Sagar & Ors. (CRIMINAL APPEAL [Arising out of SLP (Crl.) No.4285 of 2007]) The hon'ble Apex Court held that Respondents herein were convicted for commission of an offence under Section 61(1) of the Punjab Excise Act for carrying 2000 litres of rectified spirit. They were sentenced to undergo an imprisonment for a period of one year.

The High Court, however, by reason of the impugned judgment purported to be upon taking into consideration the fact that the offence was committed in the year 1987 and the appeal was dismissed in the year 1992, thought it fit to give an opportunity to the respondents to reform themselves, observing:

"The accused have suffered lot of agony of protracted trial. They having joined the main stream must have expressed repentance over the misdeed done by them about 19 years back. In the aforesaid circumstances and in the absence of any of their bad antecedents, it will not be appropriate to deny them to the benefit of probation under the Probation of Offenders Act, 1958 and to send them to jail at this stage."

We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind.

"Although ordinarily, we would not interfere the quantum of sentence in exercise of our jurisdiction under Article 136 of the

Constitution of India, but in a case of this nature we are of the opinion that the High Court having committed a serious error, interest of justice would be subserved if the decision of the High Court is set aside and the respondent is sentenced to undergo simple imprisonment for a period of six months and a fine of Rs. 5,000/- is imposed, in default to undergo imprisonment for a further period of one month.

In State (Government of NCT of Delhi) vs. Prem Raj, (2003) 7 SCC 121) Prem Raj, the accused respondent before the court was convicted by the trial court under Section 7 read with Section 13(1) (d) and 13(2) of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 500/- under Section 7. He was additionally sentenced to undergo imprisonment for 3-1/2 years and a fine of Rs.1, 000/- under Section 13(2) of the Act, subject to the direction that the two sentences would run concurrently. In appeal, on a plea made on the question of sentence, a learned Single Judge of the High Court enhanced the amount of fine to Rs.15, 000/- in lieu of the sentences of imprisonment and directed that on deposit of the amount of fine the State government, being the appropriate government' would formalize the matter by passing an appropriate order under Section 433 (c) of the Code of Criminal Procedure. This Court, on appeal by the State, held that the question of remission lay within the domain of the appropriate government and it was not open to the High Court to give a direction of that kind.

In Ishardas v/s St. of Punjab (AIR 1972 SC 1295) the hon'ble Apex court observed that the prevention of food Adulteration Act is enacted with aim of eradicating antisocial evil against public health

and court should not lightly resort to the provisions of probation of offenders Act. The 47th report of the Law Commission has recommended the exclusion of the probation Act to social and economic offences.

In Pyarali K. Tejani vs Mahadeo Ramchandra Dange (1974 SCR (2) 154) Five Judge bench of the hon'ble Apex Court held that "A successful prosecution for a food offence ended in a conviction of the accused, followed by a flea-bite fine of Rs. 100/-. Two criminal revisions ensued at the instance of the State and the Food Inspector separately since they were dissatisfied with the magisterial leniency. (Why two revision proceedings should have been instituted, involving duplication of cases and avoidable expenditure from the public exchequer is for the authorities to examine and inhibit in future). The High Court heard the accused against the conviction itself but upheld the guilt and enhanced the punishment to the statutory minimum of six months imprisonment and one thousand rupees fine. The finale in every criminal trial is sentence. Let us take stock of the social and personal facts, the features of the crime and the culprit. The Prevention of Food Adulteration Act, 1954, is meant to save society, and Parliament has by repeated amendments emphasized the statutory determination to stamp out food offenses by severe sentences. Indeed, dissatisfied with the indulgent exercise of judicial discretion, the legislature has deprived the court of its power to be lenient. In the light of escalating food adulteration this is understandable. Even so, there are violations and violations. Scented supari is neither a staple diet nor popular 'With the poor, being an expensive item. Nor is saccharm poisonous but prohibited more as a precaution. That may be the reason for the prosecution not leading

evidence of its injurious properties. The circular bearing on saccharin in supari, though irrelevant to nullify the rule, suggests that it is not so grave a danger and may perhaps be permitted again. Cyclamate stands on a somewhat different footing, although in a practical sense, the menace to health from it is not too serious except where unusually massive doses are consumed. The accused's non-knowledge has been rejected by us but he alleges that he has retired from the firm. He has undergone a week in jail and is not shown to be a repeater.

The Court has jurisdiction to bring down the sentence to less than the minimum prescribed in s. 16(1) provided there are adequate and special reasons in that behalf. The normal minimum is six months in jail and a thousand rupees fine. We find no good reason to depart from the proposition that generally food offenses must be deterrently dealt with. The High Court under the erroneous impression that the offence fell under S. 7 (i) read with s. 16 (1) (a) (i) actually it comes under s.7 (v) read with S. 16 (1) (a) (ii) did not address itself to the quantum of sentence. Even so the punishment fits the crime and the criminal.

In Gopal Singh vs. State of Uttarakhand, (AIR 2013 SC 3048), the Hon'ble Apex Court while reducing the sentence of three years of imprisonment to one year, for the offence under section 324 of the Indian Penal Code, 1860 observed that apart from other circumstances sometimes lapse of time in commission of the crime is a ground for reduction of the sentence.

In State of M.P. v. Babulal, (2013 (10) SCALE 230) the Hon'ble Supreme Court found fault with the Hon'ble High Court's

decision reducing the sentence to the period already undergone on the ground that a period of more than 7 years had elapsed from the date of the incident and observed that taking such a lenient view in awarding the sentence on the ground of delay in legal proceedings “tantamounts to doing injustice of a crude form against the innocent victims and the society as a whole”.

In **Shyam Narain v. The State of NCT of Delhi**, (AIR 2013 SC 2209), the Hon’ble Apex Court while dealing with the imposition of sentence on a rape convict observed that “the fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes.” This observation sounds that the Hon’ble Supreme Court has been moving towards crime control model of criminal justice and retributive theory of punishment, at least in the cases of the crimes committed against women.

The Hon’ble Supreme Court in **Shimbhu v. State of Haryana**, (AIR 2014 SC 739) disapproved the reduction of sentence, than the prescribed minimum, in case of rape convicts, on the ground that the accused was “unsophisticated and illiterate citizen belonging to a weaker section of the society” that he was “a chronic addict to drinking” and had committed rape on the girl while in state of “intoxication” and that his family comprising of “an old mother, wife and children” were dependent upon him. These factors, the court said, did not justify recourse to the proviso to Section 376(2) of the

I.P.C. to impose a sentence less than the prescribed minimum. In this judgment the court did not consider the compromise arrived between the victim and the accused as a ground for reduction of sentence.

In State of M.P. v. Najab Khan (AIR 2013 SC 2997) also the court did not consider the compromise between the convict of the offence under section 326 of the I.P.C., and victim as a ground for reduction of sentence.

In Shankar Kisanrao Khade v. State of Maharashtra, [2013 Cri.LJ 2595(SC)], the Hon'ble Apex Court held that, an attempt was made to do away with the preparation of balance sheet of aggravating and mitigating circumstances for arriving at a decision on death sentence by substituting the said exercise with "Crime test", "Criminal test", and "PR test." While restating the "rarest of rare case" rule, Hon'ble Justice K.S.P. Radhakrishnan opined that to award death sentence the crime test has to be fully satisfied i.e. 100% and the criminal test shall be 0% and later it shall pass through "PR test." One doubts whether there can be any such cases where there will be 100% and 0% of crime test and criminal test respectively.

In Sunil Dutt Sharma v. State (Govt of NCT of Delhi), (AIR 2013 SC (Cri) 2342) the Hon'ble Apex Court has dealt with sentencing jurisprudence at length and opined that the principles of sentencing evolved by this Court over the years, though largely in the context of the death penalty, will be applicable to all lesser sentences so long as the sentencing Judge is vested with the discretion to award a lesser or a higher sentence. Thus the Hon'ble Supreme Court

evolved new principles on sentencing practices during 2013.

In Laxmi v. Union of India, (2013 (9) SCALE 291) the Hon'ble Apex court has taken note of increasing acid attacks on women and the need for regulating of the sale of acid and issued directions to the government to take appropriate action. The court also has found disparity in compensation provided to the victims of acid attacks in different States and directed that a minimum of three lakh rupees shall be fixed as compensation in such cases.

The Hon'ble Supreme Court in "Surya Baksh Singh Vs. State of Uttar Pradesh", [2014(1) Bom. C.R. (Criminal) 26] has observed that "Recent judgments of the Court contain a perceptible dilution of legal principles such as the right of silence of the accused. The Supreme Court has, in several cases, departed from this rule in enunciating, inter alia, that the accused are duty bound to give a valid explanation of facts within their specific and personal knowledge in order to dispel doubts on their complicity.

In Mohd. Arif @ Ashfaq Vs. The Registrar, Supreme Court of India, (2014 Cri.L.J. 4598), The Hon'ble Apex Court observed that Crime and punishment are two sides of the same coin. Punishment must fit to the crime. The notion of 'Just deserts' or a sentence proportionate to the offender's culpability was the principle which, by passage of time, became applicable to criminal jurisprudence. It is not out of place to mention that in all of recorded history, there has never been a time when crime and punishment have not been the subject of debate and difference of opinion. There are no statutory guidelines to regulate punishment. Therefore, in practice, there is much variance in

the matter of sentencing.

In State of Madhya Pradesh Vs. Surendra Singh, (AIR 2015 SC 3980), based on the theory of proportionality, it is laid down by Hon'ble Apex Court that, "Undue sympathy to impose inadequate sentence would do more harm to the justice system to 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 sentencing 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. The court 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. Meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of the society. One of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers. Imposition of sentence must commensurate with gravity of offence".

Compensation to Victims of Crime

6] Criminal law, which reflects the social ambitions and norms of the society, is designed to punish as well as to reform the criminals, but it hardly takes any notice of by product of crime- i.e. its victim.

The poor victims of crime are entirely overlooked in misplaced sympathy for the criminal. The guilty man is lodged, fed, clothed, warmed, lighted, and entertained in a model cell at the expense of the state, from the taxes that the victim pays to the treasury. And, the victim, instead of being looked after, is contributing towards the care of prisoners during his stay in the prison. In fact, it is a weakness of our criminal jurisprudence that the victims of crime don't attract due attention.

The code of criminal procedure, 1973, sec.357, 357A and Probation of Offenders Act, 1958, sec.5; empowers the court to provide compensation to the victims of crime. However it is noted with regret that the courts seldom resort to exercising their powers liberally and award adequate compensation to the victim, particularly when an accused is released on admonition, probation or when the parties enter into a compromise.

The 2008 amendments introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where " the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation.

Besides above enactments, the Juvenile Justice (Care and

Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.

The object of the criminal justice system is to reform the offender, and to ensure the society its security, and the security of its people by taking steps against the offender. It is thus a correctional measure. This purpose is not fulfilled only by incarceration, other alternative measures like parole, admonition with fine and probation fulfill the purpose equally well.

The benefit of Probation can also be usefully applied to cases where persons on account of family discord, destitution, loss of near relatives, or other causes of like nature, attempt to put an end to their own lives.

In **Sangeet & Anr. v. State of Haryana** [(2013) 2 SCC 452] the hon'ble Apex Court held that "In the sentencing process, both the crime and the criminal are equally important. 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."

Section 357 Cr.P.C. confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to

this question in every criminal case.

In State of Himachal Pradesh v. Ram Pal (2015) 42 SCD 438) the hon'ble Apex Court held that "On appeal, the view taken by the trial Court was reversed. It was held that even if the vehicle was going at slow speed and uphill, the vehicle could have been stopped and its striking to the girl could have been prevented. Undoubtedly, the death was because of vehicle hitting the girl which in the circumstances was clear result of rash and negligent act of driving. Accordingly, the appellate Court convicted the respondent under Section 279 and 304 A IPC and awarded sentence of imprisonment for six months and fine of Rs.1000, in default further imprisonment of one month under Section 304 A IPC and concurrent imprisonment for three months and fine of Rs.500, in default further imprisonment of fifteen days under Section 279 IPC."

In our view, the sentence of mere fine of Rs.40,000/- imposed by the High Court is not adequate and proportionate to the offence. We have been informed that a sum of Rs.3,60,000/- has been awarded as compensation by the insurance company to the heirs of the deceased. We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. Accordingly, we modify the impugned order passed by the High Court and enhance the compensation to be paid by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation of Rs.3 lakhs. In case the

respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.

CONCLUSION

7] The Code provides for wide discretionary powers to the judge once the conviction is determined. The Code talks about sentencing chiefly in S.235, S.248, S.325, S.360 and S.361. S.235 is a part of Chapter 18 dealing with a proceeding in the Court of Session. It directs the judge to pass a judgment of acquittal or conviction and in case conviction to follow clause 2 of the section. Clause 2 of the section gives the procedure to be followed in cases of sentencing a person convicted of a crime. The section provides a quasi trial to ensure that the convict is given a chance to speak for himself and give opinion on the sentence to be imposed on him. The reasons given by the convict may not be pertaining to the crime or be legally sound. It is just for the judge to get an idea of the social and personal details of the convict and to see if none of these will affect the sentence. Facts such as the convict being a breadwinner might help in mitigating his punishment or the conditions in which he might work. This section plainly provides that every person must be given a chance to talk about the kind of punishment to be imposed.

Thus, imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the

criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, 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 etc.

Thus, the law on the issue of sentencing policy can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

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