



Sentencing
Issues and Challenges

***Danda* the sentence**

The concept of justice underwent a transformation witnessing private vengeance mutating into public wrong.

Uniformity in the substantive and the procedural law of the country was achieved with the passing of the Indian Penal Code, 1860.

Jagmohan singh v. State of U.P.

AIR 1973 SC 947

The impossibility of laying down standards (in the matter of sentencing) is at the very core of criminal law as administered in India which invests the Judges with a very wide discretion in the matter affixing the degree of punishment and that this discretion in the matter of sentence is liable to be corrected by superior courts...

The exercise of judicial discretion on well recognised principles is, in the final analysis, the safest possible safeguard for the accused.

Supreme Court of America in Funnan v. State of Georgia : 408 us 238

If a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary justice and if there is no reason to believe that it serves any judicial purpose more effectively than some less severe punishment, then the due infliction of that punishment violates the command of the clause that the state may not inflict inhuman and uncivilized punishments upon those convicted of crimes."

Mandatory pre-sentencing hearing

Section 235 in The Code Of Criminal Procedure, 1973

235. Judgment of acquittal or conviction. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

Requirement for 'special reasons' or 'reason'

Section 354(3) in The Code Of Criminal Procedure, 1973

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

Death penalty : Illustrative instances

- (a) If the murder has been committed after previous planning and involves extreme brutality; or**
- (b) If the murder involves exceptional depravity; or**
- (c) If the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed:**
 - (i) While such member or public servant was on duty; or**
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or**
- (d) If the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.**

‘Rarest of rare’ doctrine in Bachan Singh

In its General Comment on Article 6 of the ICCPR, the UN Human Rights Committee has stated that Article 6 refers generally to abolition [of the death penalty] in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life..."

Constructive Liability

There have been cases where death sentence has been awarded on the basis of constructive or joint liability arising under Sections 34 and 149

Example: Babu V State of U.P, Mukhtar Singh and other cases.

There are equally a large number of cases where death sentence has not been awarded because the criminal liability of the accused was only under Section 34 or Section 149 of the IPC.

Objective

- What ought to be punishment and why?
- Who should be punished and how?
- What factors should decide the correlation between what, why, who and how?

Uniformity and Proportionality

- **A level of uniformity and consistency must be observed,**
- **There should be lack of arbitrariness,**
- **A standardized format is often helpful and may be followed**
- **Certainty of punishment is a bigger deterrent than quantum of punishment**

Factors contribute to make a fine Balance?

- To fit the punishment to the crime - as society's retribution and denunciation;
- To deter potential offenders - as a general deterrence;
- To deter the particular offender from injuring again - as specific deterrence.
- To prevent the particular offender from injuring society again - as prevention by disablement or incarceration.
- To enable the offender to take his place as a responsible and law abiding useful member of society - as reformation by correction or rehabilitation.

Post-sentence planning

Whether the sentencing court has any duty to decide on how the convict would suffer or be rehabilitated?