CHAPTER - XIII
EXECUTION AND REMISSION OF SENTENCES

The Superintendent of a Jail must give effect to the orders or sentences of the courts inflicted upon prisoners. When the sentence is given effect to and the prisoner is released on the expiry of his term of sentence, the warrant is returned to the issuing court stating that the sentence or the order of the court has been executed. The officer in charge of the jail is responsible for the proper execution of sentences. He must maintain such registers as are necessary for the correct execution of sentences.

Method of calculating a sentence - The duration of a sentence is calculated in calendar year or month. Sometimes it is stated in weeks or days. When the fraction of a month is to be calculated in days, a month for this purpose will consist of 30 days.

When the date of expiry of a sentence of imprisonment of a criminal prisoner is to be calculated, the day of passing the sentence and the day of release are included as days of imprisonment. Similarly the day on which a prisoner is released on bail or escaped and the day on which he was readmitted or recaptured are regarded as days of imprisonment. Let us illustrate the point. When a prisoner is sentenced on January 1, for one month's imprisonment he must be released on January 31, and not on February 1. Again a prisoner sentenced to one day's

1. Prisoners Act, 1900, Section 24.
imprisonment on January 1, is released on the same day. But if it specifically stated that he should be confined for 24 hours, he must be released on January 2, at a particular hour. When a person is sentenced to one month's imprisonment on February 28, he must be released on March 27. The period of imprisonment is counted from the date on which a particular sentence is passed. In the case of sentences under Sections 35(1), 396(3) and 397 of the Cr.P.C., the period of sentence is counted as directed by the Court. If a prisoner is undergoing more than one sentence and the first sentence is annulled on appeal, the second sentence starts from its own date as noted in the order of the Court. Let us illustrate the point. When a prisoner is sentenced on July 1, to six months' imprisonment and on August 1, to another period of six months' imprisonment, and on appeal the first sentence is quashed on August 31, the prisoner must be released on January 31. Because, his second sentence would be affected from August 1.

When a prisoner is released by an order of a competent court, if he is reconvicted by the appellate authority, the period during which he remained on bail is added to the term of sentence.

When a person is sentenced to imprisonment for his failure to pay fine, if he pays a portion of it, the date of his release is also proportionately altered. When a sentence is suspended by an appellate authority, and if the prisoner is not released on bail, he is simply regarded as an under-trial prisoner. If a sentence is modified on appeal, the date of release is calculated according to modification made by the appellate court.

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The period of stay of a prisoner as an undertrial is never taken into consideration at the time of his release after the expiry of his term of imprisonment.

**Simple imprisonment:** Simple imprisonment prisoners are not bound to do any labour. They idle away their time in jails. We consider that simple imprisonment is not in the interest of the individual and the state. It is the nature of man to engage himself in some activity. If one is compelled to remain without work, he may turn out to be an intriguer. Further, his physical and mental capacities are stunted. After his release, he may not be able to do any work and thus, he becomes a burden on society. Or he may be induced to commit crime so that he may lead a lazy life in the prison. It is not also in the interest of the State. The maintenance of a prisoner is a costly affair. He must pay back in kind to the State for maintaining him in the prison. We therefore, suggest that simple imprisonment should be abolished.

We are also not in favour of short sentences—say for a day or two. Such sentences do not provide opportunities for the reformation of the criminals.

**Solitary confinement:** Solitary confinement is inflicted as a judicial punishment. A prisoner sentenced to solitary confinement is kept in a cell and he is not allowed to communicate with others. The period of this confinement is not broken excepting on medical advice. When two sentences are imposed on a prisoner and if the second sentence is accompanied by solitary confinement, it is to be executed only when the second sentence starts. The convict undergoing solitary confinement as a judicial

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3. *Indian Jail Manual Committee*, 1957-59 (paras 147 to 148) makes a similar suggestion.

4. *Indian Penal Code*, Sections 73 and 74.
punishment must be neat and clean. His bedding must be aired properly. His cell is also visited by the Medical Officer frequently. If solitary confinement affects the health of a prisoner, the Medical Officer may certify to that effect and he is exempted from solitary confinement. When such a prisoner becomes permanently incapacitated, the Superintendent of the Jail applies to the Government through the I.G.P. for the remission of the sentence of solitary confinement.

Whipping — Every sentence of whipping was carried out in the jail. The prisoner was carefully examined by the Medical Officer whether he was fit to undergo this punishment. Not more than 30 stripes could be inflicted at a time. When whipping was inflicted, it was recorded by the Superintendent on the warrant with the date of infliction. We consider that whipping was primitive in nature. We are unable to understand the effect of this punishment. Of course, whipping as a judicial punishment was abolished in 1955.

Death Sentence:— The death sentence is not executed unless it is confirmed by the High Court. After the confirmation of the death sentence the Sessions Court fixes a date and directs the Jail Superintendent to execute the sentence. When a woman sentenced to death is found to be pregnant, the death sentence is postponed till the High Court takes a decision in this matter.

A prisoner under sentence of death is searched by the Jailer before he is locked up in a cell. He is kept in a condemned cell under the charge of a guard. The prisoner is given necessary privileges to appeal or pray for mercy.

6A. Act 44 of 1955 abolished whipping system under Section 3(1)
8. Prisons Act, 1894, Section 30.
When the date of execution is fixed, the Jail Superintendent makes necessary arrangements. Generally, the execution of a death sentence takes place early in the morning before unlocking the barracks and cells. All mechanical arrangements are made earlier and the manila rope used for hanging a prisoner is tested properly. The execution takes place in the presence of the Jail Superintendent, the Medical Officer and a Magistrate. Spectators, not more than 12, are allowed to witness the execution. An armed guard is kept till the execution is over.

When the Magistrate, the Superintendent and the Medical Officer and others have taken their place in the gallows enclosure, the condemned prisoner is handcuffed behind the back and brought to the gallows escorted by the Jail-guard under the charge of the Jailer. Before the execution of the death sentence, the executioner warrant is read out. The executioner straps the legs of the convict. After that, under the order of the Superintendent, the executioner carries out the sentence. The body remains suspended for half an hour. It is brought out when the Medical Officer certifies that life is extinct. The Superintendent returns the warrant of execution to the Judge and endorses on it that the sentence has been executed.

The body of an executed criminal is handed over to such friends or relatives of the deceased at their request provided there would be no demonstration. Otherwise, the body is cremated according to the religious rites of the dead convict.

At one time, in most of the jails at the district headquarters, death sentences were executed. But at present, it is done only in the Jorhat District Jail.

Transportation for life - Sir Stamford Raffles originated the conception of an Indian Penal Settlement in 1787. He deported the Indian convicts to Sumatra to develop that Island. When Sumatra went over to the Dutch, the convicts were sent to Singapore for about 25 years. This colony was too small and endeavours were made to find another place to which convicts could be deported from India and in 1858 the choice fell finally upon the Andamans and the penal settlement was opened at Port Blair.

Prisoners were sent to these places for purposes of colonization. Apart from this fact, it was also the aim of the Government to send long-term habitual prisoners so that there may not be overdrawing in jails. Every year a large number of prisoners were sent to Port Blair.

A convict sentenced to deportation was treated as a prisoner sentenced to rigorous imprisonment. Generally, prisoners sentenced to transportation in Assam were sent to the Presidency Jail at Calcutta which sent them to the Andamans. No prisoner could be sent to Port Blair without a specific order by a competent Court.

But blind persons, lunatics, idiots, lepers and those who suffered from phthisis pulmonary were not sent to these penal settlements.

The Jail Committee, 1919-20, condemned Port Blair for the settlement of criminals for obvious reasons. Convicts in Port Blair lived in a criminal atmosphere. They lived without a resident officer or paid warder. At night there was no

10. Indian Jails Committee Report, 1919-20, para 545.
supervision excepting that of convict guards. No effort was made to reform the prisoners. Further homosexual practices were on a large scale. The Pathans were generally the active and the Burmese were generally the passive agents in this matter. In such an atmosphere the reformation of the prisoners could not be expected.

So far as Port Blair was concerned, the Indian Jails Committee, 1919-20, made certain recommendations for the improvement of the conditions of life of the prisoners. The government of India made an attempt to introduce certain reforms. In the meanwhile, compelled by circumstances, Port Blair as a penal settlement was abandoned. The whole scheme was found to be uneconomical and ineffective in reforming the prisoners. The deportation of prisoners to this place was a curse and not a blessing. In 1955, the deportation of prisoners was abolished.

REMISSION OF A SENTENCE OF IMPRISONMENT

Marking System - The duration of the sentence of imprisonment of a prisoner can be reduced if he can prove himself to be basically good. This is accomplished by the Marking System. Remission depends upon the number of marks earned by the prisoners.

The prisoners sentenced to more than one year's rigorous imprisonment were given marks. Marks were given to the prisoner on the basis of their behaviour and work done by them. It must be said that marking system induced the prisoners to be disciplined. Marks were given to prisoners at the following rates.

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12. Section 58 of the I.P.C. was omitted in 1955 under Act 26 of 1955. On September, 1945 the Government of India decided to have the Penal Settlement of Port Blair abolished—Sethana M.J., Society and Criminal, p.264.
1. One mark for good conduct for the whole day.
2. One mark daily for industry and task.
3. One mark daily for special diligence.

Prisoners were also given marks for assisting the jail authorities for the maintenance of jail discipline, for success in teaching a handicraft for special excellence in work, for protecting a prison officer from attack, for assistance in the case of an outbreak of violence and for economy in wearing clothes.

The officer who awarded marks had to consult the history ticket of the prisoners. If a prisoner committed an offence in a particular day, he was not given marks for that day.

Let us now note the value of each mark. A prisoner who earned 24 marks was entitled to one day's remission.

The Marking System worked till 1909, when it was replaced by a new system known as 'Remission system'. The marking system was abolished because of the increase of jail population and the difficulties involved in the calculation of marks. Moreover, all prisoners were not benefitted by it. Further, there was favouritism in the award of marks. Prisoners having good relationship with jail officials earned more marks.

Remission System: The sentences of imprisonment can be shortened by the grant of remission. But prisoners sentenced to transportation or imprisonment under Section 2 of the Frontier

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Later on other countries followed this system. (In 1867, the system of remission of sentences was introduced in India - Sethana, M.J., Society and the Criminal, p. 263).

Murderous Outrages Regulation, 1901, or to imprisonment for less than five months for the non-payment of fines and to simple imprisonment for less than one month are not entitled to any remission.

As regards the rate of remission, it is one day per month for good conduct and scrupulous observation of all prison regulations and two days per month for industry and due performance of work. Later on the rate of remission for good conduct and scrupulous observation of all prison regulations was increased to two days per month.

Remission earned by a prisoner may be cancelled by the Superintendent with the sanction of the I.G.P. for assaulting a jail officer. Award of remission must be entered in the history ticket. No remission is given on the month of the prisoner's release.

Ordinary remission is awarded by the Superintendent or subject to his control, by the Jailer, Assistant Jailer or any other officer in consultation with the prisoner. Besides ordinary remission, there is also provision for special remission. Special remission may be given to any prisoner for assisting in detecting or preventing breaches of prison discipline or regulations, for success in teaching handicrafts, for special excellence in work, for protecting an officer from attack and for economy in wearing clothes. Special remission may be awarded to an amount not exceeding 30 days by the Superintendent in a year. The I.G.P. or the Local Government may award remission for a maximum of 60 days in a year. But the total remission earned by any prisoner should not exceed one-fourth of the period of

imprisonment. Any prisoner employed on prison service may be awarded one day's remission per month in addition to any other remission earned by him.

The total remission earned by a prisoner at the end of each month is calculated and entered in a register specially maintained for the purpose.

Besides normal remission, prisoners are also awarded special remission on special occasions like the Diamond Jubilee Celebrations of Queen Victoria, the first Independence Day and the First Republic Day of India.

When the date of release of a prisoner is calculated, the number of days of remission must be converted into months and days. The Superintendent must release a prisoner if he has earned such remission as entitles him to release.

The remission system has been working satisfactorily in Assam since its introduction. Prisoners of good conduct are greatly benefitted by it. It is a great incentive to prisoners to develop their latent qualities.

Advisory Board: Revision of the sentences of imprisonment of prisoners is essential, because, there is no need for the detention of a person who has reformed himself. It is harmful for the convict. It is also uneconomic for the State. Unnecessary detention may also cause anxiety in the mind of the prisoner. The marking system and remission system failed to meet this objective of curtailing the sentences of long-term prisoners of good behaviour. As a result of this there was the need for an Advisory Board to revise the sentences of long-term prisoners.

The Indian Jails Committee, 1919-20, in its report suggested that the sentence of long-term prisoners should be brought under revision as soon as the prisoner has served half of the sentence in the case of a non-habitual prisoner and two-thirds of the sentence in the case of a habitual prisoner. The remission earned by a prisoner should also be counted in this case. It was further suggested by the Committee that the Advisory Board should consist of the I.G.P., the Sessions Judge, and a non-official member. The Local Government must consider the cases recommended by the board for release conditionally and unconditionally.

The Government of Assam took a long time in establishing three Advisory Boards for the revision system prevalent in Assam was functioning well. But ultimately the Government of Assam established the Advisory Boards in 1931 to revise sentences. But they could not function during the year as they were busy with preliminary works.

Now let us see the constitutional structure of the Advisory Board. A Board consists of three members viz., the Inspector General of Prisons as Chairman, the Sessions Judge and a non-official member appointed by the Government. The Superintendent of the Jail concerned is the Secretary of the Board with no voting power. The term of office of the non-official member is three years. The Board must meet at least once a year as may be fixed by the I.G.P. When necessary, the Board may sit at Shillong.

22. Indian Jails Committee, 1919-20, para. 454.
Permanent Advisory Boards were established in Sylhet and Gauhati Jails. Temporary Boards were constituted for other jails from time to time.

The Advisory Board can consider the case of the prisoner who is a casual offender and who has a substantive sentence or an aggregate of substantive sentences amounting to three years and more irrespective of the nature of imprisonment, rigorous or simple. The sentence of prisoners who have completed two years of imprisonment or half of their sentence whichever is greater is taken up under review.

Necessary particulars regarding a prisoner are collected by the Board from the Jail Superintendent, the District Magistrate and the Superintendent of Police. The particulars of the convict and the reports and recommendations of the District Magistrate and the District Superintendent of Police, history ticket and a copy of judgment must be submitted by the Secretary in the case of every prisoner appearing before the Board.

The recommendation of the Board must be unanimous. The request for release may be conditional or unconditional. While revising a sentence the Board should not review the propriety of the original judgment, but it should consider the basic qualities of the prisoner and his antecedents and probabilities for his reformation.

The Board while recommending a case gives reasons for the release of a particular prisoner. All papers connected with the case are forwarded to the Judicial Department of the Government for orders. When a prisoner is released conditionally,

26. Ibid., Rule 935.
a breach of any condition is sufficient to arrest him and bring him back to jail to undergo the unexpired portion of his sentence. An Advisory Board Register is maintained in which the dates of revision of sentence of all long term prisoners are noted.

When a prisoner is released after revision of sentence, the Superintendent of the Jail must send the warrant of the prisoner with a copy of the revision sheet to the Court which sentenced him. If a prisoner is released conditionally, it is the duty of the Jail Superintendent to inform the District Magistrate about the unexpired portion of the sentence of the prisoner so that he may be alert regarding the movements of the prisoner.

The All India Jail Manual Committee, 1957-59, recommended that the procedure for reviewing cases should be simplified and uniform throughout the Country; that the sentence of habitual male adults should be reviewed when two-thirds of the term is over; that the sentences of non-habitual prisoner, women, adolescents and the old and infirm should be reviewed when the half of the sentence is over; that the review of sentence should be treated as an essential part of correctional work and finally cases of women who committed infanticide under pressure should be reduced on admission.

These recommendations are still under the consideration of the Government of Assam.

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27. All-India Jail Manual Committee, 1957-59, paras 112 to 114.
The Advisory Board met regularly and recommended the cases of deserving prisoners which were generally accepted by the Government. In 1962, a meeting of the Board was held at Gauhati and it recommended the unconditional release of 11 prisoners, of whom 10 were released by the Government unconditionally.

The Advisory Boards have functioned satisfactorily.