CHAPTER - V

SENTENCING

The main purpose of criminal law is prevention of crimes. It is attempted to be achieved through several means. The criminal justice system has its machinery to take preventive measures such as police surveillance, security proceedings etc. The Courts try to achieve prevention of crimes by way of ensuring imposition of punishments on the criminals. And the prison system, a part of the justice system carries out the punishment. Among these steps for the prevention of crimes, it is really the sentencing part which assumes much importance.

Sentencing is a complex function. Keeping the main aim of prevention in vision the court has to consider a large number of questions while imposing a particular sentence on an individual. It has to give consideration to the personality of the offender, the seriousness of the offence i.e. the intensity of the harm caused to the society; probable impact the particular sentence may have on the society and the individual, etc. At times, the court is placed in a dilemma; namely whether to go for one that has some proportionality to the seriousness of
the offence to signify the societal disapproval and deterrence or to go
for a punishment that is deterrent on the offender.

The importance of sentencing has been succinctly spelt out thus:
Sentencing a man may be and often is decisive as to his fate.
Therefore it seems to be a fair demand on society that its organs, the
courts of justice, should not use their enormous powers on the citizens
lightheartedly, but be fully aware of the consequences of their
decisions.¹

Criminal Justice System has responded to the crimes differently
at different points of time and at present it has a good number of
punishments prescribed for various offences with varied objectives.
The determination of the choice of an appropriate sanction out of the
many permitted by law in a particular situation is of enormous
consequence to the individual offender as it is to the society at large.

Judiciary is the institution through which society expresses its
correctional predictions. The philosophy of sentencing accepted by the
society is reflected in the sentencing process. While the offender's life,

¹. Olod Kinberg - Sentencing (1965).
liberty or property and his entire future hinges on the outcome of the sentencing process, it is also bound to have some impact on the social interests - the primary concern of the criminal Justice system. The sentencing of offender is not an end in itself but rather the initiation of a meaningful process that other organs will carry on. As already mentioned, the sentence will not only affect merely the individual sentenced and those immediately connected with him but also the wider society of which he forms part.

Sentencing under the common law system and under the French system are different in several respects. The main difference is with reference to the courts' role in overseeing the implementation of the sentences.

Generally speaking, while the French system ensures that the imposition of sentence involves almost all functionaries under it, the common law system entrusts the implementation part to the prison staff after the courts have imposed the sentence. Since Pondicherry experienced both procedures it is interesting to see how the society reacted to both the systems in the correctional context.
Under the present system the courts have ample discretion in sentencing. The indeterminate sentencing scheme provided for in the penal code as well in other pieces of legislation gives the courts ample powers to select a sentence which they consider appropriate.

The current thinking on sentencing stressing the desirability of selecting a sanction that suits the personality of the offender rather than the seriousness of the offence has thrown open enough opportunities for the Indian Courts to decide the questions on sentencing.

The amendments effected to the provisions in the criminal procedure code of India, 1973, such as SS 235(2) 248(2) and 255(2)\textsuperscript{2} enabling the courts to go for pre-sentence hearing further empowered them to be the deciding authorities. The provisions such as Sections 360-361\textsuperscript{3} of Cr.P.C. have also further enhanced the position of courts in sentencing the offender. The appellate judiciary plays an effective role in streamlining sentencing. Uniformity in sentencing is also being achieved by the appellate courts in India.

3. Ibid.
Sentencing under the French Criminal Justice System

The sentences applicable to each offence were determined with the limits fixed by the code penal. The modalities of enforcement of the provisions was described in the code de procedure penal. The court could suspend the sentence provided the accused has not been previously convicted of a 'crime' or a delit. During the period of suspension the court may impose certain conditions on the accused. If the accused was not convicted of a 'crime' or 'delit' and sentenced to more than two month's imprisonment during the period of five years after which the suspended sentence was pronounced, the sentence subject to the suspension would not be enforced. A suspended sentence did not affect any award of damages or expenses against the accused, who was required to pay them. If the accused committed any offence during the period of suspended sentence, the earlier suspended sentence would be treated as previous conviction.

For certain offences, the code penal allowed the court to deprive an accused of certain civil rights such as the right to vote to dispose his property or to practice particular profession. In the case of sentence to life imprisonment the accused was deprived of his right to dispose of his property. The court could also order confiscation of goods used in the commission of or gained as the result of a criminal offence. The
law allowed the court to banish the accused from Pondicherry to certain areas outside Pondicherry. The court could sometimes order that details of the offence and conviction be prominently displayed in certain areas like the hometown of the accused. However, there was discretion for the courts to ignore these penalties with the measures of suspended sentence and probation.

If fine was imposed an official called 'percepteur' employed in the Ministry of Finance was entrusted with responsibility of collecting the same. The procurer was not responsible for collecting the fine. After imposition of fine and after the expiry of the appeal time, the accused might make arrangements with the 'percepteur' for the time limits and methods by which the fine was to be paid. If the accused failed to pay the fine, the 'percepteur' would request the Procureur to order arrest of the accused. Then the procurer would instruct the police to arrest the accused and take him to prison where he would be detained for a specified period. The accused could avoid going to prison if he paid the fine on the spot, or if the 'percepteur' agreed to a further arrangement for payment thereof. However, there were exceptions for the aged.

4. The 'percepteur' had such a power to grant extension of time for payment of fine.
and indigent persons. If the accused was aged between 60 and 70 years and failed to pay the fine, the alternative period of imprisonment was halved. If he was aged over seventy years no alternative of imprisonment could be enforced.

In certain circumstances, the alternate period of imprisonment might be halved, if the accused could prove that he was a man of no means.5 If the accused was already serving a sentence of imprisonment, the alternative period for non-payment of fine would only commence when the first term had expired. The arrears of fine after the death of the accused were be regarded as debt, against his estate. The court had no control over how a fine was paid. If proceedings were instituted by a 'partie civile' and the accused was convicted, the court had a discretion to award expenses against an accused. Such a course was uncommon. If the accused was ordered to pay damages to the victim then the responsibility of enforcement of the same was with the victim. But, for non-payment of damages an accused could be sent to prison.

5. Authenticated document from the department of Contribution (Revenue) to be produced.
When the court imposed a sentence of imprisonment, it might not be executed until the time limits for lodging an appeal had expired, or unless the court specifically ordered that the sentence be executed forthwith. The sentence must not exceed one year's imprisonment.

Imprisonment for life was imposed for certain offences. Imprisonment was always back-dated to include any time in custody awaiting trial. The way in which the sentence was served was controlled by a 'magistrate' called the judge 'application des paines, as soon as the sentence of imprisonment was executed. Normally a prisoner would start by being given work to do in his cell. He might then pass through various stages, including working outside the prison for government contractors etc. He might be placed on semi-liberty whereby he was allowed to work outside the prison and was only detained with working hours and at week ends and public holidays. Ultimately he would be released on conditional liberty. The procureur pronouncing the sentence must be consulted before the release of the prisoner on conditional liberty.

The procureur was responsible for enforcing the sentence. The procureur was responsible for enforcing the sentence.

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6. It need not wait until the expiry of the two month time limit given to the Procureur general to lodge an appeal against a Judgment to the tribunal correctional.
procureur had no discretion to decide whether or not to enforce the sentence. When the sentence imposed by the tribunal correctional or the tribunal de police, the procureur de la République would enforce the sentence.\(^7\)

The time limit allowed to an accused to lodge an appeal with the cour de caussen was three days. The sentence might be enforced in the cour d'assises within three days of its imposition. In the tribunal correctional, if the accused was present in court when the sentence was pronounced, the sentence might be enforced after the expiry of ten days. The ten days time was the time limit for lodging an appeal with the cour d'appeal.

If the sentence of imprisonment was pronounced in the absence of the accused, the "huissier"\(^8\) would serve a notice on the accused informing him about the court sentence. The same rules applied to service of notice as applied to service of a citation to the accused to attend trial. The sentence became enforceable within ten days of personal service. If this had not been effected, the sentence

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7. The enforcing of sentence was vested with the Procureur de la République.
8. Process server empowered to serve the processes.
enforceable within ten days of the accused signing the receipt for the delivery of the registered letter informing him the notice has been left at the local major's officer. Ten days time was the limit for appealing against a judgement by default by means of the appeal procedure known as L'opposition.\textsuperscript{9} If service of the notice was not effected, then the Procureur might instruct the police to trace the accused. If the accused was not traced within five years and if the penalty had not been extinguished by prescription, the penalty might be enforced on the accused without notification. The time limit for enforcement of penalty for crimes, delit and contravention's were 20 years, 5 years and 2 years respectively.

If the accused was not already in custody, the Procureur would send an extract of the court's verdict and sentence to the police, with instructions to arrest the accused and take him to prison. If the accused lived outside district of the Procureur, he would send the extract to the Procureur having jurisdiction requesting him to enforce the penalty. However, when the penalty of imprisonment became enforceable, and the accused was in custody, the sentence would begin to run from the date when the accused was taken into custody before the trial.

\textsuperscript{9} The procedure under which it was done was known as L'opposition.
For the offences like, particide, premeditated murder, illtreatment of children with intent to kill, willful fire raising of an occupied house, wrongful detention accompanied by physical torture, perjury in the trial of an offence carrying the death penalty, kidnapping a child less than 15 years of age when the child died and for certain types of robbery and theft death penalty might be imposed. However, in practice juries in such trials often found some mitigating circumstances which avoided the death penalty being imposed. Apart from that the president de la République might grant a reprieve by exercising his discretion. Apart from the above mentioned punishments like loss of civil rights, fines imprisonment, death penalty there was a big list of the punishments in French Law. They are Reclusion, civic degradation, interdiction, incapacity to give and receive gratuitously, forfeiture of property, publication of judgement, local banishment, loss of civil and family rights, prohibition to practice specified professions, confiscation of one or more vehicles, confiscation of arms, cancellation of driving licence, prohibition to drive certain vehicles, prohibition to possess and carry specified arms, cancellation of hunting permit and work of public interest etc.

The modality for imposition and the quantum of sentence to be imposed on the accused after conviction were detailed in the French
Penal Law. However, when extenuating circumstance existed the court on satisfaction of the same could go for a reduced sentence.  

Under the French criminal justice system, the inquiry was not only on the presence of the ingredients of the offence but also on all the surrounding circumstances of the case. This kind of enquiry did help the court to choose an appropriate sentence. This also helped persons accused of grave offices to build up a case for extenuating circumstances which might exist in their favour instead of total denial. In that way, even in cases of felony a correctional punishment could be pronounced, on the contrary when the convict happened to be a recidivist the court used to pronounce a sentence higher than the normal punishment, in felony cases. In case of misdemeanour, for a recidivist, the minimum would be the maximum fixed by law for first offenders and the maximum would be double the normal. In cases of violation by recidivists there was no aggravation of sentence.

For the first offenders there were several provisions to mitigate the sentence. The court had power to fully exonerate the first offenders when it appeared to it that the accused had re-settled in normal life, that

he had repaired the loss caused by him and that the trouble arising out of the offence had ceased. The court could adjourn the pronouncement of sentence when it appeared to it that the convicted person was getting resettled in normal life and the injury caused by him was being repaired. Finally, the court could exonerate the convict from any punishment prescribed by law.

When one examines these provisions and practices it seems there was public participation in the process of sentencing. In the sentencing segment the participation was open to the public unlike the present Indian System. In the French System the question of sentence was determined by the prosecutors, and jury alongwith the Presiding Officers.

**Sentencing under the Indian Model**

In olden days, sentences were fairly standardized. Fixed specific punishments for offences were laid down by the law, and once a verdict of guilty was rendered the judge merely ordered the execution of the appropriate sentence in choosing the punishment, was dependents on the seriousness of the offences. In other words, the criminal justice system stressed on the prevention of crimes by way of deterrence rather than by way of reformation of the offender. There
was no scheme under which the sentencing Judge could choose penalties designed for reformation and rehabilitation of the offenders.

Now, the position has changed as a consequence of changes in societal reactions to crime and criminals; the rethinking process about the crime and punishment is continuing. The trend for adoption of reformative and rehabilitative measures to make the accused to become a good citizen is on. Draconian notions and passion for retribution are yielding to "Mankind's concern for kindness". At present, it is believed that the sentence must suit the offender, rather than the offence, so that he can return to the society as a law abiding citizen. Thus sentencing requires considerations beyond the nature of the crime and circumstances surrounding it.

Sentencing starts after conviction and awarding of an appropriate sentence involves a lot of considerations. It is also found now, that longer the sentence of imprisonment the lesser are the chances of re-socialization in the community. The nature and the length of the sentences have direct bearing upon the future of the

offender. The proper sentence imposed by the court will determine the effectiveness of correctional measures.

The first issue which a court has to decide after finding an accused person guilty is to determine whether the offender needs to be dealt with by penal sanction or by rehabilitative measures. Rehabilitation is totally different from retribution and deterrence. If the punitive approach is decided in favour of punishment the normal punishments available are fine, imprisonment or death sentence in extreme cases. If 'Reformation' is made as a choice, the further issue is to choose between alternatives like probation and other measures. In case of the imposition of imprisonment or fine, the quantum of the sanction shall also have to be fixed. The various parts of the sentencing decisions are referred to as the primary and secondary decisions.13

The Report14 of the Indian Law Commission identified the various considerations to be made in sentencing. The same have been cited with approval by the Supreme Court in its subsequent rulings. The Law Commission's views on sentencing are worth-note. They run thus:

"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 of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the possibility of return of the offender to normal life in the community, the prospect for the rehabilitation of the offender, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved".  

Sentencing in India - Various Forms

The courts derive their sentencing power from the criminal procedure code. The offences are divided into two heads: (1) offences under the Indian Penal Code, and (ii) Offences under any other law.

Offences under the Indian Penal Code may be tried by

(a) The High Court, or

(b) The court of sessions, or

(c) Any other court by which such offence is shown in the first schedule of criminal procedure code to be triable.

15. 47th Report of Law Commission of India.
17 Section 26 of Cr.P.C.
An offence under any other law shall be tried by the court, empowered by such other law to try it.

In India the sentencing process is totally a judicial determination and the courts have to pass definite sentences. In the matter of sentencing of offenders, law confers wide discretionary powers on the judges.\textsuperscript{18} The substantive law normally indicates the maximum punishment to be awarded for an offence and then leaves it to the discretion of the court to pass an appropriate sentence within the maximum limit. For instance, in case of murder punishment is provided under Section 302 of Indian Penal Code, which reads as follows:

"Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to live".

In this 'form of the sentence', the court can exercise its discretion only within the four corners of the relevant section and can award sentence only in the 'definite form'. High Courts can pass any sentence authorised by law.\textsuperscript{19} Sessions Judge or Additional Sessions Judge

\textsuperscript{18} The maximum punishments provided in the substantive law enables the Judges to award punishments with their discretion.

\textsuperscript{19} Section 28(1) of Cr.P.C.
can pass any sentence authorised by law, but death sentence shall be subject to the confirmation by the High Court. Assistant Sessions Judge can pass any sentence except (i) death (ii) imprisonment for life (iii) imprisonment for more than 10 years. Chief Judicial Magistrate/Chief Metropolitan Magistrate can pass any sentence authorised by law, except a sentence of death or imprisonment for life or imprisonment for more than seven years. Metropolitan Magistrate or First Class Magistrate can award imprisonment for not more than three years or fine not exceeding Rs.5000/- or both. The Second Class Magistrate can award imprisonment for not more than 1 year or fine not exceeding Rs.1000 or both.

The code of criminal procedure also conferred the right of appeal upon the party which is aggrieved by the judgement of the criminal court. Criminal appeals to the Supreme Court under the criminal procedure code were regulated by the constitution. Article 134 of the Indian Constitution provides:

20. Section 28(2) of Cr.P.C.
21. Section 28(3) of Cr.P.C.
22. Section 29(1) of Cr.P.C.
23. Section 29 (2) of Cr.P.C.
24. Section 29 (3) of Cr.P.C.
An appeal shall lie to the Supreme Court from any Judgement, final order or sentence in criminal proceedings of a High Court in India, if the High Court: (a) has an appeal reversed an order of acquittal of an accused person and sentences him to death, or any court subordinate to its authority has in such trial convicted the accused person and sentenced him to death: or (b) certifies that the case is a fit one for appeal.

The higher appellate or revisional court, under the criminal procedure code, was the High Court. The law has undergone a significant change in the present criminal procedure code, 1973, which provides for appeals to the Supreme Court in the following circumstances: (i) Any person convicted on a trial held by a high court in its extra ordinary original criminal jurisdiction may appeal to the Supreme Court.27 (ii) Where the High Court has an appeal reversed an order of acquittal of an accused and convicted him and sentenced him to death or to life imprisonment for life or to imprisonment for 10 years or more, he may appeal to the Supreme Court.28

27. Section 374 (1) of Cr.P.C.
28. Section 379 of Cr.P.C.
Thus, if a case is tried by the Sessions Judge who has convicted and sentenced the accused to death, an appeal shall lie to the Supreme Court under Art.134(1) of the constitution, after the High Court has rejected the appeal to it under the provisions of the criminal procedure code. The Supreme Court observed in Ram Kumar Pande v. The State of Madhya Pradesh, that no certificate of the High Court is required for an appeal, where an acquittal has been converted into a conviction under S.302/34 Indian penal code and the sentence of life imprisonment has been imposed on the accused. In such cases appeal lies as a matter of right to the Supreme Court under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

Punishments for sentencing of offences are contained in more than 200 Indian Statutes. However, the bull of the offences and punishments are to be found in the Indian penal code: Section 53 of the code provides the following kind of punishments:

(a) Death (b) Imprisonment for life

(c) Imprisonment 1. Rigorous ; 2. Simple.

(d) Forfeiture of property

(e) Fine
Death Sentence

The question, whether the state has a right to take away a man's life, has always been agitated and its validity has often been questioned. However, in Bachan Singh V. State of Punjab, the Supreme Court by a majority Judgement upheld the validity of death sentence as punishment for murder. The majority ruled out that provision of death - sentence as an alternative punishment under S.302 of the Indian Penal Code could not be held to be unreasonable and against public interest. It did not violate either the letter or spirit of Article 19 of the constitution. The court observed:

"..... It could not be said, that the constitution framers, considered death for murder or the prescribed traditional mode of its execution as a degrading punishment which will defile 'the dignity of the individual', within the contemplation of the preamble to the constitution .... It can not be said that the death penalty for the offence of murder violated, the basic structure of the constitution.... It did not contravene Article 21 which guarantees life and personal liberty...."  

An analysis of the provisions of the Indian Penal Code shows that law vests in the Judge a wide discretion in the matter of awarding a

30. Mr. Justice P.N. Bhagawati in his dissenting opinion said, that he was unable to agree with the conclusions of the majority. He further observed, that S.302 of 1.P.C. in so far as it provided for imposition of death penalty an alternative to life sentence, was violative of Arts.14 and 21 of the constitution of India and therefore, ultravires and void.
sentence and as such the award of death penalty is left to the discretion of the court. However, under S.303 of the Indian Penal Code, there was no choice with the Court except to award a death sentence. But the Supreme Court of India in *Mithra v. State of Punjab*, Struck down S.303. I.P.C. on the ground that it violates Art.14 and 21 of the constitution. The court observed that the mandatory sentence of death prescribed by S.303 with no discretion left to the court to have regard to the circumstances which led to the commission of a crime is relic of ancient history and is void, the court held that:

"S.303 violated Art.14 which guaranteed equality before law as also Art.21 of the constitution which provides that no one shall be deprived of his life or liberty except in accordance with the procedure established by law".

Though the Supreme Court has upheld the death sentence as constitutional, it is to be awarded in 'rarest of the rare cases'. It is to be imposed only when the life imprisonment appeared to be an altogether inadequate punishment having regard to the circumstances of the crime and option to award life imprisonment could not be conscientiously exercised. As regards the mode of executing the

34. Section 354(8) of Cr.P.C.
sentence of death, law provides that when any person is sentenced to
deed, the sentencing court shall direct that he be hanged by neck till
he is dead.35

The constitutional validity of the mode of "execution of death
sentence by hanging by rope" was challenged on the ground that it is a
cruel and barbarous method of executing a death sentence, which is
violative of Art.21 of the constitution.36 The court rejected the
contention and held that executing death sentence by rope does not
violate Art.21 of the constitution. The court held that neither
electricution, nor even the lathel injection has any distinct or
demarcating advantage over the system of hanging.37

The sentence of death can be executed only when it has been
confirmed by the High Court. In order to confirm the death sentence
the High Court has to proceed in accordance with the provisions of
law,38 and has to ensure that the order passed by the sessions court is
correct and for this purpose the High court has to examine the entire

37. Ibid.
38. Sections 375 and 376 of Cr.P.C.
evidence for itself. The Indian legislature as well as the Judiciary have shown their aversion towards the execution of death sentence and it is exercised only in very exceptional cases.

The framers of the Indian penal code were of the view that capital punishment ought to be used sparingly. The position of capital punishment in the penal code has not changed as such in more than hundred years of its existence but the trend in the direction of the abolition of capital punishment in many countries has affected legislative as well as Judicial thinking on the subject. The legislative thinking is reflected in some subtle changes in the criminal procedure code during the last two decades or so. Before the amendment of the criminal procedure code of 1898 in 1955 it was obligatory for a court to give reasons for not awarding death sentence in a case of murder. The amendment of 1955 did away with the requirement of assigning reasons for not giving death sentence in an appropriate case. Under the 1973 code, the court has to record reasons for awarding death sentence. It is evident that the provisions regarding death sentence have gradually been liberalised in favour of guilty persons.

The liberal judicial attitude has also been responsible to a great extent for the gradual reduction of capital sentence in the recent past as will be evident from the following:

It may be worthwhile to take note of certain general principles which have emerged in relation to capital punishment in India. They may be summed up as follows:

1. Brutality involved in a murder as an aggravating factor may indicate capital punishment.

2. A murder after due premeditation and planning may call for death sentence.

3. Provocation given by the accused to the offender even if nor sufficiently 'grave and sudden' to reduce the offence to culpable homicide not amounting to murder under Exception 1 to section 300 of the I.P.C. may still be treated as a mitigating circumstance to warrant life imprisonment in preference to death sentence.

4. Murder committed on the spur of a moment where no enmity between the convict and the deceased is involved may not be punished with death. Such cases are not necessarily covered otherwise by exception 4 to section 300, I.P.C. which reduces the offence of murder to culpable homicide not amounting to murder
punishable with life imprisonment upto ten years Irresistible impulse has also been accepted as a mitigating factor.40

5. Age or sex itself is not generally enough to reduce the sentence of death to life imprisonment though there are some cases where youth of the offender has been accepted as a mitigating factor.41 The Indian Penal Code Amendment Bill, 1972 contains the following provision:

The sentence of death shall not be passed on a person convicted of a capital offence if at the time of committing the offence he was under eighteen years of age and death is not the only punishment provided by the law for the offence.42

6. If an appeal is made against the conviction for murder to the High Court and the Judges agree on the question of guilt but differ on sentence, it is usualy not to impose death penalty unless there are compelling reason for the extreme punishments.43


41. See Prem Narain v. State, AIR 1957 All 177. See also the general observations by the Supreme Court on capital punishment in Ediga Anamma v. State of A.P., (1974) 4 SCC 443. 1974 SCC (Cri) 479. Where it was said that where the murderer is too young or too old, the clemency of penal justice helps him.

42. Clause 20 of the bill.

7. Another factor which has sometimes been accepted as one of the mitigating circumstances is the delay involved in the final disposal of the case by the appellate courts. The reason advanced is that the mental torture caused to the convict due to the death sentence hovering over him for a long time may be considered as a mitigating factor. A possible criticism is that delay in the disposal of the appeal depends upon a number of fortutious circumstances linked with the legal process, and as such, have no relevance to the question of death sentence. The Supreme Court has said that the value of such delay as a mitigating factor depends upon the features of a particular case. The court observed that the issue cannot be divorced from the diabolical circumstances of the crime itself.\footnote{Lajar Masih v. State of U.P 1976 SCC (Cri.) 195.}

Some of the above mentioned principles can be illustrated by the decisions of the High Courts and Supreme Court.

In Suna v. State, a young man of twenty years was found guilty of an offence under Section 380 of I.P.C. for committing theft of bycycle and a few clothes. The accused was released on admonition under section 3 of the probation of offenders Act, 1958 by assigning justification that he had no previous convictions and the theft was
committed on a sudden temptation without any prior planning or design.45

In Ghanshyam has v. Municipal Corporation of Delhi,46 the benefit of probation was given on the ground that the conviction was based on an offence committed many years before the disposal of the appeal by the Supreme Court. The alleged offence was committed in 1965 and the final disposal by the Supreme Court was in 1975.

Though the Supreme Court refused to apply the provisions of probation of offenders Act, 1958 in case of a person convicted under the prevention of Food Adulteration Act47 because of imperatives of social defense and the improbabilities of moral proselytisation, it appeared that the court was not always averse to probation even in such cases.

The English courts have frequently shown extreme liberality in granting probation to persons who were 'intermediate recidivists'. But the attitude of the Indian courts in comparison appeared to be extremely cautious.

45. AIR 1967 (Ori) 4.
46. (1975) 4 SCC 82; 1975 SCC (Cri) 744.
In *Kamroonisa v. State of Maharashtra*48, for example, the benefit of probation was not given the appellant was arrested in 1971 while moving in a local train in suspicious circumstances but was released on bond of good behaviour for a sum of Rs.100/- subsequently she was convicted for theft of a gold necklace and was sentenced to 18 months rigorous imprisonment and a fine of Rs.500/- and 6 months' imprisonment in default of payment of fine. The appellant stated before the probation officer that she had committed similar thefts on two or three occasions but those thefts were undetected. The Supreme Court held that though at the relevant time she was under 21 years of age, it was not a proper case for probation having regard to the nature of the offence and character of the deceased appellant.

In *Utham Singh v. State*49, the accused was convicted under Section 292 of Indian Penal Code, for being in possession, for the purpose of sale, three packets of playing cards with obscene photographs and sentenced to six months' rigorous imprisonment and a fine of Rs.500/- The Apex Court declined to interfere with the sentence on the following justification:-

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48. (1975) 3 SCC 272; 1974 SCC (Crl) 880.
"The accused is married and is said to be 36 years of age. Having regard to the circumstances of the case and the nature of the offence and the potential danger of the accused's activity in this nefarious trade affecting the moral of the society, particularly of the young, we are not prepared to release him under section 4 of the probation of offenders Act. These offences of corrupting the internal fabric of the mind have got to be treated on the same footing as the cases of food adulteration and we are not prepared to show any leniency.....".50

Thus in spite of the existence of laws enabling the courts to avoid incarceration of offenders they have not been extending the benefits of these laws indiscriminately. The discretion vested in them is being exercised, generally speaking, in a fair manner.

The Indian Courts have of late been wearing out a sentencing policy with the philosophy of karuna and leniency in dealing with offenders. In awarding extreme penalty of death the Supreme has evolved the category of 'rarest of rare case' so that the number of such cases could reduced to the maximum.

In Shiva Ram and another v. State of U.P.51 the Supreme Court held that the case squarely fell within the ambit of 'rarest of rare case's taking into account the manner of commission of crime, its motive and

50. Ibid.
51. 1998 Cr LJ 76.
its magnitude. Death sentence was confirmed as the accused convict planned to take revenge upon the victim by murdering him.

In *State of U.P. v. Abdul and Others* the Supreme Court applied another rule evolved by itself for reducing the number of death penalty. In case of excruciating delay the Supreme Court held in several cases that the death penalty should be commuted to Life imprisonment. In Abdul's case court held that in view of passage of time of 7 years the death sentence awarded was liable to be commuted as life imprisonment.

The Court was however not swept away by the wave of leniency. In other cases demanding harsh response, it refused to be lenient. For example, in *Rakesh Singha v. State of H.P.* the plea of the appellants to the effect that he has settled in life after serving the punishment imposed by the trial court was rejected by the Supreme Court. In spite of the lapse of 8 years after the occurrence, the Supreme Court did not reduce the sentence. Nor was it ready to enhance the sentence on the state's appeal for further enhancement.

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52. 1997 Cr LJ 2997.

In *State of M.P. v. Phivendra Kumar* the Supreme Court commuted the death sentence as the accused was enjoying acquittal ever since High Court's Judgement (about 14 years back) as it can not be imposed.\(^{54}\) It is opined by the Apex Court that the trial court Judgment was challenged before the High Court and the High Court to lot of time from the date of conviction and the death sentence was past for an offence alleged to have been committed by the accused prayer to 14 years. It is also opined that for the past 14 years from the date of conviction and sentence of death the accused was leading a life that he will be hanged. But when the matter when for appeal it took 14 years which appears to be an alarming delay which should not be ordinarily encouraged in a case in which death punishment is involved. Hence the Supreme Court took a view to commute the sentence from death to life imprisonment.

In *Surja Ram v. State of Rajasthan*\(^{55}\) the Supreme Court held that in a case of death sentence, whether a case is rarest of the rare case - court has to balance aggravating and mitigating factors and exercise its discretionary judgement. It also observed that it has not

\(^{54}\) (1997) 1 SC. 93; 1997 SC. Cri 54.

only to keep in view rights of the criminal but also rights of the victim and the society at large.

In *Ravji v. State of Rajasthan*\(^{56}\) the Supreme Court justified the death sentence. It observed that after murdering five persons including wife and three minor sons, the appellant attempted to murder his own mother and wife of a neighbour. The offence committed in a conscious state of mind and in a cool and calculated manner without any provocation was to be dealt with, according to the court with extreme penalty of death.

In *Krishan v. State of Haryana*\(^{57}\) the Supreme Court held that felonious propensity of an offender can be taken into consideration but cannot be made the sole basis for awarding extreme penalty of death. In the circumstances of the case death sentence imposed upon the appellant was commuted to imprisonment for life.

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The Supreme Court in majority of cases has considered the mode and manner in which the offence has been committed as deciding factors in commuting the death sentence. The court has modified the sentence in the cases, where there was no premeditation on the part of the accused. But the court has refused to interfere with the sentence in cases where the act of the accused was deliberate, preplanned, cruel and inhuman, brutal, cold blooded, against the public servant, against an innocent and unarmed person, and against a witness.

An analysis of the above and other decisions of the Supreme Court makes it clear that the court has shown its general tendency towards the "life imprisonment" over that of the death sentence, except in some cases, where the act of accused was very gruesome.

Imprisonment

Now, imprisonment is the main and most important 'form' of the punishment. In primitive societies, either the imprisonment was unknown or if known it was very rare. Imprisonment as a method of punishment is comparatively a modern development, getting off to a slow start in the 16th century. It became the major punishment in the 19th, 20th centuries. In 20th century certain substitutes for
imprisonment have been developed. Imprisonment is ordinarily confinement of a person in a penitentiary or goal by way of punishment. But such confinement must necessarily be in a place. Any place, where in a person under lawful arrest for a supposed crime is restrained of his liberty, whether in the common goal, or in the house of a constable or private person, or the prison with ordinary walls is formally prison within the statute, for imprisonment is nothing else but a restraint of liberty.

Thus a man can be imprisoned in his own house, if he is not permitted to go outside or if his liberty is curtailed. In India, besides the Indian Penal Code, imprisonment figures almost in all other penal statutes. The Indian Penal Code provides for the following kinds of imprisonment:

1. Imprisonment for life;
2. Imprisonment for a period of 14 years;
3. Imprisonment which may extend to 10 years with or without fine;
4. Imprisonment of 7 years with or without fine;
5. Imprisonment of 5 years with or without fine.

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59. Ibid.
6. Imprisonment upto 3 years or fine or both;
7. Imprisonment which may extend to 2 years with or without fine.
8. Imprisonment which may extend to 1 year or fine or both; and
9. Imprisonment which may extend to 6 month or 3 months or 1 month to or fine or both.

Among the various kinds of imprisonment for life needs more discussion. "Imprisonment for life" ordinarily connotes imprisonment for the whole of the life that is for the remaining period of the convicted person's natural life. Unless the appropriate government passes an order remitting the balance of sentence, the life convict is not entitled to automatic release on completion of fourteen years' imprisonment.

Dr. Gour, while commenting on S.57 of the Indian Penal Code observed that not only for the purpose of calculating fraction of terms of imprisonment, but also for the purpose, of sentence itself, 'imprisonment for life', has now come down to mean imprisonment for 20 years. But, Dr. Gour has cited no authority for his comments. On the contrary Mayne, is of the view that S.57 of the Indian Penal Code, strictly is limited to calculation of fractions.

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60. The code of criminal procedure (Amendment Act 1955) substituted the words 'imprisonment for life' for the words 'transportation'.
61. Gour, H.S.
62. See Mayne, J.D. : Criminal Law of India (1904) 22.
The sentencing court must regard a sentence of imprisonment for life, as running throughout the remaining period of convict's natural life Dr. Nigram\textsuperscript{63} has observed, that Dr. Gour's interpretation of the 'imprisonment for life' along with the misreading of S.55 of I.P.C. and S.35(2) of Cr.P.C.,\textsuperscript{64} gave rise to wrong impression that a sentence of 'life imprisonment' meant imprisonment for a maximum period of 20 years.

This confusion created by such an interpretation of the 'life imprisonment', was cleared up, by the judicial committee of the privy council in Pandit Kishore Lal v. Emperor\textsuperscript{65} when their Lordship observed:

".... Life convict was not entitled to be discharged after serving out 14 years' imprisonment, even assuming that sentence was regarded to be one for 20 years imprisonment and subject to remissions for good conduct....".

Their Lordships further added that they were not to be taken as meaning that life sentence must and in all cases be treated as one of not more than 20 years, or that the convict was necessarily entitled to


\textsuperscript{64} Act V of 1898.

\textsuperscript{65} AIR 1954, P.C.64.
remission. In *Gopal Vinayak Godse V. State of Maharashtra*, the Supreme Court laid down that a prisoner sentenced to life imprisonment was bound in law to serve the life term in prison, unless the said sentence was commuted or remitted by appropriate authority under the relevant provisions of law. Recently, the Supreme Court in *State of M.P. v. Rathan Singh and Others*, observed, that from a review of the authorities and statutory provisions of the Code of Criminal Procedure, the following propositions emerge:

First, that a sentence of imprisonment for life does not automatically expire at the end of 20 years, including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act, cannot supersede, the statutory provisions of the Indian Penal Code. Thus a sentence for 'imprisonment for life' means a sentence for the entire life of the prisoner, unless the appropriate government chooses to exercise its discretion to remit either the whole or a part of the sentence under S.401 of the Code of Criminal Procedure.

Secondly, the appropriate government, has the undoubted discretion to remit or refuse to remit the sentence, and where it refuses...
to remit the sentence, no writ can be issued directing the government to release the prisoner.

Thus from the above discussion and other judgements\textsuperscript{68} of the different courts, it is now clear that a 'sentence for life' would continue till the life time of the accused, as it is not possible to fix a particular period of the prisoner's death; so any remission given under the Rules, could not be regarded as a substitute for a sentence of Imprisonment for life. The Rules framed under the Jail Manuals or Prisons Act, do not affect the total period which the prisoner has to suffer, but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. The question of remission of a part of it lies within the exclusive domain of the appropriate government. A prisoner cannot be released automatically on the expiry of 20 years.

In the cases, where the imprisonment for life stands as an alternative with that of the death sentence, there is no option for the courts, except to award the 'life imprisonment', provided they will not go for the death sentence. The Supreme Court in \textit{Shamim Rahmani v}

State of U.P.\textsuperscript{69} observed that from the view point of common ethics, or morality, one may say that Shamim, committed no sin in shooting dead a man like Gautam, although she was contributing in the act of Gautam's lust for her. But in the eye of law, she committed the offence of murder, punishable under S.302 of the Indian Penal Code. Further the Supreme Court in respect of the sentence of 'imprisonment for life', awarded by the trial court, observed:

"Even if we wished we could not reduce the sentence of 'life imprisonment' imposed on her, as that is the minimum sentence provided under S.302 of the Indian Penal Code".

Thus in cases, where the accused persons have been convicted for murder, they have to suffer imprisonment for life, even if they are in their twenties,\textsuperscript{70} because the punitive strategy of our penal code does not wish to consider these facts as they all fall outside its scope.

Further, the Penal Code has not specified the quantum of the punishment in some offences, such as abutment,\textsuperscript{70a} and Criminal attempts\textsuperscript{70b}. In such offences, the sentence is to be fixed in

\textsuperscript{69} AIR 1975 SC 1883.  
\textsuperscript{71} Gour, H.S: Penal Law of India. Vol.1 (1972) 381.  
\textsuperscript{70a} Section 109 of I.P.C.  
\textsuperscript{70b} Section 511 of I.P.C.
accordance with the nature and gravity of the offence, which has been
abetted or attempted. Also some sections of the Indian Penal Code
provide the punishment in addition to what is provided for the offence
itself or in the preceding sections. For instance, S.345, which deals
with the wrongful confinement of a person, for whose liberation the writ
has been issued. S.293, which deals with the sale, etc., of obscene
objects to young persons, provides punishment of imprisonment, which
may be of either description and which may extend to three years and
with fine which may extend to two thousand rupees. The section
further provides, that in the event of second or subsequent conviction,
the punishment of imprisonment, which may be of either description for
a term which may extend to seven years and also with fine which may
extend to five thousand rupees. In other words S.293, in the event of
second or subsequent conviction, provides for the enhancement of the
punishment.

However, the Code except in two cases has not fixed the
minimum sentence. No doubt, it was originally proposed to fix both
minimum as well as maximum sentence in several cases, but the
propriety of prescribing a minimum sentence in all cases was
questioned by the Select Committee. Considering the general terms in
which the offences had been defined, and the presence of mitigating circumstances, which may render adherence to the prescribed minimum, a matter of hardship and even injustice, it was ultimately resolved to fix only the maximum, the apportionment of sentence in each case, being left to the discretion of the judge.71 Further, the imprisonment is of two kinds, simple and rigorous. In case of the former the convicted person is not put to any kind of work or labour. In the case of rigorous imprisonment, the convicted person was put to hard labour such as grinding corn, digging earth, drawing water and the like. But, now such hard labour has been replaced by the various correctional treatment methods, which enable the prisoner to regain a sort of self-confidence.

The sentence of imprisonment is followed by a number of hardships and difficulties for the prisoner as well as his family. The court, no doubt has wide discretion to fix the sentence in accordance with the particular case, but the legislature provides no guidelines for it. Consequently, it becomes very difficult for the sentencing judges, to personalize the sentence from the reformatory angle. The usual trend of the trial courts, is to award the maximum possible sentence.

It seems that sentencing judges have difficulty in adjusting the sentence in accordance with the individual needs. The Supreme Court in *Mohammad Giasuddin v. State of Andhra Pradesh*,72 observed that the Indian Penal Code still lingers in some what compartmentalized system of punishment simple or rigorous, fine and of course, capital sentence. There is a wide range of choice and flexible treatment which must be available to the judge, if he is to fulfill his tryst with curing the criminal in a hospital setting. In an appropriate case, actual hospital setting may have to be prescribed as a part of the sentence. In another case, liberal parole may have to be prescribed as a part of the sentence. In the third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of sentencing prescription.

Besides, the punishments, as we have discussed above, the Indian Penal Code, also provides for the 'forfeiture of property' and 'fine'.

Thus in spite of the existing laws enabling the courts to avoid incarceration of offenders they have not been extending the benefit of

72. AIR, 1977 SC 1926.
these laws indiscriminately. The discretion vested with them is being exercised, generally speaking, in fair a manner.

**Forfeiture**

It is very ancient in its origin. It was meant mostly for the rich in British days in our country. But this punishment has long since become obsolete and is no longer favoured by the sociologists. Ss.61 and 62 of the Indian Penal Code, which provide for absolute forfeiture of all the property of the offender, were repealed in 1921. There are, however, three cases in which specific property of the offender is liable to forfeiture such as: (a) where depredation is committed on territories of any power at peace with the Government of India, such property as is used or intended to be used in committing such depredation is liable to forfeiture in addition to sentence of imprisonment and fine (S.126); (b) where the property is received knowing the same to have been taken in the commission of depredation on the territories of any power at peace with government of India or in waging war against any Asiatic power at peace with the government of India, the property so received is liable to forfeiture (Ss.125 and 127); and (c) a public servant unlawfully buying or bidding for property forfeits the property so purchased (S.169).

74. Criminal Law Amendment Act (XVI of 1921).
S.452 of the Criminal Procedure Code, 1973 empowers the courts to make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

Obscene books, cards and dice seized in gambling, weapons used in assault, tools used in burglary, smuggled goods like gold, wire, opium, all are instances of articles which can be confiscated under this section. Dr.Nigam75 has observed that this section is loosely worded and therefore requires careful construction. The penalty of forfeiture of property has also been accompanied with punishment of fine.

Fine

The penalty of fine has been specified in a number of offences under the Indian Penal Code. It also stands as an alternative to the sentence of imprisonment, in majority of the cases. The authors of the Code state that the punishment of fine is for all offences to which men

75. Nigam, R.C.: Supra Note 130.
are prompted by cupidity; it is a punishment which operates directly on
the very feeling which impels men to such offences. As regards the
imposition of fine as sentence, the Penal Code may be divided into the
following four parts:

(a) Offences in which the fine is the sole punishment and its amount
    is limited;
(b) Offences in which the fine is an alternative punishment but its
    amount is limited;
(c) Offences in which it is an additional imperative punishment, but
    its amount is limited; and
(d) Offences in which it is both imperative punishment and its
    amount is unlimited.

This classification would clearly show, how the Indian Penal
Code has carried out its express intention in imposing the quantum of
fine.

The sentence of fine is allied to forfeiture of the property. It is,
indeed, forfeiture of money by way of penalty. It was justified by the
Law Commission on the ground of its universality, though they admitted
that its severity should be proportionate to the means of the offender,
because the fine not only affected him but also his dependents. The
Supreme Court in *Adamji Umar Dalal v. State*,76 laid down that in imposing fine it was necessary to have as much regard to the pecuniary circumstances of the accused as to the character and magnitude of the offence. Thus where a substantial term of imprisonment has been inflicted, excessive fine should not be inflicted to it, save in exceptional cases. The Supreme Court in the above case reduced the fine to fifteenth part of what was awarded by the trial court and laid down that the court must always bear in mind the proportion between an offence and the penalty. Further the Court,77 observed that where a law permits a sentence of fine as an alternative, there is no need for a sentence of imprisonment at all, if it is thought that the offence does not merit it. It is quite unnecessary to impose fines on persons who have been sentenced to death or for substantial terms of imprisonment.

The courts are also empowered under S.64 of the Indian Penal Code to award the sentence of imprisonment in default of payment of the fine. However, the following four rules regulate the character and duration of period of sentence of imprisonment in default of payment of fine. First, when an offender is sentenced to the punishment of fine,

76. AIR 1952 SC 14. In this case appellant was sentenced to six months imprisonment with fine of Rs.15,000 for black marketing. The Supreme Court on appeal reduced the fine to Rs.1,000 only.

77. *In re Shankarappa* AIR 1958 A.P. 380.
the court may direct that the offender shall in default of payment suffer a term of imprisonment, which may be in excess of any other imprisonment to which he may have been sentenced for that offence or to which he may be liable under a commutation of sentence.\textsuperscript{77a} Secondly, when the offence is punishable with imprisonment as well as fine, the imprisonment in default of payment of fine shall not exceed one-fourth of the term of imprisonment which is maximum fixed for offence.\textsuperscript{77b} Such extra imprisonment in default of payment of fine may be of any description, that is simple or rigorous.\textsuperscript{77c} Thirdly, where the offence is punished with fine only, the imprisonment in default of payment of fine shall be simple and in accordance with the following scale laid down by Section 67:

(a) Fine of Rs.50 or less.... Imprisonment of 2 months or less
(b) Fine of Rs.100 or less.... Imprisonment of 4 months or less
(c) Fine above Rs.100 .... Imprisonment of six months or less.

However, the Supreme Court in \textit{Bashiruddin Ashraf v. State of Bihar}\textsuperscript{78} laid down that the term of imprisonment shall not in any case

\begin{itemize}
\item \textsuperscript{77a} Section 64 of I.P.C.
\item \textsuperscript{77b} Section 65 of I.P.C.
\item \textsuperscript{77c} Section 66 of I.P.C.
\item \textsuperscript{78} AIR. 1957 SC. See also Nigam, R.C.: Supra note 130 at 247.
\end{itemize}

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be in excess of the Magistrate's power under the Criminal Procedure Code. Lastly, the imprisonment in default of payment shall terminate whenever, the fine is either paid or levied by the process of law. A proportional payment or levying of fine causes a proportional reduction of the term of imprisonment.

It is clear from the foregoing discussion, that the Code empowers the sentencing judge to award either a term of imprisonment or a fine or both. Where long term imprisonment is given to convicts, it is not desirable that in addition to imprisonment a sentence of fine should be passed upon them, for sentence of fine will be burden upon their family and in case of non-payment of fine it will further stretch the length of imprisonment. The decision of the United States Supreme Court, in Willie E. Williams v. State of Illinois, is an eye-opener in this respect. In this case an indigent prisoner was convicted in Illinois Court for petty theft and was awarded the maximum sentence of one year's imprisonment and pound 500 as fine. In default of the monetary payment in accordance with the provisions of the Statute, he was supposed to remain in the jail, after the expiration of the substantive

79a. Section 68 of I.P.C.
79b. Section 69 of I.P.C.
term of imprisonment, in order to "work-off" the monetary obligation at the statutory rate of pound 5 per day. The trial court denied the petition in order to vacate the sentence of fine. The supreme Court of Illinois, affirmed the decision of the trial court, holding that there was no denial of equal protection of the law by continuation of imprisonment upon the indigent's inability to pay the fine and court costs.

In appeal, the Supreme Court of the United States, vacated the judgement and remanded the case. Chief Justice Burger, expressing the view of seven members of the court, held that there was an impermissible discrimination, violative of the 14th Amendment of the Constitution, when the aggregate imprisonment of an indigent state prisoner, exceeded the maximum period fixed by the statute, governing the offence involved and resulted directly from an involuntary non-payment of a fine or court costs. In the light of this very judgement, it can be rightly said, that if a poor prisoner is imprisoned for non-payment of fine in addition to the substantive imprisonment, it will be the violation of the spirit, underlying the Art.14 of the Indian Constitution. Further, it will undermine the modern correctional philosophy which aims at the re-socialization of the prisoners.
The fine if recovered from the prisoner is to be deposited in the chest of the State. But, our Supreme Court in recent years has shown a new trend and has given due consideration to victimology. In *Mohinder Pal Jolly v. State of Punjab*,\(^{81}\) the court directed that the fine if recovered would be paid to the widow of the deceased. Similarly in other cases,\(^{82}\) the Supreme Court ordered the amount of fine to be paid to the dependents of the deceased. The objective underlying these judgements is nothing but to provide some monetary help to the victims or their dependents, in order to pave the way for the re-socialization of the offenders.

From the foregoing discussion, it is clear that the sentencing judge in India is not in a position to award indefinite or indeterminate sentences. Generally the sentence under the Indian Penal Code is one of a relative indeterminateness with a high fixed maximum and with absolutely no statutory guidelines for the magistrate, except such as he may glean through judicial decisions, which themselves may be too variable to serve as precise leading strings. As the maximum punishment is with the discretionary power of the presiding officers the punishment are also differ each officer to officer and also each case to

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\(^{81}\) AIR 1979 SC 577.

other case. The Indian Penal Code over hundred years old, is hardly conscious of the remarkable strides made in modern penology and does not articulate the current thought on sentencing policy. Justice Krishna Iyer, observed:83

"Sentencing is a means to an end, a psycho-physical panacea to cure the culprit of socially dangerous behaviour. Penal strategy, must therefore strike a sober balance between sentimental softness towards the criminal, masquerading as a progressive sociology and the terror-cum-torment oriented sadistic handling of the criminal, which is actually in many cases the sublimated expression of judicial severity although ostensibly imposed as deterrent to save society from further crimes. Social defence, through reformation of the criminal, a task to perform of which psychology and sociology are auxiliary tools, is what strikes one as the primary object of punishment."84

Thus the sentencing judge must give due importance to the objectives underlying the sentencing policy. In other words, the sentencing court must not simply confine to the letter of law, in order to award a proper sentence but must also pay due attention to the spirits of law.

84. Ibid.
DISPARITY IN SENTENCING

As discussed above, sentencing is the most critical point in the administration of criminal justice. It is critical because nowhere in the entire legal field the interests of the society and those of the individual offender are at stake than in the system of sentencing.\(^{85}\) It has been rightly pointed out\(^{86}\) that the system lacks efficacy, if it fails in its essential function of protecting society by deterring offenders. It lacks credibility, if it does not reflect 'the mood and temper of society' towards misconduct of the offender and thereby ratify and reinforce the values of the society.

The principles of justice get eroded where the offender receives a particular sentence not on consideration of the offender's personality and guilt but on consideration of the judge's personality and ideology. Another significant case of disparity in sentences is lack of unanimity among sentencing judges as to the purpose of the sentences. The disparity not only offends principle of justice, but also effects the rehabilitative process of offender and may create problems like indiscipline and riots inside the prison.\(^{87}\) The disparity in sentences


86. *Ibid*.

limits the correctional efforts to develop sound attitudes in offenders. The two prisoners who are involved in a similar offence and under the identical circumstances will hardly respond to the correctional treatment methods, if they are awarded different sentences.88 Such prisoners feel that they have been unfairly treated in sentencing process and usually reject all efforts to rehabilitate them. They are in fact unlikely to respect many of the society's institutions concerned with the administration of criminal justice. In Asgar Hussain v. The State of U.P.89, the Supreme Court observed that the disparity in sentencing creates hostile attitude in the mind of the offenders and reduces the chances of their resocialization as the offenders feel that they have been discriminated.

However, the problem of disparity or inequality in sentences is not a new phenomenon. Studies have been conducted in the United States, England, Canada on disparity in sentencing of offenders.90 In India, Dr.Chhabra's study91 provided insight into the problem of disparity. He observed that only two factors, namely, 'plea of guilt' and

88. Ibid.

89. AIR 1974 SC.

90. See Siddiqui, M: Z., Supra note 54.

91. See generally Chhabra, K.S., Quantum of Punishment in Criminal Law in India. (1970) 175-86.
nature of crime' have bearing on the mind of sentencing judges. He further pointed out that in the use of various disposition methods, the courts widely differed. It has been found that illogical variations in sentences given by various judges are explicable only by the personal differences of the judges. Further, Dr. Siddiqui's study discloses wide variations in 'sentencing patterns of criminal courts' in different parts of the country, not only in regard to the length of prison sentences, but also in the use of different dispositions. The study also revealed that the influence of human equation in sentencing is as great as in any other human field of judgement.

Justice demands like cases be treated alike. Centuries ago Aristotle declared, that 'injustice arises when equals are treated unequally and also when unequals are treated equally'. Sentencing is an emergent branch of justice. Disparity in sentences defeats the objective of modern correctional philosophy. The developed countries have taken various measures in order to avoid it. In India, the elaborate system of appeal and revision as well as hearing on the

92. Ibid.
93. See generally Siddiqui, Z.Z., Supra note 17.
95. Ibid. at 128.
sentence to some extent are helpful in curbing the disparity in sentences.

HEARING ON THE SENTENCE

The sentencing disparity creates a host of problems in the administration of justice.\textsuperscript{95a} In order to minimize the chances of 'disparity in sentencing' and to adjust the sentence in accordance with the individual needs of the offenders, various steps have been taken.

The Law Commission, in its 41st Report,\textsuperscript{96} recommended the insertion of S.235(2) in the Criminal Procedure Code, which enables the accused to make representation against the sentence to be imposed, after conviction has been passed. The commission justified the insertion of S.235(2) as under\textsuperscript{97}:

"It is now being increasingly recognised, that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One of the such deficiencies is the lack of information as to the characteristics and background to the offender.... We are of the opinion, that taking of evidence as to the circumstances relevant to sentencing should be encouraged and both the prosecution and the accused should be allowed to co-operate in this process...."

\textsuperscript{95a} See Siddiqui, M.Z., \textit{Supra} note 17.


\textsuperscript{97} \textit{Ibid.}
The concept underlying this new provision is that the accused may have some grounds to urge for giving him consideration, in regard to the sentence, such as that he is the bread-earner of the family and the court may not be aware of it during the trial. This is also to ensure that the accused should get a fair trial in accordance with the accepted principles of natural justice. It has been rightly pointed out that the provisions of S.235(2) Cr.P.C., 1973 are salutary in their nature and contain one of the cardinal features of natural justice, namely that the accused be given an opportunity to make a representation against the sentence to be imposed upon him.\textsuperscript{98} It has been further observed that the Statute has sought to achieve a socio-economic purpose and is aimed at attaining the ideal principles of proper sentencing in a rational and progressive society.\textsuperscript{99} The Supreme Court in Tarlok Singh v. State of Punjab, observed:

"...The object of S.235(2) is to give a fresh opportunity to the convicted person to bring to the notice of the court, such circumstances as may help the court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case...."\textsuperscript{100}

\begin{itemize}
\item \textsuperscript{98} \textit{Ibid.}
\item \textsuperscript{99} \textit{Ibid.}
\item \textsuperscript{100} AIR 1977 SC 1747.
\end{itemize}
The humanist principle of individualizing punishment, to suit the person and the circumstances is best served by hearing the offender, even on the nature and quantum of the punishment. In this respect Chief Justice Chandrachud's observation in Shiv Mohan Singh v. The State (Delhi Administration) are relevant:

"... The heinousness of the crime was a relevant factor in the choice of the sentence. The circumstances of the crime, especially social pressures which induces the crime is another consideration.... These and the other like factors, can be brought to the knowledge of the court, only when an opportunity of being heard is given to the convicted person..."101

The Supreme Court of Indian in Dagdu and Other v. State of Maharashtra, has very aptly emphasized the importance of "hearing on the sentence" in the following words:

".... The right to be heard on the question of sentence has a beneficial purpose for a variety of facts and considerations bearing on the sentence, can in the exercise of the right be placed before the court, which the accused prior to the enactment of the Code 1973, had no opportunity to do. The social compulsions, the pressure of poverty, the retributive instinct to seek an extra-legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity all these and similar considerations can hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of S.235(2) must therefore be obeyed in its letter and spirit..."102

102. AIR 1977 SC 1579.
There are large number of factors which go together and ultimately produce an appropriate sentence. Adequate material relating to these factors is to be brought before the court, in order to enable it to pass an appropriate sentence. This material may be placed before the court by means of affidavits, but if either of the party disputes the correctness or veracity of the material, to be produced by the other, an opportunity is to be given to the party concerned, to lead evidence for the purpose of bringing such material on record after testing its veracity.

If the trial court for any reason, omits to hear the offender on the 'question of sentence' and the offender makes a grievance of it, in the higher court, it would be open to that court to remedy the breach by giving a hearing on the question of sentence. The opportunity has to be real and effective, which means the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence.¹⁰³ For this purpose, it is not necessary to send the case back to the Sessions Judge or Sentencing Court, because in many cases it may lead to more expenses, delay and prejudice to the cause of justice. The Supreme Court in Tarlok Singh v. State of Punjab,¹⁰⁴ observed, that in such cases it may be more appropriate for

103. *ibid.*

104. *Supra note 72.*
the appellate court to give an opportunity to the parties in terms of S.235(2) to produce the material they wish to adduce instead of going through the exercise of sending the case back to the trial court. This may in many cases help reduce delay. The claim of due and proper hearing is to be harmonized with the requirement of expeditious disposal of proceedings.

**Post-conviction orders**

In every criminal trial, when the court finds the accused guilty, it has to punish the accused in accordance with law.\(^{105}\) However, having regard to the age, character, antecedents or physical or mental condition of the offender, and to the circumstances in which the offence was committed, the court may instead of sentencing the accused person to any punishment, release him after admonition or on probation of good conduct under Section 360 of the Code or under the provisions of the Probation of Offenders Act, 1958.

In recent times, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of

\(^{105}\) See Ss.235(2), 248(2), 255(2).
jail life. On the other hand there are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's protection. In such cases, the consideration of rehabilitation has to give way, because of paramount need for the protection of society. It is not easy to reconcile these conflicting demands. As has been rightly observed by the Supreme Court, guilt once established, the punitive dilemma begins. While exercising the discretion in respect of post-conviction orders, some statutory guidelines have been given to courts by Sections 360, 361 and the Probation of Offenders Act, 1958.

(a) Section 360

An analysis of Section 360 will bring out the following points:

(1) Release on probation of good conduct

Having regard to the age, character or antecedents of the offender, and the circumstances in which the offence was committed, if the court convicting the accused person considers it expedient to

release the offender on probation of good conduct (instead of
sentencing him at once to any punishment), it may direct the offender to
be released on his entering into a bond, with or without sureties, to
appear and receive sentence when called upon during such period (not
exceeding three years) as the court may fix and in the meantime to
keep the peace and be of good behaviour. Such a release is
permissible only if the following conditions are satisfied:

(a) there is no previous conviction proved against the offender;
(b) when the person convicted is a woman of any age, or any male
person under twenty-one years of age, the offence of which he
or she is convicted is not punishable with death or imprisonment
for life;
(c) when the person convicted is not under twenty-one years of age,
the offence of which he is convicted is punishable with fine only
or with imprisonment for a term of seven years or less.

No Magistrate of the second class, unless he is specially
empowered, can release an offender on probation as mentioned above;
however, if such a Magistrate considers that the offender should be so
released, he may transfer the case to a Magistrate of the first class who
may thereupon take such action as is appropriate as to sentencing the
offender or releasing him on probation.
(2) Release after admonition: Having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, the court may, after convicting the accused person, release him after due admonition. Such a release is permissible only if the following conditions are satisfied: (a) there is no previous conviction proved against the accused person; (b) the offence of which the accused is convicted is either (i) theft (ii) theft in a building, or (iii) dishonest misappropriation, or (iv) is punishable under the IPC with not more than two years' imprisonment, or (v) is one punishable with fine only.

Section 360 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further long the path of crime, and to help even men of more mature years who for the first time may have committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens. It is not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences. 109

109. in re Titus, AIR 1941 Mad 720, 723-24: 43 Cri LJ 3; Ibrahim v State, 1974 Cri LJ 993 (All HC).
Section 360 itself makes it quite clear that it shall not affect the provisions of the Probation of Offenders Act, 1958\(^{110}\). According to Section 18 of the Probation of Offenders Act, 1958 read with Section 8(1) of the General Clauses Act, 1897, Section 360 of the Code would cease to apply to the States or parts thereof in which the Probation of Offenders Act is brought into force.\(^{111}\) However, the offender can be still released after admonition or on probation of good conduct under Sections 3 and 4 of the Probation of Offenders Act which is wider in its scope than the provisions of Section 360. In that case also the court will have to use discretion on the same lines as in cases under Section 360.

(B) No imprisonment in case of young offenders: The discretion given to the court in passing post-conviction orders has been restricted to some extent in favour of young offenders below 21 years of age.\(^{112}\)

\(^{110}\) See S.360(10).

\(^{111}\) See *State of Kerala v. Cehilappan George* 1983 KLT 811.

\(^{112}\) Section 3 of probation of offenders Act 1958. The Act enables the courts to grant release or release on probation in certain cases instead of sentencing them to imprisonment, section 3 enacts:- "notwithstanding anything contained on any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition".
According to Section 6 of the Probation of Offenders Act, if the court finds such young offender guilty of an offence punishable with imprisonment (but not with imprisonment for life), it shall not sentence him to imprisonment without satisfying itself that it would not be desirable to release the offender after admonition or on probation of good conduct; and if the Court, after such satisfaction, passes any sentence of imprisonment, it shall record reasons for doing so.

It may also be noted that wherever the Probation of Offenders Act is applicable, the court can call for the report of the Probation Officer and the officer would then be under a duty - to inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him, and submit reports to the court.113

(Contd., 112) : Section 4 lays down:- "notwithstanding anything contained in any other law for the time being in force, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the mean time to keep peace and be of good behaviour".

Section 12 of the Act series the fundamental cause of reformation in as much as it helps the offender not to be branded as a criminal and instead, to get rehabilitated in the society. But unfortunately this section has been receiving a very restrictive interpretation from the Indian judiciary including the Supreme Court. It is time and again interpreted to mean that this section does out obliterate the fact of conviction.

The report of the Probation Officer would be of considerable importance in making appropriate sentencing decisions.

**Treatment of Juvenile Offenders**

The Juvenile Justice Act, 1986 was passed with an object to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent Juveniles and for the adjudication of certain matters relating to and disposition of delinquent Juveniles. To achieve the object, several provisions are provided for in the Act. Provisions are made for the establishment of competent authorities and institutions such as Juvenile Court, and Juvenile Welfare Boards with necessary powers to deal with the problems of Juveniles. Boards are provided with special powers to deal with the neglected Juveniles. Similarly to deal with the delinquent Juveniles. Juvenile Courts are empowered to try are issue appropriate orders. Provisions are also made to punish any person who causes a Juvenile unnecessary mental or physical suffering etc., for a term which may extend to six months of imprisonment or fine or with both (S.4).


Juvenile courts do not sentence the delinquents to jail. Nor are they otherwise punished. They are in fact sent to the Juvenile homes for treatment with a view to getting them reformed.

Execution of Sentences - Sentence of death

When a sentence of death is passed by the Court of Session and on reference is confirmed by the High Court under Section 368, or when a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant in the prescribed form\(^\text{116}\) to the officer in charge of the jail for the proper execution of the sentence.\(^\text{117, 118}\)

When the sentence of death has been duly executed, the officer executing the same shall return the warrant to the Court of Session, with an endorsement under his hand certifying the manner in which the sentence has been executed (S.430).

\(^{116}\) See Form No.42, Second Schedule. See also A-G of India v. Lachamma Devi, AIR 1986 SC 364, in which the Supreme Court declared public hanging barbaric and violative of Article 21 of the Constitution.

\(^{117}\) Section 413 of Cr.P.C.

\(^{118}\) Section 414 of Cr.P.C.
Sentence of imprisonment for life or of imprisonment

For the execution of the sentence of imprisonment for life or of imprisonment, the court passing such sentence is to send a warrant to the jail in which the person so sentenced is to be confined, along with such person.\textsuperscript{119} In cases where the accused is not present in court, the court shall issue a warrant for his arrest for the purpose of forwarding him to jail and in such a case, the sentence of imprisonment shall commence on the date of his arrest. (S.418(2)).

In case of each prisoner a separate warrant for the execution of the sentence of imprisonment showing definite period shall be sent to the officer in charge of the jail and the same shall be logged with him\textsuperscript{120}

Pre-conviction detention to be set-off against the sentence of imprisonment -

Where a person has been convicted and sentenced to imprisonment for a term (not being an imprisonment in default of payment of fine), the period of detention, if any, undergone by him

\textsuperscript{119}. It has been ruled by the Supreme Court that warrants for detention should specify the age of the person to be detained. See Sanjay Suri v. Delhi Administration, 1988 Supp SCC 160: 1988 SCC (Cri) 348: 1988 Cri LJ 705.

\textsuperscript{120}. Section 419 and 420 of Cr.P.C.
during the investigation, inquiry or trial of the same case and before the
date of such conviction, shall be set-off against the term imposed on
him on such conviction and his liability to undergo imprisonment shall
be restricted to the remainder (if any) of the term of imprisonment
imposed on him.121

The period of detention which Section 428 allows to be best-off
against the term of imprisonment imposed on the accused on his
conviction must be during the investigation, inquiry or trial in connection
with the "same case" in which he has been convicted.122 But Section
428 is absolute in its terms. It provides for set-off of the pre-conviction
detention of an accused person against the term of imprisonment
imposed on him on conviction, whatever be the term of imprisonment
imposed and whatever be the factors taken into account by the court
while imposing the term of imprisonment.123

Till some time a person sentenced to imprisonment for life could
not get the benefit of set-off under Section 428 as, according to the

122. Govt. of A.P. v. A.V.Rao (1977) 3 SCC 298, 303: 1977 SCC (Cri) 508, 513:
1977 Cril LJ 935. Also see Gulam Mustafa v State of Rajasthan, 1995 Cri
LJ 266 (Raj HC).
(Cri) 70, 76: 1975 Cri LJ 182.
courts, "imprisonment for life" could not be taken as, "imprisonment for a term" as required under Section 428.\textsuperscript{124} Benefit of set-off was not given even to those life convicts whose sentence to imprisonment for life was later commuted to imprisonment for a fixed term by the order of the State Government under Section 433, since the sentence of imprisonment for a term in such cases was not one imposed by a court on conviction as contemplated by Section 428.\textsuperscript{125}

It has later been categorically ruled by the Supreme Court that imprisonment for life is imprisonment for a term for the purpose of application of Section 428 and the life convicts would be entitled to the benefit of set-off under Section 428.\textsuperscript{126}

**Sentence of Fine**

**Execution by issuing a warrant for levy of fine:**

The court imposing a sentence of fine may -

(a) issue a warrant for the levy of the amount of fine by attachment and sale of any movable property of the offender; and/or


\textsuperscript{125} R.A.Rahman, Supra Note 111; but see contra \textit{Abdul Azad v State}, 1976 Cri LJ 315, 317 (Cal HC).

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of revenue from the movable or immovable property or both, of the defaulter.

If the sentence directs that in default of payment of fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant for the levy of fine unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.127

A warrant issued by any court under clause (a) above [i.e., under S.421(1)(a) may be executed within the local jurisdiction of such court, and if endorsed by the District Magistrate concerned, it shall authorise the attachment and sale of any such property outside the local jurisdiction of the court issuing the warrant.128

127. Section 421(1) of Cr.P.C.
128. Section 422 of Cr.P.C.
SUSPENSION, REMISSION AND COMMUTATION OF SENTENCES

Suspension or remission of sentences

Apart from the powers conferred on the President of India and the Governors of States by Articles 72 and 161 of the Constitution to suspend, remit or commute any sentence, Section 432 of the Code empowers the appropriate Government\(^{129}\) to suspend or remit sentence as follows:

1. When a person has been sentenced to punishment for an offence, the appropriate Government may, at any time and with or without conditions, suspend the execution of a sentence or remit the whole or part of the punishment.

2. On receiving any application for the suspension or remission of a sentence, the appropriate Government may require the court concerned (i) to state its opinion (with reasons) as to whether the application should be granted or refused, and also (ii) to forward with the statement of such opinion a certified copy of the record of the trial.

3. The appropriate Government may cancel the suspension or remission of a sentence, if in its opinion the condition for granting such suspension or remission is not fulfilled; the offender may thereupon, if at large, be arrested by any police officer (without a

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129. As explained by S.432(7), the expression "appropriate Government" means -
warrant) and remanded to undergo the unexpired portion of the sentence.\footnote{130}

(a) in cases where the sentence is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced.

4. The condition on which the sentence is suspended or remitted may be one to be fulfilled by the offender or one independent of his will.

While commuting sentence for fine, the courts usually impose conditions non-compliance of which may revive the sentence.\footnote{131}

It may be noted that on breach of any condition of suspension or remission, the sentence is not automatically revived. It is only when the government chooses to pass an order of cancellation of the suspension or remission that the convict is arrested and is required to serve the unexpired portion of the sentence.\footnote{132}

\footnotetext[130]{See discussions in Krishnan Nair v. State of Kerala, 1984 Cri LJ 58 (Ker HC).}
\footnotetext[131]{See Sukumaran Nair v. Food Inspector, 1995 Cri LJ 3651 (SC); 1995 Cri LJ 2126 (SC).}
There have been a number of decisions by various High Courts reversing executive orders, ordering premature release of prisoners on one ground or the other. The courts have ruled that the appropriate government has power to classify the prisoners for the purpose of granting remission. But this does not mean that the Court can grant special remission to the offenders belonging to Scheduled Castes and Scheduled Tribes. Its power to grant premature release is subject to Section 433-A. No special consideration is, however, to be extended to dignitaries like MLAs, in granting premature release.

The courts have been considering various aspects such as the heinousness of the crime or the possibility the offender getting reformed etc., in granting or not granting premature release.


Under the law as it stands, a person sentenced to imprisonment for life is bound to serve the life term in prison unless the appropriate authority commutes or remits the sentence in the exercise of the powers given under Sections 432-433 of the Code.\(^{140}\) As the sentence of imprisonment for life is a sentence of indefinite duration, the remission earned according to the rules under the Prison Act does not in practice help such a convict as it is not possible to predicate the time of his death. Such remission probably may help the government in deciding to exercise its power to remit the remaining part of the sentence of life imprisonment.\(^{141}\)

**Commutation of sentence**

The appropriate government may, without the consent of the person sentenced, commute -

(a) a sentence of death, for any other punishment provided by the Indian Code;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

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(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine (s.433).

While commuting sentence for fine, the courts usually impose conditions non-compliance of which may revive the sentence.\textsuperscript{142} It may be noted that Sections 54, 55 and 55-A of the Indian Penal Code confer similar powers on the Government.

\textbf{Restriction on powers of remission or commutation}

Notwithstanding anything contained in Section 432 (i.e., \textit{supra} Part II, Para 1 above) where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at lest fourteen years of imprisonment.\textsuperscript{(S.433-A)\textsuperscript{143}} The Supreme Court his reiterated that it is the


prerogative of the appropriate Government to grant premature release. It overruled High Courts’ orders granting release to murder convicts before the completed fourteen years’ sentence.\footnote{144}

The Supreme Court of India has upheld the constitutional validity of Section 433-A.\footnote{145}

There have been decisions which tend to water down the severity of Section 433-A. For example, the M.P. High Court has come up with the thesis that the periods of sentence served by prisoners without absolute freedom such as conditional release may be treated as imprisonment that could be counted towards the 14 years required under Section 433-A.\footnote{146}

CONCLUSION

The empirical study on the working of the Presiding Officers of various criminal courts of Gujarat, Assam, Karnataka, Kerala, Tamil Nadu, Uttar Pradesh, Punjab and Haryana, Delhi and Pondicherry with


\footnote{145} Ashok Kumar Golu v. Union of India, (1991) 3 SCC 498.

regard to the sentencing pattern was undertaken. The following conclusions emerging out of the story.

1. There is no encouragement from the appellate courts in adopting the reformative measure while sentencing.

2. The probation officers do not co-operate and co-ordinate for the effective implementation of probation.

3. No reports are submitted by the probation officers about the result of the convict released on probation.

4. There is no proper infrastructure for the probation office and no adequate training is given to the probation officers.

5. Probation conditions are seldom followed by the probationers.

   In order to eradicate this unpleasant situation in the sentencing process suitable amendments to the probation Act and the criminal procedure code are required.

   Though there are various theories of punishments like deterrence retribution, utilitarian and reformation it seems the Indian Courts favour reformation.

   The whole goal of punishment is curative. Accent must be more and more on rehabilitation rather than on retributive punitivity inside the prison.147 The policy of the law in giving a very wide secretion in the

147. AIR 1978 S.C.480 Nedelia V. Rao State of A.P.
matter of punishment to the judge has its origin in the impossibility of laying down standards. But in final analysis, the exercise of judicial discretion is the safest possible safeguard.\textsuperscript{148}

The sentencing segment of French disappeared after the extension of Indian Laws to Pondicherry.

\textsuperscript{148} Jagtnanon v. State of U.P. A\textsc{I}\textsc{R} 1973 SC 947.