4. Sentencing Patterns in Pre and Post Liberated Goa

4.1. Concept of Sentencing

It has been proved beyond doubt that during the period the Portuguese ruled over Goa, people were punished severely and consequently it is thought the numbers of crimes committed were very low. When we compare this with the post independence Goa we find there is a steep rise in the number of crimes being committed.

Hence, the question arises as to whether this is due to minimum punishment being granted by the judges on other causes. In view of this conflicting situation, the scholar has thought it fit to carefully examine the factors that have gone into the whole process of sentencing. Sentencing forms a very important aspect of criminal justice system.

Theories of Punishment\textsuperscript{1}:

It is believed and many have supported the fact that there are different theories of punishment. It is imperative that we go into all these theories because the policy of sentencing is directly linked with the theories of punishment. Punishment as we know, is to counter the wrong doing or criminal attitudes of a person. From age to age, every society has believed that there must be

\textsuperscript{1} The discussion regarding purpose of Criminal Justice and the Punishment has been discussed beautifully by Salmond in, \textit{Jurisprudence} Twelfth edition by P. J. Fitzgerald. Pgs. 94 to 100.
punishment for those who break the laws and also those who has commit crimes.

The first theory that has been widely proclaimed and enforced largely in pre-democratic era is the deterrent theory. According to Geremy Tailor “a heard of wolf is quieter and more at one than many men, unless all have one reason in them or have one power over them. This is supported by Hobbs who says “without a common power to keep them all in awe, it is impossible for individuals to live in society, without it justice is unchecked and triumphant and the life of the people is solitary, poor, nasty, brutish and short”.

These two strong statements have created an opinion that punishment must be severe and should deter any person who commits a crime. The deterrent theory becomes very popular in countries ruled by dictators and religious fanatics. They used this method not to do justice but to create fear in the minds of the people that if they commit a wrong, they would be severely punished. Sometimes hands would be cut or they would be blinded or they would be put to severe strain so that they do not think of committing crimes again.

But as democracy flourished and Human Rights came to be accepted as foundations of democratic life, there was severe criticism regarding the application of deterrent theory of punishment. It was proved with facts that deterrence does not prevent totally the commission of crimes. Inspite of threat of death, people still commit murders, grievous hurt, etc. Hence it would not be
right to say that mere deterrence would either eliminate or reduce the occurrence of crimes.

However, this theory fails to achieve the end in view. A hardened criminal becomes accustomed to the severity of the punishment and no amount of deterrence prevents him from indulging in crime. It fails to affect an ordinary criminal, too, for many of the crimes are committed in moment of excitement.²

The second method of looking at punishment is retributive where very inhuman methods have been used like in case of theft, fingers were cut and in case of robbery hands are cut. Various reasons for supporting for retribution may be summarized as follows³

1. Retribution connects the offender to correct values it sends the message to the wrongdoer that what he did was wrong. Retribution should, therefore, not be confused with revenge.

2. It would be unfair to victims if there is no retribution against the wrong doer.

3. It would also be unfair to the law abiding citizens if the offender get undeserved benefit through their criminal acts.


³ Ahmad Siddique, Criminology, Problems and Perspectives, 4th Edition, Pg.113 (Eastern Book Co. Lucknow 2001)
This method seems to be totally out of touch with the causes for criminal behaviors in society. Crimes occur in society due to various reasons and to use retributive punishment to prevent them or stop them would be like placing the cart before the horse. The retributive theory of punishment is based on the fulfillment of moral justice. A good action deserves to be crowned with a good reward, and a bad action, on the other hand, meets its own fate. Hence most of the modern writers have discarded this method of punishing persons who have proud to have committed crimes.

Preventive philosophy of punishment is based on the proposition ‘not avenge crime but to prevent it’. It presupposes that need for punishment of crime arises simply out of social necessities. In punishing a criminal, the community, protects itself against antisocial acts which endanger social order in general or person or property of its members.

A number of writers came to support the preventive methods because they feel that just like medicine is used for prevention of certain diseases, punishment also could be used as a preventive techniques. Say for e.g.: hanging a person in public as a punishment for committing crime is a preventive method to discourage another from committing murder.

Researches like John Brite, William C. Bailey and Ronald W. Smith all American Sociologist have concluded that the cause of crime cannot be related

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4 Sethna, M.J., Society and the Criminal Pg.238 (N.M. Tripathi Pvt. Ltd, Bombay 1971)

5 Paranjape N.V., Criminology and Penology Pg.157 (Central Law Publication, Allahabad 2001)
to either deterrence or prevention or retributive theories. One has to solve the root cause for criminal behavior and then only they will be able to determine the cause of the crime.

The three theories mentioned above have a strong historical background and content\textsuperscript{6}. They were created as part of the evolutionary process starting with the most uncivilized societies to most democratic and Human Right based societies. We should consider them as important and give them the honour that is done keeping in mind the context in which they were created. They cannot be brushed aside as an abbreviation they had their importance and played their effective role at different times and different societies.

We may quote Justice Krishna Iyer\textsuperscript{7} who informs us that there are generally three kinds of murderers—those who kill on impulse and therefore do not consider the noose before committing the murder, those who are hardened criminals and are again unconcerned with their eventual punishment and lastly, those who kill because of belief and justification in what they are doing.

In all the three cases the eventuality of a death penalty does not deter the killer. If at all there is any other deterrent effect, it lies in the certainty of such punishment and not in its severity. Therefore even while referring other experts like Barnes and Teetens we can conclude that no external threat or pressure

\textsuperscript{6}Fitgerard, P.J., Salmond Jurisprudence, 12\textsuperscript{th} Edition, Pgs 94 – 100.
could prevent a person from committing a crime. The three theories do not support a permanent analysis for committing crime by individual.

The reformatory theory remains as one of the most utilitarian theories, that can be accepted for a sound theory in the context of punishment. It is the positive schools which emphasis the concept of ‘punishment fitting criminals’. This means each criminal must be looked at individually and he should be suitably reformed so that he does not go back on the wrong path. According to this theory the object of the punishment is to reform the offender. There is actually no punishment given but merely the criminal is rehabilitated so that the person gets accepted in society as a useful citizen.

There are five methods by which this theory could be applied. The first is that the person can be reformed if enough pain is inflicted on the offender. The second method is to change the criminal through mediation by isolating the person. The third method is religious treatment in the name of God, mother country, etc. The fourth method is asking the criminal to agree to give up the bad habits. The last method is by putting the prisoner to strong discipline so that there is change of heart.

From the above discussion we can conclude that punishment though necessary, must be just, human and that which is accepted by the society as reasonable, or would be ideal if we can make criminal repent and switch over to a new path. Every effort must be made that the criminal reconciles to the fact that what he has done is wrong and must change himself for the better. For this purpose,
doors of human rights must be prescribed for those managing prisons, remand homes and correctional centers.

Whatever may be the theory of punishment adopted, the most important aspect is that the citizens should not be taken for the ride. Having understood the importance of different theories of punishment. Let us now move over to the question as to what influences the judges when they punish the offender or what philosophy of sentencing they follow while delivering judgments.

4.2. Sentencing Patterns in Pre-liberated Goa

In any given democratic system there is essentially a court system which is given the task of imposing punishment. This is because no one should feel that a person is punished without proper procedures being evolved or observed. A country stands to gain a good name only if its judicial system is fair, just and procedurally correct. Keeping this in mind, let us see what types of punishment have been imposed under the Portuguese Penal Code and the IPC by way of comparison. The Penal Code prevailing in Goa during the Portuguese era was, “Codigo Penal Portugues”\textsuperscript{8}.

\textsuperscript{8} Codigo Penal Portugues decreed on 16\textsuperscript{th} September 1886.
Here is a brief summary of the Provisions of Portuguese Penal Code.

**Book I**

**General Dispositions**

**Title I: Crimes in General and of Criminals**

Chapter I : Preliminary Disposition

Chapter II : About Criminality

Chapter III : Agents of Crimes

Chapter IV : Criminal Responsibility

**Title II: Of Penalties and its effects**

Chapter I : About Penalties

Chapter II : Of effects of Penalties

**Title III: Of Application and Execution of Penalties**

Chapter I : Of Application of Penalties in General

Chapter II : Of Application of Penalties when there are aggravating or attenuating circumstances.

Chapter III : Application of Penalties in case of recidivism, successive or accumulation of Crime, Complicity delict and frustrated attempt.
Chapter IV : Of Application of Penalties in some special cases.

Chapter V : Of Execution of Penalties

Chapter VI : Of Extinction of Criminal Responsibility (Amended)

Title IV: Transitory Disposition

Book II

Special Crimes

Title I : Crimes against the Religion of the Kingdom and those committed for abuse of religious functions.

Chapter I : About crimes against the Religion of the Kingdom.

Chapter II : Crimes committed for the abuse of the religious functions.

Title II : Crimes Against the Security of State

Chapter I : Crimes committed against external security of state.

Chapter II : Crimes which offend the interest of the state in relation to foreign nations.

Chapter III : Of crimes against internal security of the State.

Sec 1 : Attempts and offences against the Head of the State and the Government.
Sec 2 : Crimes against organization of State.

**Title III : Crimes against Public Order and Tranquility**

Chapter I : Criminal gatherings, sedition and unlawful assembly (Assuada, Art 180).

Sec 1 : General Disposition

Sec 2 : Sedition

Sec 3 : Assuada⁹

Chapter II : Injuries and violence against public authority, resistance and disobedience.

Sec 1 : Injuries against public authority

Sec 2 : Acts of violence against public authority

Sec 3 : Resistance

Sec 4 : Disobedience

Chapter III : Taking out of Prison, or Running away from prison and about those who do not fulfill their Penalties (Sentences)

Sec 1 : Taking out of Prison or running away of Prison.

⁹ Art.180 defines Assuada. This crime is committed when people gathered in public cases for committing acts of hatred, vengeance etc., against individuals or to impede or disturb free exercise of individual rights...
Sec 2: Those who do not fulfill their penalties.

Chapter IV: Those who shelter malfactors

Chapter V: Crimes against exercise of Public Rights (Arts 199-205)

Art 199: Impediment to Electoral assemblies

Art 200: Impediment to Exercise the political right

Chapter VI: Falsification

Sec 1: Counterfeit of Currency, bank notes and other titles of the State.

Sec 2: Falsification of Written document.

Sec 3: Of falsification of stamps, marks, seals.

Sec 4: Common dispositions to all the previous Sections of the Chapter.

Sec 5: About names, titles, offices which you simply assume or usurped.

Sec 6: Of false witnesses or false declaration before public authority.

Chapter VII: Violation of Laws against exhuming bodies, violation to tombs and crimes against public health

Sec 1: Violation of laws against exhuming bodies and violation to tombs.

Sec 2: Crimes against public health.

Chapter VIII: Of Arms, hunting and Protected fishing.
Sec 1: About prohibited arms

Sec 2: Hunting and prohibited fishing

Chapter IX: About Vegabounds, Beggars and Association of evildoers

Sec 1: Vegabounds

Sec 2: Beggars

Sec 3: Association of evildoers.

Chapter X: About games, lotteries, illicit action over public funds and abuses in case of loans over securities

Sec 1: Games

Sec 2: Lotteries

Sec 3: Elicit action over public fund

Sec 4: Abuses in case of loans over securities.

Chapter XI: Monopolies and Contraband

Sec 1: Monopolies

Sec 2: Contrabands

Chapter XII: Illicit Associations (Gatherings)

Sec 1: Illicit Association (gathering) due to lack of authorization
Sec 2 : Secret Association

Chapter XIII : Crimes by Public Officials in exercise of their function (Art 284-290)

Sec 1 : Prevaricacao (Art. 284 Manifestly unjust sentence by the Judge based on hatred etc. Art 285: Public Servant who informs, counsels superior authority deliberately and falsely. Art 286: Judges and Administrative Authorities who deny to administer Justice).

Art 284 : A Judge who gives a definite sentence which is manifestly unjust by favour or hatred will be condemned by fixed penalty of Suspension of his public right for 15 years

Sec 2 : Abuse of Authority

Sec 3 : Excess of power or disobedience.

Sec 4 : Illegal anticipation, prolonging or abandoning public function.

Sec 5 : Peculato e Concussao (Misuse of stamps, seals, public documents given to a public official).

Sec 6 : Misuse of Money, title, credit, etc. in possession of public official.

Sec 7 : Bribery and Corruption

Sec 8 : General Dispositions
Title IV: Crimes against Persons

Chapter I: Crimes against liberty of Persons.

Sec 1: Violence against liberty

Sec 2: Private imprisonment (detention without the law).

Chapter II: Crimes against civil status of a person

Sec 1: Usurpation of Civil Status and Pretended or illegal marriages (Ex. Art 337: bigamy).

Sec 2: Pretended and substituted Pregnancies.

Sec 3: Enticing or hiding minors

Sec 4: Exposing or abandoning infants.

Chapter III: Crimes against security of Persons

Sec 1: Voluntary Homicide, simple and aggravated and poisoning.

Sec 2: Voluntary Homicide, aggravated by the quality of person.

Sec 3: Abortion

Sec 4: Hurt and other voluntary corporal offences.

Sec 5: Homicide, hurt and other corporal offences done involuntarily.
Sec 6 : Causes of aggravation of crimes in voluntary Homicide, hurt or other corporal offences.

Sec 7 : Homicide, Hurt and other acts of force which are not classified as crimes (justification and Defences etc).

Sec 8 : Threat and House Trespass

Sec 9 : Duel

Chapter IV : Crimes against Honesty

Sec 1 : Outrage of Modesty of Woman

Sec 2 : Attempt to Rape etc.

Sec 3 : Adultery

Sec 4 : Exploitation of women and minor

Chapter V : Crimes against Honour, Defamation, Insult and Injury

**Title V: Crimes against property**

Chapter I : Of stealing, Robbery and Usurpation of Immovable Property

Sec 1 : Stealing

Sec 2 : Robbery
Sec 3 : Usurpation of Immovable Property and alteration etc. of boundary marks.

Chapter II : Bankruptcy and Fraud

Sec 1 : Bankruptcy

Sec 2 : Fraud

Sec 3 : Mistrust, Scam and other special frauds.

Chapter III : Of those who open letters or papers belonging to others and reveal the secrets

Chapter IV : Putting on fire and damages

Sec 1 : Putting on fire

Sec 2 : Damages

Sec 3 : Fire and Damages caused in violation of Regulations.

**Title VI : Provoking public for crime**

**Title VII : Of Contraventions of Police Regulations**

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10 This title has only one article concerning provoking public to crime. This can be done by speeches or words spoken publicly or in a loud voice or even by writing through which the public is provoked to commit a determined crime. (Art.483)
This is the last title in Book II of Portuguese Penal Code. It has three articles namely Articles 484, 485 and 486. These articles deal with contravention of byelaws, municipal regulations and police and administrative regulations.

The above was the outline of Portuguese Penal Code in force in Goa.

The punishments to which offenders are liable under the provisions of Portuguese Penal Code are:

The Punishment for aggravated Homicide (Murder) was imprisonment in Major Cellular Jail for 8 years followed by exile for 20 years along with imprisonment till 2 years at the exiled place or as per the opinion of the Judge or alternatively with fixed exile for 28 years with imprisonment at the place of exile for 8 to 10 years in cases such as: (a) premeditation (b) use of torture and cruelty to increase suffering, (c) when the crime had the object to prepare, facilitate, execute another crime etc. among others.

The punishment for voluntary Homicide (voluntarily kills other) that means one who voluntarily kills another will be punished with 8 years imprisonment in Major Cellular Jail followed by exiled for 12 years or alternatively with fixed exile for 25 years11.

For Hurt a person would be punished for correctional imprisonment for 3 months12. In case of grievous Hurt, the victim being deprived of reason or

11 Supra note 8.
12 Id at Art 359.
incapacitated to work for life punishment would be imprisonment in Major Cellular Jail from 2 to 8 years or in the alternative major imprisonment (*maior temporaria*). The same aggravated penalty will be applied if a person commits corporal offence voluntarily without intention of killing and yet occasions a death.

Theft or stealing was punished with 6 months imprisonment and additional (*multa*) one month if the value of the article was up to 500 Escudos and one more month if the value exceeded 500 Escudos. However if the value of the goods exceeds 500 Escudos up to 2000 Escudos, imprisonment would be one year and *multa* of 2 months and if exceeded 2000 Escudos but less than 5000 Escudos correctional imprisonment of 2 years and *multa* of 6 months.

If it exceeded 5000 Escudos but if not superior to 50,000 Escudos imprisonment of 2 to 8 years or in alternative temporary exile with fine up to one year. If the value exceeded 50,000 Escudos major cellular jail for 4 years, followed by exile of 8 years or in alternative, a fixed penalty of exile for 15 years.

The article also further provided for recidivism on first and second occasion etc. In case the value up to 50,000 Escudos, the punishment would be major cellular imprisonment from 2 to 8 years and incase it exceeds 50,000 Escudos,
major cellular Imprisonment for 4 years followed by exile of 8 years or alternatively fixed penalty of exile for 15 years\textsuperscript{13}.

Art. 426 referred to qualified theft (\textit{Furto Qualificado}) due to involvement of other persons or circumstances such as (a) Criminal/some criminals carrying arms open or hidden, (b) Being committed at night etc. (c) By two or more persons, (d) In inhabited houses, in public edifices, in places destined for religious activities, or cemeteries etc. (e) In street and highways etc. (f) Committed by usurping a title, uniforms, insignias etc. of any public official, civil or military or falsely alleging order of a public authority (g) Scaling or using false keys in houses not inhabited or not so destined.

As per Art 433 when robbery is committed or attempted, concurring with the crime of homicide, the punishment of major cellular imprisonment for 8 years will be applied, followed by exile for 20 years with imprisonment of 2 years in place of exile or without it depending on opinion of Judge or alternatively with a fixed penalty of exile for 28 years with imprisonment of 8 to 10 years at place of exile.

In the case of Rape (\textit{Rapto violente or fraudulento}) and Kidnapping, the rape of any woman with dishonest intention through violent physical means or intimidation or fraud which does not amount to seduction or in finding the woman not in her senses. It will be punished as rape with violence (Art 395). Rape of a minor of 12 years with dishonest intention will be punished with

\textsuperscript{13} \textit{Id} at Art 421.
major cellular imprisonment of 4 years followed by exile of 8 years, or alternative, a fixed penalty of exile for 15 years (Art 394).

We can compare the above with the Indian Law which was applied to Goa after liberation. In the case of Murder, a person shall be punished with death or imprisonment for life and may also be liable to pay fine\textsuperscript{14}. Whoever commits culpable Homicide not amounting to murder shall be punished with imprisonment for life or imprisonment for 10 years along with fine\textsuperscript{15}.

In the case of Death by Negligence that is whoever causes death of any person by doing any rash and Negligent Act not amounting to Culpable Homicide shall be punished with imprisonment of with description for a term which may be extended to 2 years imprisonment or with fine or both\textsuperscript{16}.

In the case of a death of a women caused by burns or by bodily injury within 7 years of her marriage and she was treated cruelty and harassed by her husband or his relations in connection with demand for dowry, such death is called dowry death and such husband or relative shall be deemed to have caused her death for such persons the punishment is imprisonment of not less than 7 years which may be extended to the imprisonment for life\textsuperscript{17}.

\textsuperscript{14} Sec 302 of the Indian Penal Code.
\textsuperscript{15} Id at Sec 304.
\textsuperscript{16} Id at Sec 304 A.
\textsuperscript{17} Id at Sec 304 B.
In case of attempt to murder the Punishment shall be for the term of 10 years imprisonment and also liable for fine. In the case of grievous hurt, the Punishment is for 7 years imprisonment or with fine or both\textsuperscript{18}.

In the case of theft, the Punishment is 3 years imprisonment or with fine or both\textsuperscript{19}. In the case of Robbery, the Punishment is 10 years and also fine and if the Robbery is committed on highway between sunset and sunrise, it may be extended to 14 years\textsuperscript{20}.

In the case of Dacoity, the Punishment is imprisonment for life or rigorous imprisonment for 10 years and also fine\textsuperscript{21}. Further if murder is committed along with dacoity, punishment shall be the imprisonment for life or rigorous imprisonment for the term which may be extended to 10 years with fine\textsuperscript{22}.

In the case of cheating, the punishment is of 7 years and shall be liable to pay fine\textsuperscript{23}.

In addition to the above provisions of the IPC and some other legislations, create special provisions for treating the convicted persons on the basis of the rehabilitative theory. These are covered under the Probation of Offenders Act, 1958, the Children’s Act, 1960 and the Boston School Act.

\textsuperscript{18} Id at Sec 325.  
\textsuperscript{19} Id at Sec 379.  
\textsuperscript{20} Id at Sec 392.  
\textsuperscript{21} Id at Sec 395.  
\textsuperscript{22} Id at Sec 396.  
\textsuperscript{23} Id at Sec 420.
Sec 3 of Probation of Offenders Act enables the Court to release certain offenders after admonition instead of sentencing them to any punishment.

Sec 4 provides for release of certain offenders on probation of good conduct.

Sec 5 empowers the court to require that offenders released under Sec 3 and 4 to pay compensation and cost if deemed proper.

Sec 6 puts certain restrictions on the court in passing the sentence of imprisonment on offenders under the age of 21 years.

Under the Children’s Act certain provisions are made for treatment of persons between 7 years and 10 years where it is a boy and a girl who has not attained the age of 18 years. There is also provision for trying the children before Special Courts known as Juvenile Courts.

Under the Boston Schools Act, children are kept under close observation and are provided training which is suitable to them so that they could resort to more helpful and beneficial trade rather than resort to more criminal behavior. The ‘young offender’ is defined in the act as a person who is not more than 21 years of age.

Under the Suppression of Immoral Traffic Act there is a provision to send wayward and convicted woman to welfare homes and other corrective institutions. There are other legislations which prescribes certain punishment for white collar offences committed under the Essential Commodities Act,
Drug Control Legislation, Prevention of Corruption Act, the Forest Act and the Land Reforms Act.

i. **Hierarchy of Criminal Courts**

The Hierarchy of criminal courts under the code of Criminal Procedure is as follows.

A. High Court

B. Court of sessions

C. In Metropolitan areas i.e. where the population exceeds one million, there are Chief Metropolitan Magistrate, Metropolitan Magistrate and in some cases, additional Chief Metropolitan Magistrate and special Metropolitan Magistrate.

D. In non metropolitan areas, Chief Judicial Magistrate and Judicial Magistrate of the First Class, judicial Magistrate of second class and the special Judicial Magistrates.

E. Executive Magistrate consisting of District Magistrate, Additional District Magistrate, sub-divisional Magistrate and special Executive Magistrate.
ii. **Power to pass sentence:**

The High Court can pass any sentence authorized by law. The Session Court is empowered to pass any sentence authorized by law. However in cases of sentences of death the sentence passed by the Session Judge and additional sessions Judge requires confirmation of the High Court\(^{24}\).

The powers of Chief Judicial Magistrate and Chief Metropolitan Magistrates are wide. They contain in themselves all the powers of the former District Magistrate without his executive powers and judicial powers including passing of sentences of imprisonment up to 7 years the executive magistrates are not invested with any regular judicial work.

The first schedule annexed to the Code of Criminal Procedure 1973 gives in detail the courts which can try different offences in the IPC. We may specially mention sec 27 of the CrPC which provides the forum for the trial of Juvenile offenders. It states as follows: any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court specially empowered under the Children’s Act 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

\(^{24}\) Sec 366, Sec 367, Sec 368 of Criminal Procedure Code, 1973.
iii. Appellate Powers:

To ensure that not only justice is done but also seen to be done, provision is made in the Indian law for appeals. The powers of the Appellate court in this regard are shown in Sec 386 of CrPC. This section states as follows:

The code gives ample powers to the Courts to alter or amend a change. The Appellate Court has full power to review all the evidence upon which the order of acquittal. Now every designated court has power and discretion for awarding a sentence. It is decided by various courts in India including the Supreme Court that this discretion should not be interfered within the appeal court unless the discretion has been exercised arbitrarily or erroneously.

Similarly, though the Appellate court has the powers of reducing the sentence or enhancing the same with the due notice to the offender, it has no power of deleting the sentence while maintaining the conviction. Sentencing is in the description of the Trial court and the function of the appellate court comes in only by way of correction.

A review of the cases on this aspect show that courts will as far as possible respect the decision of the Trial court.

iv. Revisional Powers:

When appeal is provided under sec 377 simultaneously by using this provision one cannot use powers of revision for enhancement of sentence. However when
appeal is not available, revision lies either to the session court or to the High Court for enhancing the sentence.

v. Sentencing

The famous Latin phrase “Nulla Poena Sine Lege” meaning the essence of this principle of legality is limitation on penalization by the states officials affected by the prescription and application of specific rules. In a narrow sense, it concerns the sanctions of penal laws and that is no person may be punished except in pursuance of the statute which prescribes a penalty. According to a famous authority on criminal law Prof. Jerome Hall explains in his book ‘General Principles of Criminal Law’ that while applying the phrase “Nulla Poena Sine Lege” there is some incompatibility with the principle of legality and actual experience while applying the law.

This is in the context of intermediate sentence probation, suspended sentence, on pleas to misdemeanors, compromise, modified sentence, ‘Good times’ laws, Parole and Pardoned have almost completely transformed 18th century Law and penological ideas. He also refers to demands being made in U.S. notably by psychiatrists for complete elimination of prescribed penalties.

That sentence should be wholly indeterminate and ‘treatment’ should be given by an administrative board of experts who have ample opportunity to study the offender and presumably considerable knowledge concerning rehabilitation. Further ‘Anti Social’ persons would in some sort of proceedings be declared
‘dangerous’ and placed in the hands of experts, to be dealt with as they
determined as according to their knowledge of psychiatry or sociology.

According to Prof. Hall, the above thesis was created by the positivist school
first developed on the European continent. It was given a very illuminating
application by 20th century, Neo-positivists who accepted the strictures on the
legal limitation of official power and substituted not enlightenment and
benevolence but calculated cruelty all in the unimpeachable cause of ‘social
defense’.

Prof. Hall then explains the relation between politics and penal policy.
According to him in penal law policy plays an important role in the
interpretation of statutes and that penal policy is closely connected with
political policy. He explains how in Germany the judge had been freed from
‘slavish adherence to the statute’ long before 1935.

He is only trying to emphasis that a judge has to use his discretion while
delivering sentences. The policy of implementing reforms gives the judge the
discretion to decide how he will apply the law. It is due to the persuasion of
persons like Prof. Jerome Hall that criminal law gained a human face. Hence
we justify the arrival of the reformatory theory to deal with criminals and to
help enable them to go back to their normal life.

The Malimath Committee on Reforms of Criminal Justice System has said
‘Punishment must be severe enough to act as a deterrent but not too severe to
be brutal. Similarly punishment should be moderate enough to be human but cannot be too moderate to be ineffective’.

The Committee commenting for the needs for sentencing, guidelines states there is no guidance to the judge in regard to selecting the most appropriate sentence therefore each judge exercises discretion according to his own judgment. There is lack of uniformity which some judges are lenient. Some other judges are harsh; therefore the committee suggests that there is need for a law to minimize uncertainty in the matter of awarding sentencing. It also called for thorough examination of this issue by an expert statutory body.

4.3. Dimensions of Sentencing Process:

It is said that a dual system of sentencing is available in courts in India: one based on punitive reaction to offenders and the other which involves the modern individualized rehabilitative measures based on reformative theory.\(^{25}\)

Hence the first major decision the court is called upon to make in the sentencing process is to choose between individualized rehabilitative system and the punitive tariff system having regarded to the nature and circumstances of the case and the character and antecedent of the offender.

Sec 360 of CrPC gives the push for this process by providing for orders for release on probation of good conduct or after admonition. Under sec 255(2) in case of summons trial and where the magistrate does not proceed in accordance

\(^{25}\) Sabahit, G.N., Sentencing by Courts in India, 1975, Pg.33
with the provisions of sec 325 or 360, he shall if he finds accused guilty, pass a sentence upon him according to law.

Sec 325 refers to the procedure when the magistrate cannot pass a sentence sufficiently severe. Further under sec 361 of the CrPC for reasons to be recorded, the court can pass an order regarding an accused person who is a youthful offender to provide for his treatment, training or rehabilitation. From this we can see the exercise of dual powers by the court, one of hearing the accused on the aspect of sentence and second of deciding to invoke rehabilitative measures instead of sentencing the offender to punishment.

But the tragedy of the courts in India very happily impose sentencing and hardly taking into account the provisions dealing with probation etc. Mr. Justice S. M. Sikri inaugurating the Probation Year in 1971 said ‘ not only the probation officers should be convinced of the advantages of the probation but the Judiciary and the Bar must become its votaries. Unfortunately, at present, very little serious attention is paid to this aspect by the judiciary or by the Bar’.

Similarly Mr. Justice V. R. Krishna Iyer who was then a member of the Union Law Commission stated as follows. “The 20th century approach to crime and punishment is for us of Gandhian vintage but runs counter to the traditional theory of harsh deterrence writ large in the IPC and the CrPC. The ghosts of Mecaulay men of his ilk haunt on criminal courts still, so much so probation

still fares ill in the law courts. 25 years of freedom have not freed our judiciary from the obsolescent British Indian Penology, being on suppression of crime. And it is time our magistracy bends to the winds of socio-legal changes, which have been blowing for a longtime now. Orthodoxy and ignorance die hard even among judicial personnel.

The awareness of the need to be educated in the current thought as the cases, syndrome and treatment of criminal and the crime is the beginning of the forensic appreciation of probation and allied methods. Indeed, modern criminal jurisprudence and allied social and psychiatric departments have gone so far ahead of the lagging Indian courts, cloistered in their outworn ideas, that a national training or refresher programme for the criminal judiciary from the lowest to the highest echelons, is an imperative need\textsuperscript{27}.

The Supreme Court too has expressed its disappointment about non use of the reformatory provisions in favour of the offender. In \textit{Kishore Prasad v. State of Bihar}\textsuperscript{28}, the court observed thus ‘the Probation of offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain category on probation or after due admonition and for matters connected therewith. The object of the act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of

\textsuperscript{27} \textit{Ibid.}.

\textsuperscript{28} \textit{AIR 1972 SC 2525}. 
mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.

The above object is in consonance with the present trend in the field of penology according to which efforts should be made to bring about correction and reformation of the individual offender was not to resort to retributive justice. Modern criminal’s jurisprudence recognizes that no one is a born criminal and that a good many crimes are a product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reforms of young offenders not guilty of very serious offence and of preventing their association with hardened criminal.

The Act gives statutory recognition to the above objective, it is, therefore provided that youthful offenders should not be sent to jail except in certain circumstances. Before, however the benefit of the act can be invoked, it has to be shown that the convicted person even though less than 21 years of age is not guilty of an offence punishable with imprisonment for life.

We may now take into consideration the antecedent of the criminals for the purpose of sentencing. While imposing a sentence, the court does keep in its mind the character of the offender and his antecedents. According to Dr. Harisingh Gaur for the purpose of consideration of awarding sentences, divided all criminals into three classes. The casual, the habitual and the professional.

In the case of Casual, the court will be very synthetic and give away with minor sentencing. The Habitual criminal will get strict punishment but then the judge may have to command circumstances in which the crime was committed like the existence of famine, hunger and the desperate condition of the family. The professional is one who prepares systematically to commit crimes and will do anything to achieve his goal in such cases sentencing will have to be done by the judge keeping in mind how dangerous the offender can be to the society and it would be better he languish in jail rather than create tensions to the society.

Sometimes the judge may be placed in very peculiar situation where there are conflicting objectives and the judicious choice in sentencing would have to be made. An e.g. in this regard is found in *State of Maharashtra v. Nasein Khan and Others*. In this case the respondent in both the appeals were prosecuted in case no. 254 of 1964 in the court of sessions for Greater Bombay. They were charged with various offences. Respondents were members of a union known as B.E.S.T Union. In about the middle of August 1963, the union declared a strike. B.E.S.T was running a bus service in the city of Bombay. As a result of declaration of the strike several workers struck work.

It appears that some of the workers disregarded the call for strike and continued to work. On the third day of the strike, when a single Decker bus no. BMR 3561 was proceeding on the road, the respondent in criminal appeal No. 181 of

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30 AIR 1971 SC 381.
1967 threw burning petrol on the conductor, Abdul Khader, as a result of which Abdul sustained several severe injuries, and his face was practically burnt up. At the time of the occurrence one of the respondent’s cause grievous hurt to the driver, Kamala Shankar Misra. During the cause of the incident, injuries were also caused to police constable Namdeo Arjun Kharat who was on *bandobust*, duty in the bus. Injuries sustained by the conductor and the driver were quite serious.

The conductor sustained boils on the face, left ear and in the arms and he had to be in the hospital for over 20 days. The driver’s left ear was cut and the flap of the ear was hanging. Further there was fracture of cartilage. The offence committed by the respondent was very serious and the resulting damage to the bus was grave and also there was serious injury to the conductor and driver. The sentences that were imposed were to run concurrently and the maximum sentence given to the accused No. 1 amounted to 2 years and on the rest 1 year.

The accused appealed to the High Court and the High Court let them off on probation. When the matter went to the Supreme Court, the Supreme Court took the High Court to task. The court observed that it could not understand what the judge meant by saying that the accused did not belong to a regular class of criminals. It went on to say that the social wrongs are sought to be remediated in the street, and then these can be neither peace nor progress. It set aside the High Court order and allowed the sentence by the Trial Court.
It will be interesting to narrate here the case of Pancham Singh a dreaded dacoit who was the leader of a 60 member gang of hardcore dacoits in the Chambal Valley. He was wanted by the police for the crimes he had committed at and a reward of Rs. 1.30 lakhs was kept to receive information about him so that he could be arrested. He had committed offences like murder, kidnapping and dacoities, when he knew that it was difficult for him to escape, he surrendered with his gang and asked for pardon. The court which tried him sentenced him to death.

The late Shri Jaiprakash Narayan intervened and the government reduced their sentence to life imprisonment and after 8 years they were released for good behavior. Pancham Singh joined the Brahmakumari Movement and all the money he had obtained by looting, he started spending for charitable purposes and constructed a school in Madhya Pradesh. He is now leading a peaceful life with his family and he has turned to agriculture by growing vegetables in 6.25 acres land allotted to him by the government under the ex-dacoit rehabilitation scheme.31

This case is a beautiful example of how the process of sentencing can be balanced between the judge, the government and the prosecution to enable the criminal to come out of his condemned life and turn a new leaf by becoming an honest citizen of the country.

31 The Hindu dt 3.2. 1996, Pg 4.
When we compare this phenomenon which is happening in India and in post liberating Goa, we find that the Indian system has much to offer in terms of converting criminals into law abiding citizens.

The Supreme Court of India in a very interesting judgment of *Chimanlal Jagjiwan Das v. State of Maharashtra*[^32] rejected the plea of the appellant for reduction of sentence confirmed by the Hon’ble High Court of Bombay but the basic question before the court was whether it could consider a wrong done under the Indian Drugs Act 1940.

The accused was carrying on business in the name of Deepak Trading Corporation at Bombay. On 27th Dec 1958 the sub inspector of police accompanied by the Drug inspector raided the business establishment of the accused. They found large quantities of absorbents cotton wool, roller bandages, grease and other things. It was found that the appellant was not only storing these goods in large quantities but was actually manufacturing them in Bombay and passing them off as if they were manufactured by a firm of repute in Secunderabad.

After the test, the accused was charged for offence under Sec 18 of the Drugs Act which dealt with manufacturing of drugs which were not of standard quality; the Presidency Magistrate acquitted the appellant on the ground that the prosecution has failed to prove that the articles were in the possession of the appellant.

[^32]: AIR 1963 SC 665.
On appeal High Court found that the said articles were not only in the possession of the appellant but also were manufactured by him and they were below the prescribed standard.

In the Supreme Court the whole question revolved round whether the said articles came within the definition of drugs under Sec 3(b) of the Act. The Supreme Court without any hesitation confirmed the decision of High Court and said that the appellant was guilty of an anti social act of a very serious nature hence in its view of the punishment of rigorous imprisonment for 3 months given by the High court was more lenient than severe. Hence it felt there was no case for interference with the sentences.

When one considers the provisions for the Probation of Offenders Act, the role of the High Court to pass orders came to be scrutinized in the Supreme Court in the case *Rattan Lal v. State of Punjab*33. In this case the question was whether the High Court had jurisdiction to exercise its powers under Sec 6 of the Probation of Offenders Act 1958 in respect of an accused who was convicted by the Trial court before the Act came into force.

In this case the appellant committed house trespass and tried to outrage the modesty of a girl aged 7 years. He was convicted by the magistrate 1st class under Sec 451 and Sec 454 of the Indian Penal code and sentenced to 6 months rigorous imprisonment and fine of Rs. 200/-. The appellant was 16 years at the time of his conviction. The Act was extended to Gurgaon District on 1st Sept 33 AIR 1965, SC 444.
1962 and therefore at the time appellant was convicted by the magistrate. The magistrate had no power or duty to make any order under the act.

The appellant preferred an appeal to the Additional Sessions Judge Gurgaon who dismissed the appeal but by this time the act had come into force in that area. The appellant went in revision to the high Court which was also dismissed. Finally the appellant filed a petition in the High Court under Art 134(1) (c) of the constitution for certificate for fitness to appeal to the Supreme Court.

The main argument before the Supreme Court was whether the High Court should have acted under Sec 11 of the Act and release the appellant on probation of good conduct instead of sending him to the prison. The state opposed any relief to the appellant in this regard. The court by majority held that the High Court should have used its powers under Sec 11 of the Act since a reading of Sec 6(1) of the Act along with Sec 11 would give sufficient power to the High Court to pass the order for putting the accused under the Probation of Offenders Act.

However Justice Raghuban Dayal gave a dissenting judgment against the majority and he stated that the High Court cannot interfere in such cases. The main thrust of the Supreme Court decision was that one should not go against the tide of reforms. Rather one should go out of the way to help it. Ratanlal had to be reformed and not put in jail for what he had done.
The question of High Court performing the functions of a trial Court came for discussion in a very interesting case coming from Goa decided by the Judicial Commissioner v. Jetley\textsuperscript{34}. In this case, the petitioner Babu Raghunath Naik was convicted by the learned Judicial Magistrate Vasco-Da-Gama of theft of a coconut tree, under Sec 379 of IPC and sentenced to rigorous imprisonment for 15 days and fine of Rs. 50/-.

The main charge against the accused was, he cut the coconut tree and used the wood to construct his cottage. But that was not the problem. The question was whether one who is found so guilty by lower Court can request the High Court to intervene under the Probation of Offenders Act, 1958.

The Court held that since the offence committed was not very serious, the accused should be released after admonition and was ordered to pay compensation for the loss of the tree. The court felt that though it did not had the power to reverse the decision of the Trial Court, it was reluctantly confirming the findings of the Trial Court by only reducing the sentence.

The question of sending young offenders to jail for commission of less serious offences came to be discussed in the Supreme Court in Daulat Ram v. State of Haryana\textsuperscript{35}. The facts of the case are that on Dec 20, 1968 at about 4pm, Smt Sardaro along with her mother in-law Smt Sarbati had gone to their Gitwar for taking fuel. Smt Surti, wife of Net Ram and mother of appellant Daulat

\textsuperscript{34} AIR 1967, Goa, Daman and Diu, Pg 65.

\textsuperscript{35} 1972, Vol. 2 SCC 626.
Ram came out of a residential house and went to her Gitwar through Smt Sardaros Gitwar. Smt Sardaro prohibited Surti to pass through her Gitwar. Surti abused Sardaro. Thereupon Net Ram and his son Daulat Ram armed with lathis rushed to her Gitwar and gave blow on her head which hit her cheek below her left eye.

Thereafter Net Ram and Daulat Ram were tried and convicted under Sec 325/34 and 323/34 of the IPC. In appeal the High Court upheld the conviction but the sentence was reduced. Now Daulat Ram on the date of his conviction was less than 21 years. The question was whether he could be granted Probation. The Court decided to give the benefit of the Probation Act to Daulat Ram. The sentence of imprisonment was set side and he was released on a bond of Rs. 500/-. The court in doing so highlighted the laudable reformatory objects which legislature was seeking to achieve by enacting it.

There is another instance where the Supreme Court has gone in favour of reforms in sentencing process. Another important case decided by the Supreme Court and in which it gave full support for reformatory provision was *Abdul Qayum v. State of Bihar*[^36]. In this case the Supreme Court took the lower Courts to task for not correctly applying the Probation of Offenders Act for those below the 21 years. It held that neither the Trial Court nor the High court applied their mind to the requirement and they completely misdirected themselves as to the essential requirement of Sec 6 of the Act. It held that the

provisions must be viewed in the light of laudable reformatory object which legislature was seeking to achieve by enacting the legislation. The court allowed the appeal but the sentence was set aside with directions for the release of the appellant under Sec 4 of the Act.

In the above referred cases, the appellant was convicted under Sec 379 of the IPC and sentenced to rigorous imprisonment for 6 months. Abdul Qayum was found guilty of pick pocketing and since he was below 21 years of age, he had sought relief under the Probation of Offenders Act.

**Payment of compensation to Victims of offences:**

Apart from the case of the Probation of Offenders Act there has been another development in Indian scene and that is the question of Reparation to the victim of an offence. Under Criminal law a person who has done wrong gets punishment but the person who is wronged gets nothing. Keeping this in mind there has been a growing tendency to provide reparation to the victim of the wrong. Many world systems have provided compensation to those who are suffering. According to J. N. Sabhahit, there are 3 patterns of compensating the victims of a crime:

1. The state may take for itself this responsibility in defined classes of cases.
2. The offender can be sentenced to pay a fine by way of punishment for the offence and out of that fine compensation can be awarded to the victim.

3. The court trying the offender can, in addition to punishing him according to law, direct him to pay compensation to the victim of the crime or otherwise make amends by repairing the damage done by the offender.

The Law Commission in its 42\textsuperscript{nd} Report has very strongly recommended payment of compensation to those affected by the Criminal Act. In Chapter III Para XVII the Commission explains this to say\textsuperscript{37}.

“From the above, we can conclude that there is a strong public opinion in India to provide compensation to the victims of crimes by the Criminals. It may not be before we see laws being passed to make this a reality. This will go hand in hand with reforming the sentencing system”.

Dr. Justice V. S. Malimath Committee in its “\textit{Reforms of Criminal Justice System}” has made some important recommendations regarding sentences and sentencing procedure. The committee finds that the variety of punishments prescribed is limited. There is a need to have new forms of punishment such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without recommendation or remission.

\textsuperscript{37} Law Commission 42\textsuperscript{nd} Report 1971, Pg 216.
The committee also recommends that there should be statutory guidelines to regulate description of the judges and to that extent the committee feels that there must be permanent statutory committee being constituted for the purpose of prescribing sentencing guidelines. A further recommendation is a pregnant women with child below 7 years should instead of being sent to prison be ordered to be under house arrest. This is to protect the legitimate rights of the unborn and young children.

The Supreme Court of India has explained the role, the public prosecutor has to play. In *Habib Mohammed v. State of Hyderabad*\(^\text{38}\), The Supreme Court laid down the need to have proper prosecutors who could independently function with regard to their work. Commenting upon the duty of prosecutor, the Court said, ‘it is the bounden duty of the prosecutor to examine a material witness partly clarify when an allegation has been made that prosecuted he would not speak the truth, not only adverse effect would arise against the prosecution case from his non production of a witness in view of ill extraction (9) to sec 114 of the Evidence Act but the circumstances of his being withheld from the court casts a serious reflection on the fairness of the trial.

The Supreme Court in *S.B. Shahane v. State of Maharashtra*\(^\text{39}\) has laid down a detailed judgment as what should be the powers and functions of the public prosecutor. In this case the appellant was police prosecutor appointed by

\(^{38}\) AIR 1954 SC 51.

\(^{39}\) AIR 1995 SC 1628.
Inspector General of Police in Maharashtra. On their appointment they became the personnel of Maharashtra State Police Department. The dual status they were occupying came to the question in the High Court for a Director to the government for the exclusion from its police department so as to free them from the administrative and disciplinary control of the Inspector General of Police.

When the application was rejected by the High Court they came before the Supreme Court in appeal. The Supreme Court taking support of the XIVth report of the Law Commission laid down the law in favour of complete separation of police department from the prosecutor department. The Supreme Court felt that it is absolutely necessary that Assistant Public Prosecutor is completely freed from the administration and disciplinary control of the Police Department.

This was in the best interest of Justice. In view of this and criticizing the judgment in the High Court, the Supreme Court allowed the appeal and directed the government of Maharashtra to constitute a separate cadre of Assistant Public Prosecutor either on state basis or district wise basis by creating a separate prosecution department for them and making the head to be appointed to such department directly responsible to the State Government for their discipline and conduct of all prosecutions conducted by them.
The Department of Prosecution:

In order to get clean conviction for offences committed, much would depend upon the investigation done by the police and the role played by the prosecution to place the evidence before the Trial Judge. One of the reasons why there are fewer convictions in India as well as in Post Liberated Goa is the lack of expertise and training among police as well as prosecutor to secure conviction in criminal matters. It has to be remembered that the public prosecutor is representing the state and a large burden is cast on him to do justice. Each of the prosecutors must be aware of his role and the expectation of the public to secure justice.

There have been instances where the prosecutors have done excellent job in presenting evidence even in very complicated cases. Even the police department has worked hard to ensure that the investigation is correctly done and sufficient evidence is collected to ensure that the wrong doers are brought to book. In the administration of criminal justice the public prosecutor and the defense counsel play the part in assisting the Magistrate and the Judge to come to the right conclusion in the matter of sentencing. Most of the states in India are having department of prosecution and this department is getting more and more professionalized.

The prosecution must place before the Court any material that helps to Mitigate the gravity of the crime and extenuates the severity of the sentence on the
accused. He should also place materials concerning the antecedents of the accused and the circumstances of the offence.

In view of the fact the Department of Prosecution has to be strengthened and made more effective, the suggestions made by Justice V.S. Malimath Committee are useful. Some of the relevant suggestions are given below:\textsuperscript{40}:

1) Every state must have a Director of Prosecution who should be appointed from among suitable police officers of the rank of D.G.P. in consultation with the Advocate General of the State.

2) All Assistant Public Prosecutors and Prosecutors shall be subject to administrative and disciplinary control of the Director of Prosecution.

3) The Director must function under the guidance of the advocate general.

4) Assistant Public Prosecutors must be given intensive training both in theoretical and practical aspects.

5) The Director is empowered to call for reports especially in regard to the cases which lead to acquittal to ensure accountability.

There is one more problem in India and that is too many agencies are involved in investigation. There should be co-coordinators between them to ensure quick and effective results. Further, the complex and varied methods employed in the commission of socio-economic crimes do not admit of traditional methods of

\textsuperscript{40} Report of the Committee on reforms of Criminal Justice System 2003, Chairman Dr. Justice V. S. Malimath Pgs 127, 128.
investigation rather we require new technique of investigation backed by latest scientific and technical expertise.

A critical analysis of the cases decided by the Supreme Court of India help us in understanding the problems involved in punishing persons who have committed Socio-economic crimes. Here below are given some of the examples which go to support the above given conclusions.

In *New Piece Goods Bazar Co. Ltd v. Commissioner of Income Tax*\(^4\)\(^1\). The Supreme Court had to consider the interpretation to “Capital Charge” and “Annual Charge”. This was an appeal against a judgment of the High Court of Bombay in an income tax matter and it raised the question whether municipal property tax and urban immovable tax are payable under the relevant Bombay Act. The Assesses Company was an investment company deriving its income from properties in city of Bombay.

The question before the Court was whether the municipal taxes paid by the applicant company were allowable deduction under the Income Tax Act. The High Court answered all the questions in the negative. The Supreme Court however reversed the decision of the High Court and allowed the appeal and permitted reduction.

\(^{41}\) AIR 1950 SC 165.
In the case of *Rahula Hariprasad Rao v. State*\(^{42}\), the appellant was the licensee of two petrol filling stations at Guntoor. He was also the Presidency First Class Bench Magistrate Shivala; he had managed, what has been described as a vast business at several places. In 1946, the applicant and his two employers were tried before the Sub-Division Magistrate at Guntoor and convicted in each of the cases.

The charge was that they had supplied petrol to 3 cars without taking coupons in contravention of clause 22 read with clause 5 of Motor Spirit Rationing Order which was promulgated under Rule 81(2) of Defense of India Rules and they had also accepted coupons relating to 2 other cars in advance without supplying petrol in contravention of clauses 27 of the order. Here also they had supplied petrol without issuing coupons.

The question to be decided in this appeal arose upon a plea taken by the appellant that he was First Class Magistrate at Shivala and he had issued orders to all his servants not to deviate from the rules under any circumstances and that he would not be made liable for the transaction of the rules committed by his employees.

The matter went up to the Privy Council on the single question whether mens rea was necessary to constitute an offence under rule 81 of the Defense of India

\(^{42}\) AIR 1951 SC 204.
Rules. It was argued that mens rea was essential element to convict a person under the rules and since that he was absent he could not be convicted.

The Supreme Court of India partly allowed the appeal stating that the clause was aimed specifically against the supplier but it was general in its language and it would hit the individual person who contributes the wrong and the only person also furnishes motor spirit contrary to the provision of the order will be affected by the contravention.

It was held that the master need not be held responsible for the acts of his servant and they only should be punished. This is an important case because it dwells upon the issue of vicarious liability of a master for wrongs done by his servants. In today’s business employers have to rely much upon the character of the workmen to get certain things done but if the servants’ let down their master they go beyond the permissible limits then the master will not be made liable. The case settles the issue of liability in socio-economic crimes committed by the servants in the existing master servant relationship.

The Supreme Court of India has over the years laid down guidelines as to who shall be finally responsible if one of the persons in the chain of Management defaults. In commercial transactions and in socio-economic situation the question does arise as on whom state shall take action in case of death or injury to persons. Such a situation arose in the case Chief Inspector of Mines v.
In this case there was a tragic accident in Amlabad colliery (coal field) in Manbhum District in the state of Bihar as a result of which 52 persons lost their life and one escaped with injury. The court of inquiry in its report found that the accident and the circumstances attending the accident was due to negligence and non observance of some of the regulations of the Indian Coal Mine Regulation 1926.

The government then constituted a Court of Inquiry into their conduct. Criminal proceedings were also instituted against 14 persons including Manager and the agent of the colliery. All the directors of the company were the owner of the colliery and the Directors of the Managing agents of that company. They were booked for the violation of several regulations made under the Indian Coal Mine Regulations 1926.

The sub divisional Magistrate took cognizance of the offences and issued processes against all the 14 persons. 6 of the accused persons including the appellant filed applications before the High Court of Patna for the issue of appropriate writs or orders quashing the criminal proceedings. The main ground for this was prosecution of all directors was not permitted by the Mines Act 1952. The Directors and Managing agents not being owners could into be prosecuted.

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43 AIR 1951 SC 838.
The High Court dismissed the applications of Manager and agents and allowed the applications of the Directors of the Managing Agent. In the two criminal cases the two directors obtained special leave to appeal against the direction of the High Court before the Supreme Court. The Court held that the very fact that in Sec18, 22 and 61, the owner, agent, and manager have been separately made responsible clearly shows that the Legislature did not think that Agent or manager would come within the definition of ‘owner’.

The Managing agent company not being either agent or manager or owner of the mine, there was no question of contravention by that company or any of its directors of the Coal Mine Regulation can arise. The High Court had therefore rightly quashed the criminal proceedings against the directors of the Managing agent company. Thus the appeal was allowed.

From the above decisions, we can conclude that the Supreme Court has very carefully separated the issues when it came to deciding the question of liability for crimes committed in the socio-economic sector.

We may take another example where the Supreme Court resolved a socio-economic problem so as to avoid enlargement of a dispute which could lead to criminal consequences in future. The case at hand is *Alembic Chemical Works Co Ltd v. The Workmen* 44 in this case there was a dispute between the appellant that is Alembic Company and its workmen. This dispute related to a single

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44 AIR 1961 SC 647.
demand made by the respondents with regard to leave. Further this demand was split into 3 parts:

a) One month privileged leave with full salary and dearness allowance on completion of 11 months service in a year with a right to accumulate for 6 months.

b) One month sick leave with full salary and dearness allowance on completion of 11 months service in a year with a right to accumulate for the entire period of service.

c) Every workman should be entitled to take leave in proportion to the number of days he is in service of the company at the time of his application for the same. The government referred the matter to the Industrial Tribunal.

The Tribunal, with regard to privilege leave ordered that leave should be granted to the staff members. It permitted only 15 days sick leave and refused to grant leave in proportion to service. The company appealed to the Supreme Court. The Supreme Court decided that the Tribunal acted within its powers. It further lay down that while industrial Adjudication seeks to do social justice, it cannot ignore the needs of National Economy.

Here it disagreed with the Tribunal especially with regard to leave or sick leave and decided that the Tribunal should not ignore the consideration that unduly, generous or liberal leave provision would affect the production but for that
court agreed with the Tribunal findings and dismissed the appeal. From the above case we can conclude that the court has shown high concern for the welfare for the workers and by helping the workers get their legitimate demands. The court thus indirectly, has maintained the balance in the society.

There has been a spurt of activities by anti social elements attempting to adulterate food for personal gain. They have not even spared babies in arms by selling fodder as baby milk. Such crimes cannot be pardoned and opportunity came to the Supreme Court of India.

In case of food Adulteration, all persons are prohibited from selling adulterated food and they can be criminally punishing the wrong doer. In the case of Sarjoo Prasad v. State of Uttar Pradesh, the appellant was convicted by the Magistrate First Class of an offence under Sec 7 of Prevention of Food Adulteration Act of 1954. He was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 2000/-.

The Allahabad High Court confirmed the sentence. He went to the Supreme Court for relief. The Supreme Court held that the prohibition of sale of adulterated food applies to all persons who sell adulterated food and for contravention of the prohibition all such persons are penalized because the legislature has sought to penalize a person who sells adulterated food by his agent, it cannot be assumed that it was intended to penalize only those who may act through their agent. The conviction was upheld as what the appellant was doing was highly dangerous to society.
A number of persons have committed criminal acts in the name of Import and export. In *Abdul Aziz v. State of Maharashtra*\(^{45}\) the appellant was convicted under Sec 5 of the Imports and Exports (Control) Act, 1947. He was sentenced for 3 months rigorous imprisonment and a fine of Rs. 2000/-. The appellant was the chairman of the Malegaon Power Loom Saree Manufacturers’ Co-operative Association Ltd. He and the members of the association were prosecuted for committing offence under Sec 5 of the Act. They were acquitted by the Trial court. The state appealed against the acquittal of the appellant alone. The appeal was allowed and he was convicted of the offence under Sec 5 of the Act.

The Supreme Court confirmed the decision of the High Court. The chairman was aware that the association would not be able to utilize all the yarn to be imported under the license applied for and that case appears to be a deliberate case of securing import license with the view to misapply the goods imported.

In another case the Supreme Court of India had to deal with the problem of smuggling by a crew member in a ship. The problem was who should be punished for this offence. In *Indochina Stream Navigation Co. Ltd v. Jasjeet Singh*\(^{46}\), the offence committed here was that certain alteration was done in the ship to hide gold and smuggle it into India. The Court felt that the mere fact that the master or the owners of the vessel were not shown to have been privy

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\(^{45}\) AIR 1963, SC 1470.

\(^{46}\) AIR 1964, SC 1140.
to such alteration would not be sufficient to exclude them from the operation of Sec 52-A of the Customs Act 1878.

By deciding that the legislature intends by necessary implication, the exclusion of mens rea in dealing with contravention of Sec 52A, the Court upheld the conviction of the concerned so that illegal smuggling which has the effect of disturbing very rudely the national economy of the country should be stopped. Thus the persons involved in this smuggling activity were appropriately punished and appeal was dismissed.

We now have the example where the accused committed fraud causing loss to the government to the extent of Rs. 1000/-. The case was Baidyanath Prasad Shrivastava v. State of Bihar\(^{47}\). In this case the Order of the Patna High Court setting aside the order of the acquittal passed by the second Additional Session Judge Muzaffarpur and convicting him for an offence under sec 467 of IPC and passing sentences of 3 months rigorous imprisonment.

The facts were for the relief and rehabilitation of people who had suffered in 1954 in heavy floods in Sitamarhi sub-division, the government of Bihar was granting loans to needy and suitable persons under the Agricultural Loan Act 1884. The appellant was Mukhtar practicing at Sitamarhi.

He forged signatures to secure the loan. This resulted in trial and conviction at the High Court. The session judge had acquitted the appellant because he

\(^{47}\) AIR 1968, SC 1393.
admitted that he has done at the behest of somebody else. The Supreme Court reversed the decision of the High Court and upheld the decision of Session Judge acquitted the appellant.

In another case *Murlidhar Megaraj Loya v. State of Maharashtra*⁴⁸, Justice Iyer had the opportunity to comment upon Food Adulteration Law. Right at the beginning of the judgment he said “judicial fluctuation in sentencing and societal seriousness in punishing have combined to persuade parliament to prescribe inflexible, judge proof sentencing minima in the food adulteration law. This deprivatory punitive strategy sometimes inflicts harsher than deserved compulsory imprisonment on lighten offenders, the situation being beyond judicial desecrater even if prosecution and accused consent to an amelioration course”.

In this case the appellant was convicted for crushing Khurasani as well as Groundnuts in the same mill resulting in the presence of 30% groundnut oil in Khurasani oil. He was thus accused of adulterating Khurasani by mixing both. Confirming the sentence and dismissing the appeal the court held the appellant guilty for adulteration because the act did not give any scope for mitigating the punishment. The Supreme Court indeed very correctly interpreted the law to ensure that anti social elements in society do not escape punishment.

From the pattern of sentencing, let us now proceed to the next Chapter which deals with Crime Occurrence in State of Goa.

⁴⁸ AIR 1976, SC 1929.