CHAPTER - V
SENTENCING POLICY

Sentence is a judgement on conviction for crime the pronouncement by the judge of the penalty or punishment as the consequence to the defendant of the fact of his guilt.1 Sentence in law, the term signifying a judgement of a court of criminal jurisdiction imposing a punishment such as a fine or imprisonment. It is given orally by the presiding judge or magistrate, and may be altered before it is entered.2 According to Black’s Law Dictionary sentence means the judgement that a court formally pronounces after finding a criminal defendant guilty, the punishment imposed on a criminal wrong doer.3 Sentencing, which is the cutting edge of judicial process, is the crucial strategy of criminal law in achieving social defence and reconciliation of the delinquents. 4 It is a facet of social justice and judiciary has a very important role to play in it. However, in the earlier times, the imposition of the sentences were fairly standardised as specific punishment for specific offences were laid down by the law and once a verdict of guilty was returned, the sentencing judge was merely to order that the appropriate sentence be carried out. The focus of attention was offence and not the offender. The sentencing judge knew very little, about the places to which they were consigning offenders for varying periods up to life time. The judges were not bound to choose penalties designed for reformation and re-socialization of the offenders or adopt the punishment to their individual needs and potentialities.5

However, the situation has now changed as a consequence of changes in societal reactions to crime and criminal. In the recent years, the science of criminology and penology has taken great strides. There has been thinking and rethinking about the crime and punishment6, inspite of the call for increased penalties for all serious crimes by conservatives, who argue that

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2 Encyclopedia Britannica, (1768) Vol. 20, p.330
4 Ashok Kumar v. State (Delhi Administration) AIR 1980 SC 636.
criminals have been given more rights than the victims. But the process of reformation and re-socialization is continuing. Winds of compassion for the criminals are blowing the world over. Draconian notions and passions for retribution are yielding to "Mankind concern for charity." It is now believed that the sentence must be in accordance with the offender, rather than the offence, so that the offender can return to the society as a law abiding citizen.

The First movement towards rational sentencing was launched by the English Classical School as a reaction against the arbitrary nature of the punishment prescribed for a variety of offences. In eighteenth century England, over 200 crimes, ranging from pick pocketing to murder were punishable with death sentence. In other words, far from fitting the offenders, the punishment did not fit even the offences.

Like any other matter in law, sentencing also has its own aim. There are mainly four aims for sentencing. They are considered as deterrence, reformation, protection and retribution. The first three are popularly considered to be utilitarian aims. It has been noted that sentences in India and England reflect the aims of utilitarians. Utilitarian theory has a range of complex and sophisticated principles, which are best exemplified by Jeremey Bentham's ingenious and detailed writings on punishment. It was the utilitarian Bentham who pointed out that offender’s 'sensibility' to penalties varies with their age, gender and other circumstances. He was the advocate of the principle of proportionality. Therefore, he argued that sanctions should be graded commensurate with the seriousness of the offences. For example, if the punishment for rape and murder is same, then the offender who commits rape may also commit murder of the rape victim, in order to annihilate the evidence of rape. But if the punishment for rape is lesser than

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8 Supra Note 4, p1040.
9 The Indian Penal Code was drafted by Lord Macaulay, who was a utilitarian. Benthamite Principles influenced him while drafting the code. For more details see, Eric Stokes, The English Utilitarians and India (1989).
murder, then the offender may only commit rape. According to Bentham, general prevention ought to be the chief end of punishment.12

The general justifying aim of sentencing in the sense of modern retributivism is to restore the balance which the offence disturbed. It would be unfair if the offender is allowed to ‘get away’ with the advantage arising from the offence, and it is therefore right that he should be subjected to a disadvantage so as to cancel out his ill gotten gain.13

5.1 Philosophical Insight of Judicial Discretion in Sentencing

Imposition of penalty, considering the aims outlined above is a complex discerning process. This is also the most difficult stage in the judicial process. Before sentencing, a judicial officer has to consider some factors outside the law and he cannot sentence an offender by the use of a common mathematical yardstick. Therefore, individualization14 must be the criterion of its application. Once Sir Arthur James said:

*The sentencing process has to be applied not only to a large number of individuals but also to the variation in response to the sentence, often unpredictable, which may be exhibited by any one individual. The process has to be applied to offenders ranging in character from the determined, committal criminal, who is intelligent and in full possession of his faculties, to those of low-grade intelligence, the immature, the inadequate and those addicted to drink or drugs. The practice has to be applied to the old legend to the first offender, to the elderly and to*

12 Supra Note 10, p.396.
14 Individualization may be used to individualize the offender and the offence individualizing the offender means differentiating the personality of the offender from other offenders in character, socio-cultural backgrounds, his motivations of the crime etc.
Thus offenders may come from different streams of the society. They have different personalities, family backgrounds, temptations, antecedents and character. Considering these things, judges should approach the offenders in a psychological manner. He must study and analyze the character of the offender and for that he must call for all the relevant records either from the probation officers or Police officers and act accordingly while passing the sentence. Special consideration must be given if the offender is a youth. If they were incarcerated without giving a chance to reform, it may be counterproductive. Judges must take into consideration the mitigating factors of the offender. This will include factors like good character and reputation of the offender in the community, the accused has acted under strong provocation, the victim was a voluntary participant in the criminal activity, his previous connection with the victim, etc.

This makes clear that statutory rules cannot cope with the needs. There must be some powers to mitigate and to individualize sentence. The sentencer must have some powers to select the sentences which he believes to be most appropriate in the individual case. He has to select the appropriate way of implementing the given policy in a particular case. Therefore, judicial discretion is important to enable sentencer to take account of the wide and varying range of factors that might be relevant.16

Almost in all jurisdictions the legislature provides a maximum and minimum penalty for the offence, and thereby has given the judges a wide range of sentencing choice. The judge can choose and pick an appropriate sentence within this range. While doing so judges are expected to apply their mind in each and every individual case. The offence may be committed by one or more offenders. Before sentencing he should analyse the background of all offenders. Thus Courts must exercise their discretion in deciding the

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16 Discretion in relation to sentencing means the degree of freedom vested in the sentencer to decide sentence. For details see, The Concise Oxford Dictionary of Current English (7th ed. 1982).
type and length of sentence to be imposed within the range provided under the law.

Nevertheless, due to the enormous number and range of different factors that are held to be relevant in sentencing, judges in all jurisdictions enjoy wide discretion in imposing punishment in a case. This has resulted in wide of disparity and inexplicable inconsistency in sentencing. The quantum of punishment given by different or even the same court have no uniformity in similar cases or cases having equal sets of facts and all other things are identical. Once Marvin E. Frankel denounced this as "lawlessness in sentencing". Andrew Ashworth, labels it as 'Cafeteria System of sentencing', which permits sentencer to pick and choose, with little constraint, a rationale which seems appropriate at the time. If this stand continues it may lead to irreparable loss of public confidence in the administration of justice. Therefore this is time to control the wide discretion in sentencing.

Here the question is who will control this wide discretion enjoyed by judge. Some may argue that laying of policy is exclusively within the province of legislation. No doubt, it is surely matter of legislation, but to what extent they can interfere is a question that gains importance. In some jurisdictions discretion in sentencing is regulated by imposing mandatory sentences, extra-judicial guidelines and presumptive sentence, which are proved ineffective. In practice, these statutory regulations eradicate completely the discretion of the sentencer rather than structuring it. Simply these are an attempt made by the legislature to transgress into the sentencing power of the judiciary. If the control is in like manner, then there would be disadvantages and possibility of

18 This may defeat the very purpose of discretion. In this line in 1991 England and Wales enacted statutory sentencing principles. Mandatory sentences have proved attractive to legislatures in many jurisdictions and in 1997 England shaped an Act, known as the Crime (Sentences) Act, 1997; In Minnesota they enacted a 'Sentencing Guidelines Gird' and it had been in operation since 1981; In United States, Federal guidelines were introduced by the Sentencing Reform Act, 1984.
19 Once the policy of sentencing is set out by the legislature, judiciary shall not be disturbed later. No political interference, pressure or influence shall be allowed while sentencing. Therefore, judicial independence shall be provided in the form of discretion to protect the judges from partiality and bias.
judicial resistance. Therefore, the suggestions are that the basic principles of sentencing must be framed by the legislature and the judiciary must be left free to develop the detailed norms for the application in accordance with the needs.  

5.2 Disparity in Sentencing Process

One complex problem relating to the sentencing process is the lack of uniformity in the quantum of punishment given by different courts for the same or similar offences. The Supreme Court took note of the problem of disparity in sentence in *Rameshwar Dayal V. State of U.P.*  

The court observed that the problem of disparity had not been solved satisfactorily so far. In the case before it, the court found it strange that though the two cases were identical in terms of the offence and circumstances, a four year imprisonment was awarded in one while only three months imprisonment was given in the other. Obviously it would be unreasonable to expect uniformity of a very high degree since penology is not a kind of discipline capable of giving ready made formulae of precise nature to meet the various situations nor do all the judges and magistrate possess the same attitudes while sentencing since they are bound to influence by their own values and personalities.

In this connection the following observations of Sheldon Glueck are also pertinent to note that:

> It is a naive self confidence that makes a judge, or criminologist, or psychiatrist, or probation officer assume that he can detect the minutest details of difference of personality, characters, motivation, socio economic background and other subtle factors and forces that distinguish one offender from another, and on top of that determine the exact nature and amount of correctional rehabilitation treatment suited to the individual case and to that case alone. Only God can do that, and since judges are not gods, we get the following practical results in the "individualisation" of sentence.

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20 Legislation cannot foresee all the needs that may arise while sentencing. Therefore it has been strongly argued that it is essential to preserve a judicial discretion to individualize a given policy by applying it to a particular case.

21 (1971) 3 SCC 924.

22 41 Journal of Criminal Law and Criminology, 717, Glueck refers here to an analysis of 7000 sentences to show substantial disparity in the USA.
Though some disparity in sentencing is inevitable in view of the factors described above, it is difficult to accept a very high degree of disparity found in sentencing by different courts since it involves not only questions of justice as such but also the offenders' perception of justice on the basis of punishments received by them.\textsuperscript{23} The disparity not only offends principles of justice, but it also affects the rehabilitative process of offender and may create problems like indiscipline riot inside the prison. The disparity in sentences limits the correctional efforts to developed 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 sentence.\textsuperscript{24}

In \textit{Asgar Hussain v. The State of U.P.}\textsuperscript{25}, the Supreme Court observed that the disparity in the sentences creates hostile attitude in the mind of the offenders and reduces the chances of their re-socialization as the offenders feel that they have been discriminated. However, the problem of disparity or in equality in sentences is not a novel one. The studies conducted in the United States, England, Canada and other countries bring out a wealth of information on the extent of disparity in sentencing of offenders. In India, Dr. Chhabra's study provided insight in the problem of disparity and proved to be of immense help for the sentencing courts. He observed that only two factors namely 'Plea of guilt' and nature of crime have bearing on the mind of sentencing judges. He further pointed out that 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.\textsuperscript{26}

Justice demands that like cases be treated alike. Centuries ago Aristotle declared, that 'injustice arises when equals are treated unequally and also when unequal are treated equally'.\textsuperscript{27} However, the disparity in sentences

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\item \textsuperscript{23} Ahmad Siddique, \textit{Criminology Problems and Perspectives}, (1976), p. 254.
\item \textsuperscript{24} P.W. Tappan, \textit{Crime, Justice and Correction} (1960), p.446.
\item \textsuperscript{25} (1974) 2 SCC 518.
\item \textsuperscript{26} K.S. Chhabra, \textit{Quantum of Punishment in Criminal Law in India}, (1970), p.175-56.
\item \textsuperscript{27} Hart, \textit{Punishment & Responsibility}, (1968), p. 24
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is a world phenomenon, but the developed countries have taken various steps in order to avoid it. Some of the suggestions which can be taken into consideration to reduce disparity in sentences are as follows.

Though the sentencing disparity cannot be eliminated altogether, yet efforts can be made for reducing it to the minimum level. The strategies indicated are the better training of judicial personnel and coordination of the sentencing policy through sentencing councils. It has also been suggested that the job of sentencing should be taken away either wholly or partly from the judicial personnel and the same should be entrusted to the boards consisting of experts trained in disciplines like social work, psychiatry and allied disciplines. A provision for appellate review of sentences also helps in reducing disparity in sentences.28

An effective technique employed in the USA to achieve coordination between the different judges of a multijudge court. The judges meet in the sentencing council to discuss the punishment to be awarded in the cases pending before them. From such a discussion a consensus on sentencing standards may emerge. However, the ultimate responsibility for determining sentence rests with the judge to whom the case is assigned, although the discussion and need to state reasons for a sentence tends to restrain the imposition of unreasonable severe or lenient sentences. In this case the pre sentence report for each offender is circulated and each judge recommends a sentence. The advantage of the council is that the judges can hear the other judges' opinion which may lead to the less sentencing disparity. But the judges are also free to ignore the comments of their colleague. The assumption, however, is that will not be the case and based on a study of sentencing councils in New York and Chicago, there is evidence that sentencing disparity is reduced by about ten percent as a result of the sentencing councils.29

28 Supra Note 23, p.254
Improving sentencing skills should be an important part of any scheme which aims to make sentence practice more consistent. The trial judge should be made well conversant with all the alternative sentences and their application in the appropriate situations. Another alternative is to try a combination of the judiciary and board of experts by employing the technique of indeterminate sentence. The sentencing judge may award a sentence indicating maximum and minimum limits and the board then decides the actual time of release on the basis of the performance and promise of the convict in the institution.

The appellate review of sentences is another way of reducing disparity in sentencing. It affords the occasion for a systematic and continuous examination of sentencing policy by an appellate court. The merit of appellate jurisdiction in matters relating to sentencing lies in the fact that apart from correcting the occasional way wardness of trial courts in awarding capital punishment, the principles laid down by the appellate courts are conducive to greater uniformity in sentencing in the lower court. It provides a workable means of correcting unjust and ill-considered sentences particularly those in which punishment imposed is grossly inappropriate.\(^\text{30}\)

5.3 Guideline Judgments System in Sentencing Discretion

The continued existence of sentencing discretion is an essential component of the fairness of the criminal justice system. Unless judges are able to mould the sentence to the circumstances of the individual case, then irrespective of how much legislative forethought has gone into the determination of a particular regime, there will always be the prospect of injustice.\(^\text{31}\) Here comes the importance of guideline judgements. Guideline judgement system has emerged in a context in which there has been a significant public debate about the introduction of various forms of legislative prescription which would significantly confine the exercise of sentencing


\(^{31}\) This was announced by Justice Speigelman, Chief Justice of New South Wales, while addressing the National Conference of District and Country Court Judges on 24th June, 1999.
The promulgation of guidelines will not be inconsistent with the existence of sentencing discretion. So by this method we will get both consistency and individualized justice. The reason for the necessity of guideline judgment on sentencing, Gleeson C.J. observed.

The increasing size of the judiciary, and the legal profession, is a factor in the importance which is attached to the problem of inconsistency, and the need for appellate guidance. In the days when criminal justice was administered by a relatively small group of judges, it was easier to maintain consistency. The range of likely penalties for common offences was well known, and significant departures from that range were readily identified. Idiosyncratic decision-making was not difficult to recognise. Now, at least in New South Wales, a large number of judges (and acting judges) sentence offenders, and there is a growing need for the Court of Criminal Appeal to give practical guidance to primary judges.

Guideline judgements are judgments delivered by the courts of criminal appeal. While hearing such appeals the appellate court may go beyond the point specifically raised for consideration in that appeal. Sometimes court may select certain cases having identical factual situation and deliver guidelines for the future sentence. Their purpose in delivering such judgments is to suggest certain principles, which ought to apply to sentences for various categories of crime. Such judgments represent a consolidation of advice upon a particular sentencing point. What are guidelines? These are summaries of the experience of all members of the bench in the particular court system and provide for a basic minimum information necessary to indicate the usual penalty which was awarded in similar cases.

32 The advantage of guidelines judgments is that they are used for structuring sentencing discretion and not for restricting it. So it has more qualities than the minimum or maximum sentences, fixed penalties or grid sentences. They are very flexible than any other method. For more details see, Wasik and Turner, "Sentencing Guidelines for the Magistrates Courts", 1993-Crim. L.R. 345; C.M.V. Clarkson and H.M. Keating, Criminal Law: Text and Materials (4th ed. 1998).


34 For example in R v. Boswell (1984) 3 All. E.R. 353, the court of appeal considered three other cases and delivered a guidelines judgment on sentencing for the offence of death by reckless driving.

35 A general definition of guidelines judgment can be seen in the Crimes (Sentencing Procedure) Act, 1999 of New South Wales. Section 36 of the Act provides that a guideline judgment is: "...a judgment that is expressed to contain guidelines to be taken into account by courts sentencing offenders, being: (a) guidelines that apply generally, or (b) guidelines that apply to particular courts or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of offenders (but not to particular offenders)."
As stated, guideline judgments are principles pronounced by an Apex Court, but in effect the sentencing courts are not bound to follow it in a strict sense. They are only formal guidelines for sentencing. They have no authority of precedent. They represent as a relevant indicator for the sentencing judge. In strict legal terms, most of the contents of guideline judgments are obiter dicta pronouncement, which runs beyond the case under consideration. They are not intended to be applied to every case as if they are binding rules. The sentencing judge has discretion to depart from them if the particular circumstances of the case justify that, by giving adequate reasons.\textsuperscript{36}

The appropriateness of guideline judgments has been authoritatively established by Mason and Deane JJ., in Norbis v. Norbis\textsuperscript{37} as follows:

\ldots It has been a development which has promoted consistency in decision-making and diminished the risks of arbitrary and capricious adjudication\ldots The point of preserving the width of the discretion which Parliament has created is that it maximizes the possibility of doing justice in every case. But the need for consistency in judicial adjudication, which is antithesis of arbitrary and capricious decision-making, provides an important countervailing consideration supporting the giving of guidelines\ldots To avoid the risk of inconsistency and arbitrariness which is inherent in the system of relief involving a complex of discretionary assessments and judgment, the full court as a specialist appellate court with the unique experience in family law in this country, should give guidance as to the manner in which these assessments and judgements are to be made. Yet guidance must be given in a way that preserves, so far as it is possible to do so, the capacity of the family court to do justice according to the needs of the individual case, whatever its complications may be.

5.3.1 Position of Guideline Judgement System under English Law

Guideline cases are judgments that go beyond the point raised in the particular case. They may suggest a sentencing scale or appropriate starting pointing one or more commonly encountered factual situations. It may be in a quantitative form developed by the appellate courts, by way of statement of sentencing principles. Two kinds of guideline judgments are there in existence. The first, is a system in which the appellate court establishes a

\textsuperscript{36} In Regina v. Jurisic, 1998, 45 N.S.W.L.R. 209
\textsuperscript{37} (1986) 161 C.L.R. 513, 519.20
guideline of a prescriptive character. The second, is a system in which the appellate court purports to derive a range or tariff from the actual sentences of trial judges.\textsuperscript{38}

The most well developed system of guideline judgments in England was initiated in 1970s by the English Court of Appeal (Criminal Division) under the guidance of Lord Justice Lawton and further developed by Lord Chief Justice Lane in 1980s. Later, from time to time appellate court would either select a particular case or a group of cases having the same question of law regarding the imposition of sentence, and deliver a guideline judgment, setting out the parameters of sentencing for a whole range of variations of the crime in question.

English guideline judgment does two things. First, it sets a tariff\textsuperscript{39} or sentencing range for a particular offence and secondly, it differentiates between and analyses aggravating and mitigating factors in relation to a particular type of offence.\textsuperscript{40} Guidelines may be delivered for particular offences or for type of penalty or for the type of offender. Sometimes, a quantitative measure may not be appropriate because of wide variations in the circumstances of an offence. In such cases the guidance is in the form of consideration of aggravating and mitigating factors. Recent trends is to


\textsuperscript{39} Tariff means a chart. It contains the seriousness of the offence and its prescribed punishment according to its circumstances. In most cases the penalty may be provided in a quantitative form. Judges in the lower court can select the penalty from the chart after comparing the nature and circumstances of the case in hand with the things as provided in the chart. If the offence in hand had any specialty which is not provided in the tariff, judge can decide it accordingly after giving reasons. However, in some cases it will be difficult to give a detailed length of sentences and any such attempts may produce injustice in some cases. For example in R. Avis 1998 Crim. L.R. 428, Lord Bingham C.J., has delivered certain general guidelines for firearm offences. In this case court framed four questions to ask itself by a sentencing court before selecting a particular sentence. See, R. V. Boswell 1984 All. E.R. 353.

\textsuperscript{40} Aggravating factors, includes (1) the offence was heinous, atrocious or cruel; (2) The accused induced others to participate in the commission of offence; (3) the accused was armed or used a deadly weapon at the time of the crime; (4) the offence was committed against the public authorities; (5) the offence was committed for hire; (6) the accused took the advantages of trust etc. the mitigating factors include, (1) the accused has no criminal record; (2) the accused has been a person of good character or has a good reputation; (3) the accused acted under sudden provocation or the victim was an active participant in the crime; (4) the offence was committed under duress, coercion, threat, compulsion which was insufficient to constitute a defence, but significantly reduced the defendant's culpability.
provide an elaborate general guidance without setting any detailed tariffs for the lengths of sentence in particular classes of case. Thus by doing this, trial courts were given direction to consider the cases individually in the light of these general guidelines.

5.3.2 Position of Guideline Judgement System under Indian Law

In India, the Apex Court has declared repeatedly that the court will not interfere in the discretionary power of trial judges in sentencing, except in cases of gross abuse.\(^41\) Here this reluctance is a matter of policy and not a rule provided by law; since, the sentencing discretion in India is not confined or limited by the Supreme court through judicial precedents. However, the Supreme Court has identified that in India there is serious disparity in sentencing.\(^42\) Today court's anxiety is regarding the lack of uniformity in fixing the quantum of punishment by different courts in the same jurisdiction or even the same offence on different occasions having the same facts. Taking these into consideration court announced that, undue leniency, gross severity and lack of uniformity are antithetical.

From early days, Courts in India understood that sentencing is not a simple judicial process which can be easily handled, but a complex interdisciplinary approach calling special skill and experience. A sentencer is not only a judicial officer but a social scientist, psychologist and a good correctional administrator. Taking these into account, the High Court of Allahabad\(^43\) formulated certain guidelines which may be considered as a first attempt made by the Indian judiciary in structuring judicial discretion in sentencing. The guidelines in general form are as follows.

- The guideline begins with a discussion about the object of punishment.
- Court stated that prevention of a person who has committed the offence and preventing others from committing similar offences must


\(^{42}\) In Rameshwar Daya v. State of U.P. (1971) 3 SCC 924, Supreme Court identified a serious disparity of sentencing. In two cases having similar facts and circumstances, court awarded four years in one case and three months in the other.

\(^{43}\) See, Dulla v. State, AIR 1958 All. 198, p.204.
be the ultimate object of punishment. For fixing the quantum of punishment, court should take into account the nature and circumstances in which the offence was committed, the age, character and antecedents of the offender. The court must give regard to the proportion between an offence and the penalty inflicted for that offence. If any statutory maximum has been fixed it must be given only for worst cases.

- The court then went on to note the purpose of sentence and put briefly that sentence should not be imposed as revenge. Court opined that excessive sentence may defeat the very purpose and object of sentencing. If law provides fine as an alternative for imprisonment court must select fine except in cases of grave offence. Court insists that first and youth offenders must be treated gently. Maximum leniency must be given to them by invoking relevant provisions of the First Offenders’ Probation Act and provisions of the Criminal Procedure Code.

- Deterrent sentence is justifiable if the offence is committed as a result of deliberation and pre-planning, committed for the sake of personal gain at the expense of the innocent, if it is against the safety, health or moral well being of the community or difficult to detect or trace. Sentencing court should not consider the political, sentimental or religious pre-conceptions of the accused.

5.4 Sentencing Policy in Murder Cases

Before 1955 normal punishment for murder was death and imprisonment for life was to be awarded for reasons to be recorded by the judge. After 1955, as reasons were not to be given for not awarding the death sentence in capital cases offences, matter of choosing between the two alternatives was left to the discretion of the court. This position continued till new Criminal Procedure Code in 1973 came into existence now under new provisions namely section 354 (3) Criminal Procedure Code 1973, normal punishment for murder is imprisonment for life and death sentence is to be awarded for special reasons to be recorded by the judge. Thus we can see...
that the new Criminal Procedure Code has made the situation just reverse of what it was before 1955 in matter of sentence in murder case.

Section 302 of Indian Penal Code provides two categories of punishment for murder namely death and imprisonment for life. It does not specify which one of the two punishments must be imposed in various situations. An accused found guilty of murder can be punished only in one of two ways namely by death or imprisonment for life. He can not be given lesser punishment. As to when, as between alternative sentence, death sentence should be given and when imprisonment for life, here the learned sentencing judge has then to search for the sentencing factors upon which the quantum of punishments depends.

Supreme Court ventured to dwell on its sentencing philosophy on various occasion:

The Hon'ble Supreme Court of India expressed its view in Jagmohan Singh v. State of U.P. 44

"In the structure of the Indian penal code the statute having defined an offence and invested the judges with a very wide discretion in the matter of fixing a degree of punishment, the exercise of judicial discretion on well recognised principles is in the final analysis the safest possible guide and safeguard for the accused." Court also laid down certain principles of sentencing which are important guidelines:

.......... "All that could be reasonably done by the legislature is to tell the judges that between the maximum and minimum prescribed for an offence, they should, be on balancing the aggravating and mitigating circumstances as on the case, judicially decide what would be the appropriate sentence." 45

44 AIR 1973 SC 947.
Similarly the decision of Santa Singh v. State of Punjab\textsuperscript{46} highlights the sentencing policy and guidelines in assessing the appropriate quantum of punishment. The Supreme Court, observed, "The purpose of hearing, before passing the sentence is to direct the court's attention to such matters as the nature of the offence, the circumstances, extenuating or aggravating of the offence, the prior criminal record if any, of the offender, the age, the record as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment emotional and mental conditions of the offender, the prospects for rehabilitation, the possibility of return to normal life in the community, the possibility of treatment or training of the offender, the possibility, that the sentence may serve as a deterrent to crime to the offender or to others and the current community needs, if any, for such a deterrent in respect to the particular type of offence". So the learned magistrate when convicting the offender has to think these "Sentencing Factors" as mentioned in these judgments which will help him to arrive at the most appropriate sentence. The sections 235(2) and 248 (2) are obligatory on the criminal court to hear the accused on the question of sentence before convicting them. The answers given by them, help the learned court to impose the correct and most appropriate sentence on the convict. It also enable the convict to place other factors that support a plea for lesser sentence that the provision for hearing him in section 235(2) Criminal Procedure Code was introduced.

In Balwant Singh v. State of Punjab\textsuperscript{47}, the Hon'ble Supreme Court observed "Now under sec. 354 (3) Cr. PC as it stands awarding of a sentence other than death is a general rule. Only for special reasons which are required to be stated death is permissible. It is not possible to catalogue the special reasons which may justify the passing of death sentence, but just a few may be indicated, such as, the crime has been committed by a professional or hardened criminal or it has been committed in a brutal manner or on a helpless women or the like. To rely on absence of extenuating circumstances to justify a sentence other than death sentence since 1st April, 1974 is not justifies".

\textsuperscript{46} AIR 1975 SC 2386.
\textsuperscript{47} AIR 1976 SC 230.
After that in series of cases as in A. Sagar v. State of U.P.\textsuperscript{48}, Hardayal v. State of U.P.\textsuperscript{49}, Guddan Buchi Reddy v. State of A.P.\textsuperscript{50}, specially after the inclusion of section 354(3), for murder life imprisonment is the rule and death sentence is an exception. Though Supreme Court laid down several guidelines on different offences. But these guidelines are in general form. These guidelines are formulated by their lordships suitable only for the cases in their hand.

The major drawback of these guidelines is that they have not been consolidated. They lie scattered in numerous reported and unreported decisions. Therefore it is difficult to identify and follow them. However, in Bachan Singh v. State of Punjab\textsuperscript{51}, Constitution Bench of the Supreme Court had delivered a clear guideline judgment providing circumstances in which the extreme sentence of death penalty can be imposed. In this case their lordship has formulated a principle that capital punishment has to be awarded in \textit{rarest of rare cases}. Moreover, court went on to prepare a balance sheet of aggravating and mitigating circumstances and held that a just balance has to be stuck between these two circumstances.

\textit{The Aggravating Factors}

(a) If the murder has been committed after previous planning and involves extreme brutality.

(b) If the murder involves exceptional depravity; or

(c) If the murder is of a member of any of the armed forces of the union or of a member of any police force or of any public servant and was committed

\hspace{1cm} i) while such member or public servant was on duty; or

\hspace{1cm} ii) in consequences of any thing done or attempted to done by such member or public servant in a lawful discharge of his duty as such member or public servant whether at the time of murder

\textsuperscript{48} AIR 1977 SC 2000.

\textsuperscript{49} AIR 1976 SC 2055.

\textsuperscript{50} 1978 Cri. L.J. (NOC) 290 (Andhra Pradesh).

\textsuperscript{51} AIR 1980 SC 898.
he was such member or public servant as the case may be or had ceased to be such member or public servant; or

(d) If the murder is of a person who had acted in the lawful discharge of his duty under section 43 of the code of Cr. PC 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring under sec 37 and section 129 of the said code.

The Mitigating Factors

(a) That the offence was committed under the influence of extreme mutual or emotional disturbance.

(b) If the accused is too young or old, he shall not be sentenced to death.

(c) The probability that the accused would not commit criminal acts of violence as would constitute as continuing threat to society.

(d) The probability that accused can be reformed and rehabilitated. The state shall by evidence prove that accused does not satisfy conditions (3) and (4) above.

(e) That in the facts and circumstances of the case the accused believed that he was morally justifies in committing the offence.

(f) That the accused acted under duress or domination of another person.

(g) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

The guidelines formulated in Bachan Singh's\textsuperscript{52} case were approved and the Supreme Court's ruling that death sentence ought to be imposed only in 'rarest of rare cases' was explained in Machhi Singh v. State of Punjab.\textsuperscript{53}

The following propositions were called out by the Supreme Court:

(a) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

\textsuperscript{52} Ibid
\textsuperscript{53} AIR 1983 SC 957, p. 966-67.
(b) Before opting for the death penalty, the circumstance of the 'offender'
also require to be taken in to consideration along with the
circumstances of the crime.

(c) Life imprisonment is the rule and death sentence is an exception. In
other words death sentence must be imposed only when life
imprisonment appears to be an altogether inadequate punishment
having regard to the relevant circumstances of the crime, and provided,
that opinion to impose sentence of imprisonment for life cannot be
conscientiously exercised having regard to the nature and
circumstances of the crime and all the relevant circumstances.

(d) A balance sheet of aggravating and mitigating circumstances has to be
drawn up and is doing so, the mitigating circumstances has to be
accorded full weightage and just balance has to be struck between the
aggravating and mitigating circumstance before the option is exercised.

Guidelines given in Machhi Singh's case\(^54\) were followed in Kehar
Singh\(^55\), Ashrafi Lal and Sons\(^56\), Allauddin Main\(^57\), Shankar\(^58\), Balray Singh\(^59\),
Ashok Kumar\(^60\) etc.

In the deliberated decision of Surja Ram v. State of Rajasthan.\(^61\) Supreme
Court observed:

"for deciding just and appropriate sentence to be awarded for an
offence, the aggravating and mitigating factors and circumstances in which
crime has been committed are to be delicately balanced in a dispassionate a
manner. Such act of balancing is indeed a difficult task".

So age, antecedents character, gravity of the offence, manner of
committing the offence nature of injury of the victim, motive behind the

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\(^{54}\) Ibid
\(^{55}\) Kehar Singh v. State (Delhi Administration) AIR 1988 SC 1883.
\(^{60}\) Ashok Kumar v. State (Delhi Administration) (1995) 3 SCC 626.
\(^{61}\) AIR 1997 SC 18.
commission of the offence, whether it was cold blooded, pre-planned murder, whether the murder was committed on the spur of a moment, insanity, whether the accused committed murder as a protest or prolonged torture inflicted by the victim on the accused, educational statues, family background chance of reformation, weapon used, murder committed on a helpless women, delay are the various factors which the Apex court has considered for shaping the sentencing policy in capital cases.

5.5 Some of the Important Principles Illustrated in Supreme Court Decisions

5.5.1 Pre-planned cold blooded murder: Brutality involved in a murder as an aggravating factor may indicate capital punishment.

In Maghar Singh v. State of Punjab\textsuperscript{62} the Supreme Court observed “for pre-planned cold blooded murder, death sentence is proper”.

In Mangal Singh v. State of U.P.\textsuperscript{63} it has been observed “Accused murdering the victim taking advantage of the absence of the husband of the deceased with whom the accused at the relevant time was alone in the house, death being caused by several fatal blows by a gandasa – held death sentence is proper.”

In Bishan Das v. State of Punjab\textsuperscript{64}, it has been observed by the Hon'ble Supreme Court accused throwing a hand grenade to the house of victim and murdering, death sentence is proper.

In Suresh v. State of Maharashtra\textsuperscript{65} Murder of helpless women by knife, accused chasing her and stabbing when she was running away death sentence's proper.

\textsuperscript{62} AIR 1975 SC 1320.  
\textsuperscript{63} AIR 1975 SC 76.  
\textsuperscript{64} AIR 1975 SC 573.  
\textsuperscript{65} AIR 1975 SC 783.
In Shankaria v. State of Rajasthan\textsuperscript{66}, Ramiah v. State of Tamil Nadu\textsuperscript{67}, Rawchiam Chougule v. State of Maharashtra\textsuperscript{68}, the Hon'ble Supreme Court observed, accused committing double murder in a most brutal and dastardly fashion betraying depravity of character-held, should be awarded extreme penalty of death.

In Shankeralias Gauri Shanker v. State of Tamil Nadu, Hon'ble Supreme Court observed, the crime indulged was gruesome cold-blooded, heinous, atrocious and cruel and he was proved to be an ardent and thus a menace to the society. It is an exceptional case where the crime committed by him is so gruesome, diabolic and revolting which shocks the collective conscience of the community. There cannot be any doubt that his case is one of the rarest of rare cases fully warranting the imposition of death sentence.

In Sushil Khurana v. State of Jharkhand\textsuperscript{69}, the accused for his own prosperity sacrificed a child of 9 years. The child was killed in a grotesque and revolting manner. The court upholding the sentence of death, enumerated the following circumstances where death sentence may be imposed.

(i) When murder is committed in a brutal, grotesque; diabolic revolting and dastardly manner so as to arouse intense and extreme indignation of the community;

(ii) When murder is committed for a motive which evinces total depravity and meaness e.g. murder by hired assassins for money or reward or cold blooded murder for gain or where the murderer is in dominating position of trust or where the murder is committed in betrayal of motherland.

(iii) When multiple murder is committed so is all these cases, brutality, pre-planned cold blooded etc. were the factor considered for awarding death sentence

\textsuperscript{66} AIR 1978 SC 1298.
\textsuperscript{67} AIR 1977 SC 2102.
\textsuperscript{68} AIR 1977 SC 2407.
\textsuperscript{69} 2004 Cr. L.J. 658 (SC) at 662 para 17.
In *Surja Ram v. State of Rajasthan*\(^7^0\) the appellant killed his real brother, brother’s two minor sons and aunt while they were asleep. He also attempted to murder his brother’s wife and daughter. They were seriously injured, however, survived. There was some land dispute among the brothers about six to seven months prior to the incident which was sorted out but about five six days prior to the incident there was a dispute among the deceased and the appellant for erecting wire fence in the residential compound. On the date of the offence, the accused entered the house of the deceased and killed him, his two minor sons and aunt. Murders were committed in a cool and calculated manner. The court held:\(^7^1\)

The murder had been committed very brutally and mercilessly of absolutely innocent persons, namely, the aunt and two minor sons of his brother with whom there was no occasion to come in conflict and to entertain any grudge or ill feeling.... Such murders and attempt to commit murder in a cool and calculated manner without provocation can’t but shock the conscience of the society, which must abhor such heinous crime committed on helpless innocent persons. Punishment must also respond to the society’s cry for justice against the criminal. While considering the punishment to be given to the accused, the court should be alive not only to the right of criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society’s reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of offence and consistent with the public abhorrence for the heinous crime committed by the accused.

Under the circumstances and facts of this case the court held that the crime committed by the accused fell within the category of ‘rarest of rare cases’ and hence death penalty was justified.

In *Govindasami v. State of Tamil Naidu*\(^7^2\) the appellant was alleged to have committed five murders. The motive behind the heinous act was a boundary dispute with the deceased over their properties. The high court

\(^{70}\) Supra Note 61.
\(^{71}\) Id. at 25.
\(^{72}\) AIR 1998 SC 2889.
reversing the finding of trial court held that all the circumstances and
evidences firmly established the guilt of the appellant and imposed capital
punishment on him. While delivering judgement the high court discussed the
principles laid down by the apex court in *Bachan Singh v. State of Punjab* and other cases and came to the findings:

- There was no provocation between the accused and the deceased. The five deceased were unarmed and sleeping during midnight.
- It was proved beyond doubt that the crime was a pre-meditated one and not committed on account of sudden provocation.
- There was no mental derangement of the accused to kill five human beings in five strokes.
- The nature and the manner, in which the five people were murdered was gruesome, calculated, heinous, atrocious and cold-blooded.

So, the high court found the case to be one of the ‘rarest of rare’ cases awarded capital punishment to the appellant. In appeal the Supreme Court held that the high court did not base its decision to impose the penalty of death solely on the fact that five persons were murdered but also it took into account some attending circumstances. After giving deep consideration to this aspect of the matter the Supreme Court completely agreed with the reason canvassed by the high court to impose capital punishment. It looked into the record to find out whether there was any extenuating or mitigating circumstances in favour of the appellant but found none. The court observed that if, in spite thereof, we convert the death sentence into life imprisonment, we will be yielding to spasmodic sentiment, unregulated benevolence and misplaced sympathy.

The court cited *Mahesh v. State of Madhya Pradesh* where it had observed while refusing to commute the death sentence into life imprisonment:

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73 Supra Note 51.
74 AIR 1998 SC 2894.
75 AIR 1987 SC 1346.
It will be mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of this country suspect. The common man will lose faith in Courts. In such cases he understands and appreciates the deterrence more than the reformatory jargon.

In *Panchhi and Others v. State of U.P.* there was hostility and rivalry between the two neighbouring families which led to frequent attacks and counter attacks between them. During one such attack the accused members of the assailant family murdered four members including one child of the other family. The trial court and the high court awarded death penalty to the appellants. Before the Supreme Court a fervent plea was made by the counsel for the appellant that imposition of extreme penalty on all the accused was not legally justified. According to him death penalty awarded to three persons -one a septuagenarian, another a youth in his prime and the third a mother with a suckling child -was unwarranted since the case did not show any special feature as distinguished from other brutal murder cases in spite of the number of victims being four including a child. He further contended that the number of victims alone was not sufficient to make the case so special as it foreclosed the next alternative sentence i.e. imprisonment for life.

The Supreme Court cited with approval the Constitution Bench decision upholding the constitutional validity of death sentence. In this case the court had taken particular care to say that death sentence would not normally be awarded for offence of murder and that it must be confined to 'rarest of rare' cases when the alternative option was foreclosed. In other words, it did not find death sentence valid in all cases except in the 'rarest of rare' case wherein the lesser sentence, by any account, would be, wholly inadequate.

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76 AIR 1998 SC 2726.
77 Supra Note 51
The court extracted the only reason given by both the trial court and the high court that it was the savagery or brutal manner in which the killers perpetrated the acts on the victims including one little child, which had persuaded both courts to award death sentences to the four persons. It stated that brutality of the manner in which a murder was perpetrated might be a ground but not the sole criterion for judging whether the case was one of the ‘rarest of rare’ cases as was indicated in Bachan Singh.⁷⁸ The court observed⁷⁹

*In a way every murder is brutal, and difference between one from other may be, on account of mitigating or aggravating features surrounding the murder.*

Considering the bitter incidents that happened on earlier occasions between members of the two rival families it was thirst for retaliation, which became the motivating factor for the appellants to murder the deceased in a brutal manner. Six days prior to the crime two elderly persons of the deceased family had attacked the young female members of the accused family. The brutality with which the murders were committed by the assailants which included two ladies made the Supreme Court to think that more skirmishes could have happened prior to the incident which would have escalated the simmering thirst for revenge to reach a boiling point. In the circumstances the apex court did not consider the instant case a ‘rarest of rare’ case and death sentence was commuted to life imprisonment.

In *Mohd. Chaman v. State*⁸⁰ the accused was found guilty of committing rape and murder of baby a girl aged one and half years. The trial court after considering the judgement of Supreme Court in *Bachan Singh v. State of Punjab*⁸¹ awarded the accused death sentence and said that the case fell within the category of ‘rarest of rare’ cases.

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⁷⁸ Ibid.
⁷⁹ Supra Note 76, p.2729
⁸⁰ 1998 Cri. L.J. 3739.
⁸¹ Supra Note 51.
When the case came before the high court, it considered a number of cases where the Supreme Court had awarded death penalty. When murder is committed in an extremely brutal, grotesque, diabolical, repulsive or dastardly manner, so as to arouse intense and extreme indignation of the community it would fall within the category of 'rarest of rare' cases. The court observed that in the instant case a baby girl aged about one and a half years, like a growing bud of a flower, has been a prey to the just of a thirty years old man and had been killed in the most revolting manner arousing intense and extreme indignation of the community. It is an act of extreme depravity and arouses a sense of revulsion in the mind of a common man. Such a person is menace to society. The facts of the case persuade us to hold that this is a rarest of the rare case where the sentence or death is eventually desirable. Besides giving emphatic expression of society's abhorrence of such crimes we wish to give a clear signal that one who commits such crimes would meet the same fate as the accused is to face.

5.5.2 Age as a Ground for Compassion

The judiciary has shown compassion and concern when the offenders are children or individuals who are in youth and in such cases there is a general trend towards adherence to the reformatory ideology. In Inder Singh v. State of A.P.83 Supreme Court directed instead of bolting these two young men behind the high wall of prison and forgetting about them, humanising influence must be brought to bear upon them, so that a better sense of responsibility, a kindlier attitude, behavioural maturity and values of a good life may be generated under control conditions. So apex court issued a directions to the state government to see that the young accused of the case are not given any degrading work and they are given the benefit of the parole every year if their behaviour show responsibility and trust worthiness.

Justice Krishna Iyer observed in Shivaji v. State of Maharasta84 that when accused person are of tender age then even in murder case it is not

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82 Supra Note 80, p. 3745
83 AIR 1978 SC 1091 at. 1093.
84 AIR 1973 SC 2622.
desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation.

In *Hamam Singh v. State of U.P.*\(^\text{85}\) In this case accused was just 16 years of age so Supreme Court observed in view of the current sociological and juristic thinking on the subject, it would be legitimate to refuse the impose death sentence on the accused convicted of murder if it finds that at the time of commission of the offence, he was under 18 years of age. Thus where the accused was just around 16 years of age at the time when he committed the offence, he would be entitled to clemency of penal justice and it would not be appropriate to impose extreme penalty of death on him.

The Supreme Court considered several mitigating factors while reducing the quantum of punishment in *State of Punjab v. Gurmit Singh*\(^\text{86}\) giving due weightage to the fact that the three respondents had been acquitted by the trial court more than a decade ago, they were since not involved in any other crime, they were young at the time of the commission of the offence the court considered the sentence of five years rigorous imprisonment and Rs.5000/- was appropriate punishment for the offence under section 376.

In *Gentella Vijava Vardhan Rao v. State of A.P.*\(^\text{87}\) involved a question of mitigating circumstances – the accused streaked in to a passenger but with a most inflammable liquid (petrol) and match box and set it ablaze causing several burn injuries to innocent passengers and killing 23 of them including some children. The facts that accused were young, had no motive for murder, and did not prevent the passengers from escaping did not according to the court constituted "mitigating circumstances" death sentence was confirmed by Supreme Court. In this case it was mentioned by the Supreme Court that the number of victims is a criterion in awarding capital punishment, in spite of that accused were young.

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\(^{85}\) AIR 1976 SC 2071.
\(^{86}\) 1996 SCC (Cri) 316.
\(^{87}\) AIR 1996 SC 2791.
There are two Supreme Court rulings, namely Bijender Singh v. States\textsuperscript{88} and Pratap Singh v. State\textsuperscript{89} in which applicability of special sentencing rules in case of accused below the age of 18 years on 01.04.2001 the day new act of 2000 came into force. Thus, section 20 of the 2000 act and the judicial interpretation in the aforesaid cases has underscored a distinct and favourable sentencing philosophy for juvenile offenders.

5.5.3 Mental Conditions of the Offender at the Time of Commission of the Offence

In Namu Ram v. state of Assam\textsuperscript{90} the appellant committed the triple murder of his wife and two minor daughters. He was tried and convicted under section-302 of the penal code by the trial judge. He sentenced the appellant to death and also confirmed by the high court. Supreme Court on hearing the special leave petition came to the conclusion that there was no particular motive for the appellant to commit the ghastly crime. He was suffering from mental disorder since after he suffered a dog bite and committed the murder in such a state of mind. It was not a pre planned ghastly act of criminal. He, therefore doesn't deserve the extreme penalty of death and commute his death sentence one of imprisonment of life.

5.5.4 Delay and other Circumstances in Execution of Death Sentence as an Extenuating Factor Warranting Commuting the Death Sentence to Life Imprisonment

In Ediga Anamma case\textsuperscript{91} justice Krishna Iyer substituted the sentence of death by life imprisonment not solely on the ground that the “brooding horror of hanging” hunted the convict for two years but also on the other social and personal factors of the convict such as her femininity, youth, unbalanced sex and her expulsion from conjugal home which, according to learned judge, “individually inconclusive and cumulatively marginal facts and circumstances tend towards award of life imprisonment”.

\textsuperscript{88} 2005 Cri.L.J. 2195 (SC)  
\textsuperscript{89} 2005 Cri.L.J. 3901 (SC)  
\textsuperscript{90} AIR 1975, SC, 762  
\textsuperscript{91} Ediga Anamma v. State of A.P. AIR 1974 SC 799
Similarly Justice Murtaza Fazal Ali in *Bhagwan Bux Singh v. State of Utter Pradesh*\(^2\) commuted the sentence of death to life imprisonment in the peculiar circumstance of the case and particularly on account of infliction of death sentence two and half years ago. This position was continuing till *Vatheeswaran*\(^3\), which was overruled in *Sher Singh v. State of Punjab*\(^4\) expressed its disagreement with the ratio of Vatheeswaran and refused to accept two year and above for commuting the death sentence into life imprisonment as a binding rule.

Because of these conflicting judicial pronouncements on the question as to whether prolonged delay in execution of sentence of death by itself renders the death sentence in executable and justifies its replacement by the alternative sentence of life imprisonment, the matter was referred to five member Constitution Bench inviting it to examine the question as to whether prolonged delay in execution of death sentence alone entitles a condemned prisoner to the lesser sentence of life imprisonment.

In *Triveni Ben v. State of Gujarat*\(^5\) the Constitution Bench, delves into following two issues, viz. when does delay in execution of sentence of death furnishes a ground for commutation of that sentence by imprisonment for life on account of time factor alone, and secondly, what should be the starting point for computing the undue delay?

The Bench unanimously accepted the view that undue delay in execution of death not only leads to inhuman suffering and dehumanising treatment but is also unjust, unfair and unreasonable deprivation of life and liberty of a condemned prisoner and therefore, opines that inordinate delay in execution of death sentence constitutes a ground for its commutation to life imprisonment. But while deciding replacement of the death sentence by sentence imprisonment for life, the question of inordinate delay, according to it has to be considered in light of other relevant factors. The Bench, further,

\(^{2}\) AIR 1978 SC 34
\(^{3}\) *T.V. Vatheeswaran. v. State of Tamilnadu*, AIR 1983 SC 361
\(^{4}\) AIR 1983 SC 465
\(^{5}\) AIR 1989, SC, 1335
disagreed with the view taken in Vatheeswaran and disfavoured the idea of fixing of the period of delay making the death sentence in executable and entitling the condemn prisoner to ask for its substitution by life imprisonment. Justice Jagannatha Shetty, "however, apprehends that such fixing of period of delay is tainted with an element of arbitrariness and therefore be violative of procedural fairness under Article 21".

On the question as to starting point of time in computing the undue delay two major view points were put forth before the constitution bench for its consideration. One view was that the time taken in the judicial proceedings (triable, appeal review) as well as the time utilised by the executive in its prerogative clemency be taken into account. On the other hand it was pleaded that delay in execution of the death sentence be considered only after the pronouncement of the final verdict of the Supreme Court for the mental torture in the real sense commences from that movement only. The later view was accepted by the apex court. It is important to note that the Supreme court has relied upon Triveni Ben in Madhu Mehta v. Union of India\textsuperscript{96} and Jumman Khan v. State of U.P.\textsuperscript{97} and considered the question of inordinate delay in light of all circumstances of the cases to decide whether the execution of death sentence should be carried out or should be replaced by imprisonment of life. So the Supreme Court, through Triveni Ben\textsuperscript{98} sets the controversy at rest. It lays down that inordinate delay in execution of the death sentence by itself cannot render the execution unconstitutional. Delay in execution of death sentence has to be considered not in isolation but in combination with other mitigating factor for repealing the death sentence by the sentence of life imprisonment, and the period of delay has to be computed from the end of the judicial process. Unreasonable time taken by the executive to dispose off mercy petition only constitutes undue delay calling for mitigation of death sentence.

\textsuperscript{96} AIR 1989, SC 2299
\textsuperscript{97} 1990 (2) scale 1167
\textsuperscript{98} Supra Note 95
Dhuli Chand and others v. State\textsuperscript{99} was a case of mass killing in riots. The appellants indulged in killing innocent persons and looting and burning their properties. The offence had taken place more then twelve years ago at the time of the riots of 1984 in Delhi. The session courts had awarded death penalty to the appellants. The question before the high court was whether to convert the death penalty into life imprisonment because of lapse of time. The court observed that “\textit{on the question of sentence we have bestowed considerable thoughts to decide whether to confirm the death sentence awarded by learned additional session judge or to convert it into imprisonment of life. We are conscious of the fact that the offence took place more then twelve years ago and the trend of judgements on the question of sentence is not to award death sentence after long lapse of number of years took place mainly on account of total apathy of the administration of police during 1984. In our view in this case, the lapse of time by itself is not a sufficient ground to convert life imprisonment. It is not an ordinary routine case of murder, loot or burning. One of the basis structures of our constitution is secularism. It is a case where members of a particular community were singled out and murdered and their properties looted and burnt. Such lawlessness deserves to be sternly dealt with, having balanced on one hand the number of years that have gone by and on the other trauma caused by the mob of which appellant was the member, we are of firm view that any leniency, mercy or sympathy would be misplaced. Considering the case in rarest of rare category, death penalty as awarded by the session court was therefore, upheld by the court}”.\textsuperscript{100}

These were the few examples in which the Supreme Court has laid down its sentencing policy specially in murder cases by considering different factors to pass a sentence of death or life imprisonment.

In the end it is worth mentioning the view of Justice Krishna Iyer on the question of sentence. In an inaugural address delivered at Bangalore on 10\textsuperscript{th} February 1979, at seventh annual conference of Indian society of

\textsuperscript{99} 1998, Cri. L J. 988  
\textsuperscript{100} Ibid, p.991
Criminology, Hon'ble Mr. Justice V. R. Krishna Iyer, Supreme Court of India\textsuperscript{101} suggested that:

"Sentencing judge must, through the punitive process, help, not harm, improve not injure, all punishment must be oriented on reformation......"

Lawlessness in sentencing, hidden in the euphemism of judicial discretion, must be replaced by a new penal pharmacopoeia, modern, scientific, effective and flexible curative and not fiercely terrifying......

A new sentencing culture, harmonising the need of crime prevention must be developed. Our criminal law sentencing policies are in a terrible quandary and our prison reform process is paper paralysed.\textsuperscript{102}

Hon'ble judge further observed:

"There must be a goal oriented impost of sentence; that must be social defence functionally served by the strategy of sentence prescribed by the code".\textsuperscript{103}


\textsuperscript{102} Ibid, p. 6

\textsuperscript{103} Ibid, p. 8