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COURTS AND SENTENCING PRINCIPLES : A STUDY

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1) In criminal cases, convictions are followed by punishments as prescribed by law. Unless the law prescribes a mandatory punishment, it invariably provides a minimum limit which may range upto a maximum limit. Within the distance covered by the minimum to the maximum, courts exercise a wide power of a decretionary nature to impose any punishment they think proper in the circumstances of the case. It is not an easy task as the exercise of discretionary power rests on a variety of factors such as deterrence, prevention, retribution and enhanced punishment to those categorized as 'habitual offenders', and also pacifying the feelings of the injured and preventing them in seeking 'private vengeance' by taking law into their hands. Judges have to balance the 'conflicting' interests in choosing the appropriate sentence such as measure of guilt to determine the measure of punishment.

2) In Dull v. State,[1] the Allahabad High Court enunciated the principles of punishment thus :—

i) The object of punishment has to serve two main purposes namely :—

a) To prevent the offender from repeating the crime; and

b) To prevent like-minded persons from committing the crimes

ii) Appropriate punishment can be determined by the court by taking into consideration several relevant factors such as

a) The gravity or magnitude of the offence; and

b) The circumstances in which the crime was committed;

iii) Political or religious or other beliefs to be strictly disregarded;

iv) No vindictive punishment or excessive punishment shall be imposed;

(Excessive punishment defeats the very purpose of punishment and also undermines the respect for law);

v) Punishment by way of fine as an alternative to imprisonment should not exist;

(However this can be done where the gravity of the offence and antecedents of the offender deserves it);

vi) Lenient treatment can be given to youthful offenders by resort to Probation of Offenders Act. (Habitual offenders who had not learnt anything from their previous convictions, need to be treated deterrently).

Such a lenient treatment can be meted out to 'acts' recently made as a crime, which is not unlawful in other parts of the Country and not essentially criminal in character;

vii) Deterrence sentence must be justified for offences committed after pre-planning and for the sake of personal gain and at the cost of an innocent person who are regarded as a menace or safety of the individuals and society;[2] and

viii) The maximum penalty prescribed should be confined to the 'worst cases'.

3) There exists no hard and fast rule to determine the right measure of punishment. Consequently Judges find this as an extremely difficult task to make punishment to suit the gravity of the particular offence. It is always a matter of discretion subject to any mandatory minimum prescribed by law.[3] It has therefore, been a practice adopted by the legislature, to prescribe a sentence of minimum which may extend upto a maximum period for offences. Even a sentence till the rising the court awarded to an officer of Government had more deterrent effect, as there was a demand for his removal from the post,[4] on the ground of conviction without any further enquiry.

4) Where the law prescribed a mandatory

1. AIR 1958 All P. 198.

2. Some of the principles in Dull's case reiterated in D. R. Bhagare v. State of Maharashtra, AIR 1973 SC P. 476.

3. Ramashraya Chakravarthi v. State of M.P., AIR 1976 SC P. 392.

4. See Art. 311 (2) of the Constitution.

minimum punishment, the court has no choice or discretion to award lesser than the prescribed mandatory.[5] However, if the law permits imposition of lesser punishment than the mandatory, for reasons to be recorded in writing, it can be done but this becomes reviewable either in the exercise of revisional or appellate jurisdiction of superior courts. In a case, the High Court of Andhra Pradesh 'suo motu' enhanced the sentence, despite no appeal against the sentence awarded. The order was upheld.[6] In another case of Haryana, the High Court reducing the minimum sentence based on the circumstances and conduct of the victim was not upheld by the Supreme Court, as the court held that reputation or character of the victim has no bearing on adjudication of guilt or imposition of mandatory punishment.

5) Cruel and disproportionate punishments have made judicial review an indispensable necessity. However, in the matter of imposition of punishments, considerable variation is found in the exercise of discretion to award punishments. Either it has been found to be too harsh or too inadequate frustrating the very objective in the imposition of punishments. As observed by the court, "judicial fluctuation has led to legislative standardization of sentences".[7] In practice, as has been found the standardization of sentences by the legislative efforts has taken only in a few cases and not too many to have any impact like statutory mandatory punishment. Even in such cases the courts have wide power in the matter of imposition of enhanced punishments beyond the standardized minimum.[8] In other cases, where there is no prescription of mandatory minimum sentence, the power of the courts to impose punishments depend upon a variety of factors[9] such as:—

a) Nature of offence;

b) Circumstances of the case;

c) Age and character of the accused;

d) Injury to the individual or society;

e) Effect of punishment on the offender;

f) Reformation of the offender; and

several other factors vital to the consideration to sentencing decision. While choosing between short term and long-term imprisonment, it has been found that short-term punishments are to be avoided as it makes the first offender to get the "opportunity to be contaminated with hardened criminals".[10] The long term sentences will result in brutalization of the offender and "make him blunt to finer sensibilities".[11] Thus, the courts have a very sacred duty to take sentencing decision to make "sentences fit the crime". As pointed out in P. K. Tejwani's case:[12] "Soft Justice in gross Injustice". In this case the court dealt with a food adulteration offence, where a mere fine of Rs.100/- was imposed and observed.....:—

"Primary necessaries are sold with spurious admixtures for making profits and if the offenders get away with payment of trivial fines..... it brings the law into contempt and its enforcement a mockery". Imposition of heavier fine in a less serious offence, may result in driving him out of trade — a violation of Art. 21 i.e., deprivation of means of livelihood. The Supreme Court even disapproved the application of Probation of Offenders Act to 'food adultrants' which might result in loss of human life. The court observed in Raman's case" "No chances to be

5. See Sec. 302, IPC prescribes death or imprisonment of life and also Sec. 397 (Robbery with attempt to cause death) not less than (7) years.

6. Nagam Gangadhar v. State and see also State of A. P. v. S. R. Rangadamappa. In the later case reduction from mandatory prescribed was not upheld.

7. Inderjeet v. State of U.P., AIR 1951 All P. 71.

8. See for illustrative sections 302, 397 etc., of the Indian Penal Code.

9. Ramashraya Chakravarthi v. State of M.P., AIR 1976 SC P. 392.

10. See for details Kameshwar Thakur's case.

11. Ashok Kumar v. State, 1991 Cri LJ P. 2483 (SC).

12. P. K. Tejwani's case. In this case the court had to intervene when a mere fine was imposed for adulteration of food items.

taken with a man whose anti-social operations, disguised as a respectable trade are unlikely to be dissuaded by the gentle probationary process".[13] In the context of enlarging dimension and area of crimes like slave traffic, professional crimes and others, the law is required to meet the growing challenges to tackle such offences by the strong arm of the law. New heads of public policy have emerged[14] making deterrence, a sure component of sentencing decisions. In other words, sentencing policy must result in "protection of society and stamping out criminal adventures". If the courts fail to protect the injured then the injured will resort to private vengeance[15]. This was stated by Chief Justice Warren while making a reference to high-rate of crimes. The sentencing policy can be stated thus :—

(i) Only Judges should decide the sentence;

(ii) Errors in sentencing decisions can be corrected by appellate or revisional or inherent jurisdiction of the courts, as the case may be;

(iii) Statutes prescribe the offences and punishments giving wide discretion to Judges to decide the quantum just like medicines to be administered according to the nature and severity of the disease by the physicians; and

(iv) Courts to exercise discretion informed by tradition, methodized by analogy and disciplined by the system (per Justice Cardozo)

6) Aggrevating or mitigating circumstances is another relevant factor in sentencing-decisions :—

It can be spelt out thus :—

a) Circumstances should be proper and recognized expressly such as:—

a) Perpetrated;

b) Whether the offence was committed by force or fraud;

c) Whether it was actuated by malicious motives; and

d) Whether the individual or society suffers by the crime committed; (which might include time, place or persons in the context of the crime committed);

e) Other factors to be considered such as:

i) Minority of the offender;

ii) Old age;

iii) Condition of the offender;

iv) Provocation; and

v) Acts done in obedience to the orders of a superior officer;

f) Combination of above factors and

g) Delay in the disposal of cases. Delay is considered as a factor to reduce the sentences.

7) Since standardization can be attempted by the legislature only in a few cases. Whether it can be capable of covering all cases require a detailed study. An attempt is made in this study as to the practicability of such an exercise. As observed by the Apex Court: "Standardization is well neigh impossible".[16]

In the first place, it may be stated that punishment must depend upon the seriousness of the offence i.e., harm done by the act and the offender's degree of culpability. Measuring these two vital factors is not an easy task and presents many intricate problems, which almost makes the exercise of standardization impossible. The difficulties faced may be stated thus:—

I) Two criminal cases may not be identical, each case presenting a differential variation. Human behaviour is unpredictable unless it is expressed in an act or omission from which an inference can be drawn. All criminal cases do not fall into set-behavioural patterns and when standardization cannot be made with regard to crimes, equally no such standardization can be made in sentencing decisions;

II) Variation in culpability makes little room for categorizing 'single-offence' category. Commission of a crime has to be considered by a series of multiple factors and

13. 34 Cri LJ P. 1259.

14. See the observation of Viscount Simonds in Lady's Directory case (Shaw v. DPP) (1961)2 All ER P 446.

15. See the observations of Warren, CJ in Stacks v. Boyle (1951) 342 US 1.

16. Bachan Singh v. State of Punjab, AIR 1980 SC P. 898.

even the slightest variation makes a lot of difference in sentencing decisions, often resulting in miscarriage of justice;

III) Standardization of sentence is a matter for a legislative policy and not a matter for judiciary to lay down. When legislatures have found it to be a difficult attempt to do so, it is equally not within the reach of courts to standardize the sentences. Courts can lay down broad guidelines to be followed in the award of sentences leaving it to superior courts to correct any error that has crept into sentencing decision;

IV) Sentencing is the last stage in a criminal trial that too it is invoked depending upon the fact that the accused is convicted and the sentence to be imposed is for consideration for the court. Even in some case the adjudication of guilt is pronounced and on the question of sentence, the offender is heard before it is decided like Mrs. Jayalalitha's case (former CM of Tamil Nadu) and now the issue in appeal;

V) Sentencing decisions raises social justification like imprisonment, fine, community services or externment of a person not to enter a particular State and others, and the reasons to be stated for the award of the punishment. Justified reasons make sentences conformable to the essence of criminal justice system;

VI) Whether the 'rule of law' applies to sentencing-decision is a moot question which arises for consideration. In fact, sentencing decision depend on a variety of factors, circumstances and facts of individual cases, no uniformity in the award of sentences could be predicted. Rule of law and its application to decisions in the award of sentences postulate two essential pre-requisites namely

a) Openness; and

b) Standards declared in advance

Openness is complied with when Judgments are delivered in the open court and the Judgment being a public document made available to the public which is subjected to fair comment by all sections of the public, standard cannot be declared in advance. Legislations do not lay down procedure, determination of guilt or award of punishments in individual cases but lay down in broad terms as to what constitutes a crime, courts competent to try and adjudication of the crime conferring wide discretion to court to award punishment as the case deserves. Judges have their philosophy to follow and the aim of sentence to which they subscribe such as:

a) To punish the offender;

b) Deter the offender;

c) Deter others;

d) Rehabilitation of the offender;

e) Compensation to victims;

f) Protect the public; and

g) Reflect the public concern in criminal justice system.

In view of the above facts, it is difficult to make 'rule of law' applicable to standardize the sentencing-decisions. In fact matters relating to award of sentences, Judges are invariably required to consult their 'conscience' and not the law-books. If at all judiciary has been able to standardize the sentencing-decision, it is rare and in the 'rarest of rare cases' imposition of death penalty to be awarded. It can only be an insignificant exception to the rule that standardization of sentence can be attempted only by the legislature;

VII) Sentencing should be regarded as one of the societal institution such as family, adoption and others. It should therefore, be grounded on social values and to the extent to which it can serve the society and ends of criminal justice system;

VIII) One cannot rule out the role of political party in power in a democratic system to influence or modify or replace the sentencing policy, just like it has the right to frame the policy and to render that policy into a binding rule of conduct. For instance Foreign Exchange Regulation Act being replaced by Foreign Exchange Management Act which has made criminal liability cases into that of 'civil liabilities'. In effect, the change in the statute has almost made sentencing policy inapplicable;

IX) No sentencing theory has stood the law and order pressures. Despite criminal

laws and heavy sentences prescribed, crime control has become difficult and crime rate increasing day by day and new types of crimes occurring in cyber World, which is governed by computers;

X) Controllers of sentencing policy use sentencing powers as tools in their hands, which heavily depends on political, social and legal traditions that lay at the roots of the society. What appears just may be unjust in a different period. Illustrates are not lacking to support this view;

XI) Criminal justice system in the Country is in constant struggle in making sentences to fall in line with the demand for criminal justice and the criminal justice system to suit the social policy. The growing opinion that crimes could be prevented not by sentencing power but by resort to social, situational and other measures cannot be ruled out altogether. In fact, crimes relating to corporate body eludes any standardization of sentences; and

XII) Research holds the key to bring changes namely:—

a) In reducing variations in the sentencing policy;

b) The standardization of sentences at least in a wider area of criminal activity; and

c) The extent to which judiciary can play its role in the task of standardization.[17]

17. For example, Judiciary has standardized the sentences Sec. 302 IPC — Death in the rarest of rare cases and imprisonment for life in others. Despite the fact that the rarest of rare cases, it is still in the stage of development

TRACKING THE DILEMMA OVER JURISDICTION IN 138 MATTERS OF THE NI ACT, 1881

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INTRODUCTION AND ISSUE

Very recently, Hon'ble Supreme Court of India in Dashrath Rup Singh Rathod v. State of Maharashtra[1-2] clarified a legal nodus of substantial public importance pertaining to Court's territorial jurisdiction concerning criminal complaints filed under Chapter XVII of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') by holding that dishonour of cheque cases can be filed only to the Court within whose local jurisdiction, the offence was committed; i.e., where the cheque is dishonoured by the bank on which it is drawn. In this landmark judgment, Full Bench of Hon'ble Apex Court overruled K. Bhaskaran v. Sankaran Vaidhyan Balan[3] wherein two Judge Bench had held that "the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are ingredients of the said offence : (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice". Hon'ble Apex Court had laid down that "if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done."[4] It took almost 15 years for Hon'ble Court after *Bhaskaran* judgment to clear the position pertaining to territorial jurisdiction, when as per 213th Law Commission of India report which came in the year 2008, over 38 lacs cheque bouncing cases are pending in various courts in the country. Therefore, analyzing all the minor or major changes that took place during this period, this article mainly deals with the legal intricacies of territorial jurisdiction with respect to criminal complaints filed under Section

1-2. AIR 2014 SC 3519 : 2014 Cri LJ 4350.

3. AIR 1999 SC 3762 : 1999 Cri LJ 4606.

4. *Ibid.*