

CHAPTER 19

Sentences

Part A GENERAL

1. The award of suitable sentence depends on a variety of considerations—The determination of appropriate punishment after the conviction of an offender is often a question of great difficulty and always requires careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law for any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstances, such as sudden temptation, previous convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence.

2. Various kinds of punishments. Minimum and enhanced punishments prescribed in different cases—The Indian Penal Code permits (*vide* Section 53) the following classes of punishments *viz.* fine, imprisonment, imprisonment for life and death. The sentence of forfeiture of property was abolished for certain offences (*e.g.* Sections 121 and 122) by Act XVI of 1921 but can be imposed for certain other offences (*e.g.* Sections 126 and 127). The sentence of penal servitude which could be awarded against Europeans and Americans in lieu of transportation was abolished by Act XVII of 1949. Act 26 of 1955 has abolished the sentence of transpiration and Act 44 of 1955 which has repealed the Whipping Act, 1909, abolishes the sentence of whipping which could be imposed in lieu of or in addition to other punishments. The Reformatory Schools Act, 1897, provides for “youthful offenders” (*i.e.*, offenders below the age of 15 years) sentenced to imprisonment being detained in a Reformatory School instead of being sent to Jail. Section 562 of the Criminal Procedure Code enables the Court to release offenders in certain cases after taking a bond for good behaviour or in trivial cases even with a mere admonition. On the other hand there are certain offences for which a minimum punishment is prescribed (*see e.g.* Section 397, Indian Penal Code), and the Court cannot pass a lesser sentence on a person convicted of such an offence. Section 75 of the Indian Penal Code makes a previous convict liable to enhanced punishment in the case of certain offences. There are also other Acts of the Legislature, (*e.g.* the Punjab Excise Act), which lay down an enhanced penalty for repetition of an offence.

In certain cases, the Court can take action when passing the sentence to ensure good behaviour on the part of a convict on his release from jail. In the case of a person convicted of an offence involving a breach of the peace, the Court can order him to execute a bond for keeping peace for a period up to three years (Section 106, Criminal Procedure Code). Section 565, Criminal Procedure Code [Section 356 of the New Code] enables Courts to order convicts to remain under police surveillance after their release from jail in the case of certain offences. In the same circumstances, an order of restriction can be passed under Section 8 of the Restriction of Offenders Act, 1918.

3. Limits of the sentences which different classes of Magistrates can impose—In passing sentence, the Court has not only to bear in mind the nature and the limit of the punishment prescribed for the offence of which the accused is found guilty, but also the nature and the limit of the punishment which it is empowered to impose. Sections 31 to 35 of the Criminal Procedure Code [Sections 28 to 31 of the New Code] lay down the limits of the sentences which different classes of Courts are empowered to impose. Magistrates of the 2nd or 3rd class are not empowered to exercise powers under Section 565, Criminal Procedure Code [Section 356 of new Code]. Nor can they deal with first offenders under Section 562, Criminal Procedure Code. [Section 360 of the New Code] unless empowered by the State Government. In the Punjab, however the State Government has empowered all Magistrates of the 2nd class to take security from first offenders under Section 562 of the Criminal Procedure Code [Section 360 of the New Code]. The powers under the Reformatory Schools Act cannot be exercised by any Magistrate other than the District Magistrate, unless he is specially empowered by the State Government in that behalf.

4. Procedure when Magistrate thinks that the accused should receive greater punishment than he can award—When a Magistrate of the 2nd or 3rd class is of opinion that an offender should receive a punishment different in kind from or more severe than that which such Magistrate is empowered to inflict or that he should be sent to a Reformatory School, he should, take action under Section 349, Criminal Procedure Code [Sections 325 of the New Code], and forward the proceedings to the District Magistrate or the Sub-Divisional Magistrate to whom he is subordinate. Similarly when a Magistrate of the 1st class is of opinion that an offender, owing to previous convictions or other circumstances deserves a severer sentence than what he can inflict, he should report the case to the District Magistrate with a view to have it transferred to a Magistrate empowered under Section 30 of the Criminal Procedure Code or should commit the case to the Session Court if the case is serious enough to justify that course. Instructions on this subject in chapter 23 relating to “Habitual offenders” should also be consulted in this connection.

5. Limitation imposed by Section 71, Indian Penal Code, and Section 35, Criminal Procedure Code Sentences in cases of accused convicted of several offences concurrent sentences—Where a person is convicted of an offence which is made up of parts each of which constitute an offence or when a person is convicted of more offences than one, the limitation imposed by Section 71 Indian Penal Code, and Section 35, Code of Criminal Procedure [Section 31 of the New Code] must be adhered to. When a person is convicted of more than one offence, the Court should be careful to pass a separate sentence for each offence, so that if the conviction is set aside on appeal with respect to one of the offences, there will be no room for doubt as to the sentences passed with respect to the rest. The Court has a discretion to make such sentences

run concurrently, and this discretion should be exercised so as to make the effective sentence proportionate to the gravity of the offence. Under Section 397 of the Code [Section 427 of the New Code] (as amended in 1923 and 1955) the Court has now power to order, in the case of an accused person, who is already undergoing imprisonment for another offence, that a subsequent sentence of imprisonment passed on him shall take effect at once and run concurrently with the sentence he is undergoing. Where, however, the previous sentence is of imprisonment for life, the subsequent sentence of imprisonment must be made to run concurrently with such previous sentence.

6. Recommendations to Government for remission or commutation of punishment—

Whenever it is considered necessary in a case to recommend the remission or commutation of a sentence, the instructions contained in Chapter 20-F of this Volume and the provisions of Sections 401 and 402 of the Code [Sections 432-434 of the New Code] (as amended by the Adaptation of Laws Order, 1950) may be referred to.

Part B

FINE

1. Fine to be in proportion to offender's means—This is the lightest form of punishment which a Criminal Court can impose, but care should always be taken to see that the fine is not excessive with reference to the means of the offender. Indiscriminate imposition of fines without due regard to the capacity of the convict to pay it only results in waste of time of the Courts and the Police in attempting to realise it, and harassment to the convict and his dependants. If in awarding sentences of imprisonment in default of payment of fines, regard is had to the status of the accused and the sentence properly regulated, the accused may be induced to pay the fine rather than evade such payment.

2. Limitations—Courts are empowered to impose imprisonment in default of payment of fines, but such imprisonments can only be awarded subject to the limitations prescribed in Sections 64 to 67 of the Indian Penal Code [Sections 44(1)(2) and 60 (1)(2) of the New Code].

3. Instalments or postponement of realisation of fine—When an offender has been sentenced to fine only and to imprisonment in default of fine and the fine is not paid forthwith, the Court can, under Section 388 of the Code of Criminal Procedure, order that the fine be paid within a certain period or in instalments as laid down in that section.

Part C

IMPRISONMENT

1. Kinds of imprisonment and their selection—The Indian Penal Code provides for imprisonment of two kinds, *viz.*; simple and rigorous, and the Court must choose one or the other form in view of all the circumstances. In certain Local and Special Acts, it will be found that the Legislature has not specified the kind of imprisonment which may be awarded, under Section 3(27) of the General Clauses Act, 1897, such imprisonment may be simple or rigorous. In the case of many offences under the Indian Penal Code and other Acts, it is provided that the

offender *shall* be punished with imprisonment up to a certain term and *shall also be liable to fine*. In such cases the offender must be sentenced to some period of imprisonment (however small), but it is not obligatory to impose fine in addition, as supposed by some Magistrates.

2. When simple imprisonment is suitable—Simple imprisonment is suitable where a fine will not suffice and a very short term of imprisonment has to be imposed. This ensures casual offenders being kept apart from the contamination of hardened criminals.

3. When solitary confinement is suitable—The Indian Penal Code provides for “solitary confinement” being awarded up to a certain limit (*vide* Section 73). This form of punishment is appropriate in the case of the more heinous class of offences. It should be borne in mind, however, that solitary confinement can be awarded in the case of offences under the Indian Penal Code only and not in the case of offences under Special or Local Acts.

4. Short term imprisonment—Short term imprisonments should ordinarily be avoided and before passing such sentences the Court should consider whether the imprisonment till the rising of the Court, allowed by law, could not appropriately be passed instead, or the provisions of Section 562 of the Code [Section 360 the New Code] applied in favour of the accused. This is, however, not intended to fetter the judicial discretion of the Courts.

5. Short term imprisonment—The Honourable the Chief Justice and the Judges have expressed agreement with the following paragraphs of the Report of the Jail Reforms Committee, recommending abolition of short term sentences:—

“23. It is common knowledge that short sojourn in jail is very harmful to the first offender in as much as by association with other prisoners, such sojourn may result in making an ordinary offender to become a hardened criminal. Besides, such short sentences take away the fear of jail life from the mind of the offenders as well as from the public mind. They provide more work for the jail officials and are uneconomical to the state. Evidently short sentences cannot be reformatory in character. It is for this reason that in many countries, sentences of imprisonment for less than 4 weeks have been abolished. The Committee also recommends that simple imprisonment for less than four weeks should be abolished. 270. * * * *

It is considered opinion of prisoner experts that a short sentence is neither deterrent nor reformatory in its effect, but is positively harmful. As said in the Indian Jail Committee’s report “short sentence was often the introduction of life of crime. If familiarised the offender with prison, destroyed his self-respect, and made him indifferent to further disgrace.” The only justification for the award of short sentence was the lack of a suitable alternative. Trivial offences in respect of which short sentence are passed could equally be suitably dealt with by imposing fine, admonishing or awarding a sentence till the rising of the Court.

In many such cases “the publicity and inconvenience and anxiety of a public trial are more punishing than a sentence.” (Mr. Justice Heaton) there may, however be occasions when in the opinion of the Court, imprisonment is the only sentence and the ends of justice would not be met by a mere sentence of fine. The Court can while dealing with such case give a sentence of

imprisonment but all the same our recommendations considering all the pros and cons of the question would be that the sentence should not be for a period less than four weeks.”

Part D
DETENTION IN A REFORMATORY SCHOOL

See Chapter 22, relating to youthful offenders.

Part E
DEATH SENTENCES

1. Instructions to be observed by Courts passing death sentences—When a convict is sentenced to death by a Court of Sessions, it must:—

- (i) direct by its sentence that he be hanged by the neck till he is dead (Section 368 of the Code);
- (ii) submits its proceedings to the High Court for confirmation of the sentence (Section 374); and
- (iii) inform the convict of the period within which he must appeal if he wishes to do so [Section 371 (3)].