

HUMAN RIGHTS: EXERCISE OF JUDICIAL CONTROL OVER THE EXECUTION OF SENTENCE IN THE PRISONS

Dr. Seema Yadav

Associate Professor, H.O.D. Deptt. of Law
Shri Varshney College, Aligarh

ABSTRACT

There was no criminal law in uncivilized society. Every man was liable to be attacked on his person or property at any time by any one. The person attacked either succumbed or over-powered his opponent. "A tooth for a tooth, an eye for an eye, a life for a life" was the forerunner of criminal justice. As time advanced, the injured person agreed to accept compensation, instead of killing his adversary. Subsequently, a sliding scale of satisfying ordinary offences came into existence. Such a system gave birth to the archaic criminal law.

Ensuring human rights within the framework of the criminal justice system of the criminal justice delivery system cannot be narrowly construed to mean merely the protection of the rights of the under-trials, or detainees, or convicts. In fact it can very rightly be contended that the most essential of all human rights in a criminal justice delivery system, is the right of access to courts of law. Emphasizing this crucial importance, Article 10 of the Universal Declaration of Human Rights (UDHR) provides that:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal and the determination of his rights and obligations and of any criminal charge against him".

The Constitution of India enshrined, in consonance with the Universal Declaration of Human Rights (UDHR) various Fundamental Rights which protects the individual interest against the State Action. The Judiciary of India also took positive steps to expand the meaning of the Fundamental Rights by interpreting these rights in liberal manner.

The protection of human rights through the criminal justice delivery system is an indispensable feature of any system governed by the rule of law.

INTRODUCTION

Sentencing is a crucial strategy of Criminal Law in achieving social defence and re-socialization of the offender. Sentencing is a facet of social justice. None can dispute the need to humanize sentencing as a tool of reformation. The object of the criminal justice system is to reform the offender, and to ensure the society its security, and the security of its people by taking steps against the offender. This purpose is not fulfilled only by incarceration; other alternative measures like parole, admonition with fine and probation fulfill the purpose equally well. Power of sentencing, therefore, must be exercised taking into account all the relevant considerations necessary to serve the social justice and while doing so there must be some judicial control over it.

Under Criminal Law, every criminal trial must come to a conclusion with a judgment, either of acquittal or conviction in terms of S.235 (1) or 248 (1) of the Code. All cases of conviction have to be appropriately sentenced as per the requirements of the statute. However, before passing the order of sentence the judge is required in terms of SS 360 and 361 of the Code to keep in mind the reformatory considerations in matters of sentencing because S. 361 and imposes a duty on the Courts to record special reasons with a view to emphasizing the reformatory sentencing alternative. Furthermore, SS.235 (2) and 248(2), create an additional obligation on the Courts to hear the accused on the question of sentence. Only after the accused has been given a pre-sentence hearing, the judge is empowered to pass the appropriate sentence. The exact quantum of sentence would vary as per the nature of the offence, with the most severe form of sentence being death penalty, followed by life imprisonment, followed by term imprisonment with hard labour or without hard labour, followed by fine, followed by probation release, etc. A person sentenced to a term of imprisonment goes into prison for the execution of the sentence. Even after he/she goes into the prison, he/she is entitled to several rights and privileges pertaining to his stay inside, till his conditional or final release. Since the inmate goes into the prison as per the judicial order of both remand and sentence, what happens to him/her during the period when he/she is inside the prison becomes a matter of concern not only to the prison but also to the Court that sends him/her inside. Under Code of Criminal procedure, various provisions as discussed above deal with the judicial control over the power of sentencing, which are further assisted by the provisions of Probation of Offenders Act, 1958. These provisions run as follows:

Judgment of acquittal or conviction –

- (1) *After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.*
- (2) *If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.*

If the accused is convicted, the judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law. If the judge convicts the accused person, he is required to pass sentence on him according to law. However, considering the character of the offender, the nature of the offence and the circumstances of the case, the judge may, instead of passing the sentence, decide to release the offender on probation of good conduct under Section 360, or under the Probation of Offenders Act, 1958.

After the accused is found guilty and an order of conviction is recorded by the court, a separate and specific stage of trial has been provided by Section 235(2) whereby the court is required to hear the accused (to be more precise, the convicted person) on the question of sentence. In this sense the section provides for a bifurcated trial and specifically gives to the accused person a right of pre-sentence hearing which may not be strictly relevant to or connected with the particular crime under inquiry but may have a bearing on the choice of the sentence.¹ A sentencing decision taken without following the requirements of Section 235(2) in letter and spirit is likely to be struck down as violative of the rules of natural justice.²

The object of this provision is to acquaint the court with the social and personal data of the offender and thereby to enable the court to decide as to the proper sentence or the method of dealing with the offender after his conviction. It has been said that this provision has been made because it may happen that the accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is the breadwinner of the family of which the court may not be made aware during the trial.

Acquittal or conviction –

(1) If in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2).

After the close of the defence and after hearing arguments the magistrate shall give a judgment in the case. If in any case in which a charge has been framed, and the magistrate finds the accused not guilty, he shall record an order of acquittal; and where in any case, the magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law.

If the magistrate convicts the accused, he is required to pass sentence on him according to law. However, considering the character of the offender, the nature of the offence and the circumstances of the case, the magistrate may, instead of passing the sentence, decide to release the offender, on probation of good conduct under Section 360 or under the Probation of Offenders Act, 1958. Section 361, ordains that the offenders should, as far as possible, be released under the probation or other like laws. In order to acquaint the court with the social and personal data of the offender and thereby to enable the court to decide as to the proper sentence or the method of dealing with the offender after his conviction, Section 248(2) makes it imperative that the magistrate shall hear the accused on the question of sentence. After an accused has been found guilty and an order to that effect has been passed, the magistrate cannot straightway record an order of sentence. He has to pause there because the statute enjoins that he should "hear" the accused on the question of sentence.³ Section 248(2) gives an opportunity to both parties to bring to notice of the court facts and circumstances which will help personalize the sentence from a reformatory angle.⁴

Order to release on probation of good conduct or after admonition

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which

the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

Offenders with any previous conviction or those found guilty of any offence punishable with death or imprisonment for life are totally beyond the purview of the section. Sub-section (1) gives discretion to the court to release an offender on probation of good conduct provided the offender is (i) a woman, or (ii) a person below 21 years of age, or (iii) a male person of 21 years of age or above who is not guilty of an offence punishable with more than seven years' imprisonment. From this it will be clear that the section tries to reform the criminals by treating them leniently only in those cases where there is no serious danger or threat to the protection of the society. Again, the court is to use the discretion given, in this respect judicially and having regard to the age, character and antecedents of the offender, and to the circumstances in which the offence was committed.⁵ Therefore, the section is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of more mature years, who for the first time may have committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.⁶ It is not intended that this section should be applied to experienced men of the world who deliberately flout the law and commit offences.⁷

Special reasons to be recorded in certain cases.

Where in any case the Court could have dealt with-

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (2(1) of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

The section clearly requires that the Court shall normally deal with the offenders under Section 360 or under the Probation of Offenders Act, 1958 or in case of youthful offenders under laws for the treatment, training or rehabilitation of youthful offenders: in case the court chooses to do otherwise and to pass any sentence on the offender, that could be possible only for special reasons to be recorded in its judgment.

The provisions under Probation of Offenders Act, 1958 in this regard provides as follows:

Section 3- Power of court to release certain offenders after admonition- *When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the **circumstances** of the case including the nature of the offence and the character of the offence, it is expedient so to do, then, notwithstanding anything anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.*

Explanation- *For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.*

Section 4- Power of court of release certain offenders on probation of good conduct-(1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:*

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other

mater as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offence by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders. The sureties, if any, and the probation officer concerned.

Section 4 of the Probation of Offenders Act, 1958 ensures:

- (1) in all the cases not punishable with death or imprisonment for life, where the Court, in view of the nature of the Offence and character of the offender, is of the opinion that it is expedient to release on probation, it may order such a release for a period up to three years, subject to a bond, with or without sureties.
- (2) where the interest of the accused or of general public demands release him on probation under supervision, the terms and conditions of supervision order are duly explained to the accused.

Section 6- Restrictions on imprisonment of offenders under twenty-one years of age-(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred the in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

Apart from the above provisions of Code of Criminal Procedure, 1973 and The Probation of Offenders Act, 1958, the Constitution of India under Article 11 provides for the dignity of the prisoners in the prison.

CONCLUSION

Human conflicts are basic to human societies. Crime symbolizes a major form of conflict in the society. It deprives the victim from their fundamental human rights especially those pertain to life, liberty and safety. Deprivation of personal liberty in the form of the imposition of a prison sentence has long been the most common means used by State authorities to fight crime and maintain internal security. Yet, the legitimate public interest in the punishment of criminal offenders finds its limits in the human rights of the detainees and the principle to treat every person with respect for his or her human dignity. The mankind has always been instrumental in finding the most effective ways to resolve conflicts or crime in the society. The advent of the criminal justice system was the consequence of similar efforts.

The effectiveness of Criminal Justice System depends upon not any single factor but it is a combination of various factors which must be maintained. These include, Right to Public Hearing, Rights to be tried by Competent and Impartial court, Right to Speedy trial, Right to be Presumed Innocent, Right to know the accusation, Right to lawyer of his choice, Right to free legal aid, Right of the accused to be tried in his presence etc. These factors impose upon the mind of the accused person a feeling of security and righteousness, which in turn maintain the dignity of the accused person. Thus the protection of human rights through the criminal justice system is an indispensable feature of any system governed by the rule of law & last not the least 'when liberty is subtracted, justice is to be added'.

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