COMPENDIUM OF CASE LAWS ON

SENTENCING IN NON-CAPITAL CASES



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BHOJPUR JUDGESHIP

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(1) This extract is taken from Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 : 1991 SCC (Cri) 724 : 1991 SCC OnLine SC 184 at page 480

9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be — as it should be — a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation of sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep seated personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. [(1987) 3 SCC 80 : 1987 SCC (Cri) 379 : (1987) 2 SCR 710] , this Court while refusing to reduce the death sentence observed thus : (SCC p. 82, para 6)

> "[I]t will be a 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 the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the

courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

12. Undoubtedly under Section 235(2) of Code of Criminal Procedure, the accused is entitled to an opportunity to adduce evidence and if need be the case is to be adjourned to another date. There is illegality to convict and to impose sentence on the same day. It is true as contended for the State that under Section 309(2) third proviso brought by Amendment Act, 1978 no adjournment should be granted for the purpose only of enabling the accused person to show cause against sentence to be imposed upon him. Under Section 235(2) when the accused has been given right to be heard on the question of sentence it is a valuable right. To make that right meaningful the procedure adopted should be suitably moulded and (sic) the accused given an opportunity to adduce evidence on the nature of the sentence. The hearing may be on the same day if the parties are ready or be adjourned to a next date but once the court after giving opportunity proposes to impose appropriate sentence there is no need to adjourn the case any further thereon. No doubt the Sessions Judge needed to adjourn the case under Section 235(2) to next date but in the High Court the counsel was directed to show any additional grounds on the question of sentence. The High Court observed that the counsel was unable to give any additional ground. It is further contended that the appellants are young men. They are the breadwinners of their family each consisting of a young wife, minor child and aged parents and that, therefore, the death sentence may be converted into life. We find no force. These compassionate grounds would always be present in most cases and are not relevant for interference. Thus we find no infirmity in the sentence awarded by the Sessions Court and confirmed by the High Court warranting interference. The appeals are accordingly dismissed.

(2) This extract is taken from Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499 : 2006 SCC OnLine SC 99 at page 361 Attempt to murder

7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that:"State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. **This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]**

10. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences

are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US 183 : 28 L Ed 2d 711 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In Dhananjoy Chatterjee v. State of W.B. [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's creditability. **The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment**.

13. Similar view has also been expressed in Ravji v. State of Rajasthan [(1996) 2 SCC 175 : 1996 SCC (Cri) 225] . It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial**. The court will be failing in its duty if appropriate punishment is not**

awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. In State of M.P. v. Ghanshyam Singh [(2003) 8 SCC 13 : 2003 SCC (Cri) 1935] , Surjit Singh v. Nahara Ram [(2004) 6 SCC 513 : 2004 SCC (Cri) 1801] and State of M.P. v. Munna Choubey [(2005) 2 SCC 710 : 2005 SCC (Cri) 559] the position was again highlighted.

(3) This extract is taken from State of Punjab v. Prem Sagar, (2008) 7 SCC 550 : (2008) 3 SCC (Cri) 183 : 2008 SCC OnLine SC 872 at page 552 (Hooch Tragedy/ Liquor)

2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example **Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.**

5. Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in

which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The superior courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

15. We may also notice that in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82 : 2004 SCC (Cri) 1208] this Court opined : (SCC p. 87, para 13)

> "13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

16. In Rattan Singh v. State of Punjab [(1979) 4 SCC 719 : 1980 SCC (Cri) 17] this Court held : (SCC pp. 720-21, para 5)

"5. Nevertheless, sentencing must have a policy of correction. This driver, if he has to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences. Maybe, the State may consider, in cases of men with poor families, occasional parole and reformatory courses on appropriate application, without the rigour of the old rules which are subject to government discretion."

17. The Ministry of Law, Government of India, Committee on Reforms of the Criminal Justice System, 2003 was established by the Government of India to recommend changes to the criminal justice system in India. It had observed that the Judges were granted wide discretion in awarding the sentence within the statutory limits. It was also of the opinion that as there was no guidance in selecting the most appropriate sentence in the fact situation thereof, there was no uniformity in awarding sentence as the discretion was exercised according to the judgment of every Judge. Thus, the Committee emphasised the need for having sentencing guidelines to minimise uncertainty in awarding sentences. It recommended the appointment of a statutory committee to lay down the sentencing guidelines.

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in Sentencing by Hyman Gross and Andrew von Hirsch opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press that there is considerable 'disparity' in sentencing. The word 'disparity' has become a prerogative and the concept of 'sentencing disparity' now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase 'unwarranted disparity' may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable

qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment, that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

(emphasis supplied)

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interests are violated or threatened by the standard case of the crime—physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim—minimum well-being, adequate well-being, significant enhancement.

3. Culpability of the offender.

4. Remoteness of the actual harm as seen by a reasonable man.

(See Andrew Ashworth : Sentencing and Criminal Justice, 2005, 4th Edn.)

21. Guidelines in the United Kingdom originated from two separate sources in the 1980s. The first was the Magistrates' Association, which took the first steps in producing road traffic offence guidelines for the lower courts. This process has widened and deepened, so that the latest set of sophisticated guidelines, effective from 2004, cover all the main offences likely to be encountered in those courts. The second source of guidelines was the Court of Appeal which, of its own initiative, developed guideline judgments as a means

of providing assistance to Crown Court sentencers in the disposal of particular types of offences, mainly the most serious forms of crime which attract long prison sentences.

22. The Crime and Disorder Act, 1998 created the Sentencing Advisory Panel (SAP), a body with a diverse membership, to assist and advise the Court of Appeal in the promulgation of sentencing guidelines. The Panel and the Court of Appeal worked together effectively in this way from 1999 to 2003, at which point the Sentencing Guidelines Council (SGC) was established. One of the most significant innovations introduced by the Criminal Justice Act, 2003 was the setting up of the Sentencing Guidelines Council. The Council, composed mainly but not exclusively of sentencers, took over the task of issuing sentencing guidelines, with the Panel performing much the same function as before, but now advising the Council rather than the Court of Appeal. The personnel on the SGC/SAP all work on guidelines in a part-time capacity, but supported by a joint full-time Secretariat.

23. The idea of a "commission on sentencing" can be traced to Marvin Frankel's influential writings of the early 1970s, most notably his 1973 book Criminal Sentences : Law Without Order. He also advocated:

> "Greater uniformity in punishments imposed upon similarly situated offenders, with a concomitant reduction in inexplicable disparities, including racial disparities in punishment and widely varying sentences based simply on the predilections of individual judges."

(See Encyclopædia of Crime and Justice, 2nd Edn., "Sentencing Guidelines", Kevin R. Reitz.)

24. The Sentencing Reforms Act of 1984 created the **US Sentencing Commission** to promulgate binding sentencing guidelines in response to a regime of indeterminate sentencing characterised by broad judicial discretion over sentencing and the possibility of parole. The Act sought to create a transparent, certain and proportionate sentencing system, free of "unwarranted disparity" and able to "control crime through deterrence, incapacitation, and the rehabilitation of offenders" by sharing power over sentencing policy and individual sentencing outcomes among Congress, the Federal Courts, the Justice Department and probation officers.

25. The heart of the Guidelines is a one-page table : the vertical axis is a forty-three-point scale of offence levels, the horizontal axis lists six categories of criminal history, and the body provides the ranges of months of imprisonment for each combination of offense and criminal history. A sentencing Judge is meant to use the guidelines, policy statements and commentaries contained in the Guidelines Manual to identify the relevant offence and history levels, and then refer to the table to identify the proper sentencing range. Though in all cases a sentence must be at or below the maximum sentence authorised by statute for the offense, in certain circumstances the Guidelines allow for both upward and downward departures from the sentence that would otherwise be recommended.

26. In "The Failure of the Federal Sentencing Guidelines : A Structural Analysis" [105 COLUM. L. REV. 1315], Frank O. Bowman III criticised the Federal Sentencing Guidelines in the following terms:

> "(1) The severity and frequency of punishment imposed by the federal criminal process during the guidelines era is markedly greater than it had been before.
>
> (2) For most crimes it is difficult, and perhaps impossible, to isolate the effect of federal prosecutorial and sentencing policies from effects of State policies and practices, not to speak of the broader economic, demographic and social trends that influence crime rates.
>
> (3) The federal process of making sentencing rules and imposing sentences on individual defendants has gone astray."

29. Andrew von Hirsch in "The Sentencing Commission's Functions", The Sentencing Commission and its Guidelines [(North-Eastern University Press, 1987), Ch. 1] more than twenty years ago summarised the central tasks of a Sentencing Commission by observing that the function was:

> "(1) to decide the future direction of sentencing policy, informed by the study of past sentencing practice;

(2) to structure judicial discretion, rather than to eliminate it, allowing Judges to interpret and apply the guidelines and to deviate from them in special circumstances; and

(3) to select a predominant rationale for sentencing, and to base guidelines upon it, so as to promote consistency in sentencing and to reduce disparity."

31. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind.

(4) This extract is taken from State of M.P. v. Bablu Natt, (2009) 2 SCC 272 : (2009) 1 SCC (Cri) 713 : 2008 SCC OnLine SC 1920 at page 276 (Section 366/376)

15. The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature, particularly when Parliament itself had laid down minimum sentence. In India, we do not have sentencing guidelines. Necessity of the guidelines on the judicial side has been highlighted in State of Punjab v. Prem Sagar [(2008) 7 SCC 550 : (2008) 3 SCC (Cri) 183] wherein it was noticed: (SCC p. 553, paras 5-8)

> "5. Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.
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> 6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.
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> 7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant."

Upon noticing the development of law in this behalf in other countries, it was opined: (Prem Sagar case [(2008) 7 SCC 550 : (2008) 3 SCC (Cri) 183] , SCC p. 560, para 31)

"31. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind."

16. One of the principles that the judiciary had all along kept in its mind that rape being a violation with violence of the private person of a woman causes mental scar, thus, not only a physical injury but a deep sense of some deathless shame is also inflicted. (See Mohan Anna Chavan v. State of Maharashtra [(2008) 7 SCC 561 : (2008) 3 SCC (Cri) 193 : (2008) 9 Scale 474] and Bantu v. State of U.P. [(2008) 11 SCC 113 : (2008) 10 Scale 336]) Although, with utmost respect to the Hon'ble Judges, one may not entirely agree with invocation of doctrine of proportionality in imposing death sentence as has been highlighted in the above two cases, we may notice that in the latter doctrine of proportionality has been invoked, stating: (Bantu case [(2008) 11 SCC 113 : (2008) 10 Scale 336] , SCC p. 123, para 21)

"21.... '11. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent

injustice that are serious and widespread.' [**Ed.**: As observed in State of M.P. v. Munna Choubey, (2005) 2 SCC 710, p. 715, para 11.] "

(5) This extract is taken from State of M.P. v. Bablu Natt, (2009) 2 SCC 272 : (2009) 1 SCC (Cri) 713 : 2008 SCC OnLine SC 1920 at page 278

17. We may also notice that in State of M.P. v. Bala [(2005) 8 SCC 1 : 2005 SCC (Cri) 1947] this Court commenting upon the grossly inadequate sentence imposed upon by the High Court of Madhya Pradesh, stated: (SCC p. 4, para 6)

> "6. Sub-section (1) of Section 376 IPC provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 7 years. There is a similar proviso to sub-section (2) which empowers the court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to the express provision of law. The High Court has not assigned any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum. Therefore, the sentence awarded by the High Court is clearly illegal."

P.K. Balasubramanyan, J. in his concurring judgment added: (Bala case [(2005) 8 SCC 1 : 2005 SCC (Cri) 1947] , SCC p. 6, paras 11 and 13)

> "11. The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is

to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason.

13. The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilised society does not revert to the days of 'an eye for an eye and a tooth for a tooth'. Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted."

The said line of reasonings was adopted in about twelve short orders [**Ed.**: Reported at (2005) 8 SCC 11 (1), 11(2), 11(3), 12(1), 12(2), 12(3), 13(1), 13(2), 13(3), 13(4), 14(1) and 14(2).] following the said decision.

18. In State of Karnataka v. Raju [(2007) 11 SCC 490 : (2008) 1 SCC (Cri) 787] it was held: (SCC pp. 492-93, paras 6-7)

"6. It needs no emphasis that the physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery.

7. It is to be noted that in sub-section (2) of Section 376 IPC more stringent punishment can be awarded taking into account the special features indicated in the said sub-section. The present case is covered by Section 376(2)(f) IPC i.e. when rape is committed on a woman when she is under 12 years of age."

19. We have noticed hereinbefore that the age of the prosecutrix was assessed between 11 and 13 years, but by way of abundant precaution, the

learned Sessions Judge held her age to be less than 13. The court has not, therefore, awarded any punishment in terms of Section 376(2)(f) of the Penal Code. But even in doing so, the learned trial Judge herein imposed the minimum sentence, should have met the approval of the High Court. It was a case where the minimum sentence, to say the least, could be imposed. While saying so, we may notice that this Court in State of A.P. v. Bodem Sundara Rao [(1995) 6 SCC 230 : 1995 SCC (Cri) 1097] stated the law thus: (SCC pp. 231-32, paras 6-7 and 9)

> "6. After its amendment, Section 376(1) provides for a minimum sentence of seven years which may extend to life or for a term which may extend to 10 years besides fine for the offence of rape. The proviso to sub-section (1) lays that the court may for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.
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> 7. Keeping in view the nature of the offence and the helpless condition in which the prosecutrix a young girl of 13/14 years was placed, the High Court was clearly in error in reducing the sentence imposed upon the respondent and that too without assigning any reasons, much less special and adequate reasons. The High Court appears to have overlooked the mandate of the legislature as reflected in Section 376(1) IPC.
>
> 9. In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conscience. The offence was inhumane. There are no extenuating or mitigating circumstances available on the record which may justify

imposition of sentence less than the minimum prescribed by the legislature under Section 376(1) of the Act."

(6) State of NCT of Delhi v. Mukesh Section 376/511

9. Arguing next about sentence, it was submitted that assuming, though not admitting that the prosecution had proved the accused's guilt, the court should not interfere with the sentencing choice exercised by the Trial Court. The amicus relied on Mohd. Giasuddin v. State of A.P., (1977) 3 SCC 287, at page 293, where it was held as follows: "16. The new Criminal Procedure Code, 1973, incorporates some of these ideas and gives an opportunity in Section 248(2) to both parties to bring to the notice of the Court facts and circumstances which will help personalise the sentence from a reformative angle. This Court, in Santa Singh vs. State of Punjab, 1976 (4) SCC 190 has emphasised how fundamental it is to put such provision to dynamic judicial use, while dealing with the analogous provisions in Section 235(2): "This new provision in Section 235(2) is in consonance with the modern trends in penology and sentencing procedures. There was no such provision in the old Code. It was realised that sentencing is an important stage in the process of administration of criminal justice -- as important as the adjudication of guilt -- and it should not be consigned to a subsidiary position as if it were a matter of not much consequence. It should be a matter of some anxiety to the Court to impose an appropriate punishment on the criminal and sentencing should, therefore, receive serious attention of the Court. Modern penology regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalise the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined. A proper sentence is the amalgam of many factors such 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 of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender 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 by the offender or by Crl.A.21/2011 Page 4 others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. The hearing contemplated by

Section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the Court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the Court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings." 17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. Even so, the Judge must exercise this discretionary power, drawing his Indian Kanoon - http://indiankanoon.org/doc/1956456/ 4 State Gnct Of Delhi vs Mukesh on 20 May, 2011 inspiration from the humanitarian spirit of the law, and living down the traditional precedents which have winked at the personality of the crime-doer and been swept away by the features of the crime. What is dated has to be discarded. What is current has to be incorporated. Therefore innovation, in all conscience, is in the field of judicial discretion. 18. Unfortunately, the Indian Penal Code still lingers in the somewhat compartmentalised system of punishment viz. imprisonment, simple or rigorous, fine and, of course, capital sentence. There is a wide range of choice and flexible treatment which must be available with the Judge if he is to fulfil his tryst with curing the criminal in a hospital setting. Maybe in an appropriate case actual hospital treatment may have to be prescribed as part of the sentence. In another case, liberal parole may have to be suggested and, yet in a third category, engaging in certain types of occupation or even going through meditational drills or other courses may be part of the sentencing prescription. The perspective having changed, the legal strategies and judicial resources, in their variety, also have to change. Rule of thumb sentences of rigorous imprisonment or other are too insensitive to the highly delicate and subtle operation expected of a sentencing Judge. Release on probation, conditional sentences, visits to healing centres, are all on the cards. We do not wish to be exhaustive. Indeed, we cannot be. 19. Sentencing justice is a facet of social justice, even as redemption of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian Courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age.

10. It was submitted that having regard to all the conspectus of facts, particularly the age of the respondent, his family circumstances, the fact that he had no previous record of convictions, or involvement in any other crime, and that he co-operated with the prosecution at all stages, and never ran away or tried to escape, etc. It was argued that if prison sentence is aimed at reformation, the enhancement of sentence, in this case may not achieve any purpose, Crl.A.21/2011 Page 5 and may, on the contrary result in ruination of the respondent, who had served his sentence, after the Trial Court delivered its judgment. It was also submitted that the Court should exercise appellate jurisdiction having regard to all the circumstances, and interfere with sentencing choice of Trial Courts only if the impugned judgement shocks the court's conscience, and not otherwise.

12. Penology and sentencing in our country has remained an underdeveloped concept. In several jurisdictions across the world, sentencing choices are guided not only by the subjective "facts of the case" but a whole variety of factors, such as social investigation of the offender, his family background, his social environment, behaviour, tendencies, etc. These are apart from the more "traditional" factors such as the history of previous offences or convictions, subjective facts pertaining to the offender, such as age, gender, gravity of the offence, circumstances leading to the offence, etc. More often than not, these are factored into a set of codified rules or regulations, which in some cases, prescribe great details, and even mandate separate hearings, where the judge is obliged to consider evidence presented in that regard. Sadly, courts in this country do not have the benefit of such specialized assistance. As a result, courts have to fall back on judicially evolved standards and ad-hoc notions of penology and theories while exercising discretion in relation to offences where sentencing choices span a wide spectrum of penalties and prison terms. Here, the courts have to strike a balance between the need to impose an "adequate" sentence even while keeping in mind that the choice has to ultimately sub serve a larger public purpose, and not be one merely given for the ritualistic satisfaction of notions like public justice. An offender found to have committed a crime has to suffer conviction, and also a punishment. However, if sentencing choices are dominated by notions like popular justice or popularity demanded sentences or punishments, it is ultimately the cause of justice, and rule of law which suffers. A French philosopher and mystic (Simone Weil (1909-43), in her "Draft for a Statement of Human Obligations) said that: Indian Kanoon - http://indiankanoon.org/doc/1956456/ 6 State Gnct Of Delhi vs Mukesh on

20 May, 2011 "Whenever a human being, through the commission of a crime, has become exiled from good, he needs to be reintegrated with it through suffering. The suffering should be inflicted with the aim of bringing the soul to recognize freely some day that its infliction was just."

13. While considering the sentence, it would be apt to notice the judgment reported as State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230. The court upheld the conviction of the respondent, for the offence of rape, and held that the minimum sentence was 10 years. The courts below had imposed RI for 4 years; it was enhanced to seven years. The court held that: "We, thus, consider it our plain duty to enhance the sentence in this case. Keeping in view the facts and circumstances of this case and the submissions made by the learned amicus curiae, while maintaining the conviction of the respondent for the offence under Section 376, Indian Penal Code, we enhance the sentence of 4 years' RI to 7 years' RI, which is the minimum prescribed sentence under the section, for we find no adequate or special reasons to impose a Crl.A.21/2011 Page 7 sentence less than the prescribed minimum. Necessary warrants shall be issued to take the respondent into custody to undergo the remaining period of sentence." In State of M.P. v. Bablu Natt,(2009) 2 SCC 272, the Supreme Court upheld the sentence of four years imprisonment for rape of a minor, when the lower courts had exercised jurisdiction under proviso to Section 376 (1). The court held that: "The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused and the victim although may not be wholly irrelevant, should be eschewed in a case of this nature, particularly when Parliament itself had laid down minimum sentence. In India, we do not have sentencing guidelines. Necessity of the guidelines on the judicial side has been highlighted in State of Punjab v. Prem Sagar1 wherein it was noticed: (SCC p. 553, paras 5-8)"

5. Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them. 8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant."

14. In a previous ruling, the Supreme Court had held that there cannot be any cast iron rule about what constituted relevant factors while exercising jurisdiction for "special" reasons, in imposing a sentence which was less than the minimum prescribed in the case of rape. This was in State of Karnataka v. Krishnappa, (2000) 4 SCC 75 where it was held that: "Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application."

15. In this case, the offence for which the respondent was convicted was attempted rape, though he was charged for the offence of rape. The circumstances also show that the prosecutrix, a minor was unable to depose

about the incident; the prosecution cross examined her to elicit details of the facts. The respondent and prosecutrix were both medically examined; nothing was discerned. The respondent co-operated with the prosecution in the investigation. All these were taken into consideration by the Trial Court. It also considered the offender's age, as well as his previous (lack of) record. The materials also did not suggest his propensity to commit crimes. The accused respondent was an under trial prisoner for the entire duration of the proceedings before the Trial Court. He continued to be incarcerated after the impugned judgment was delivered, and having completed his sentence, was set free. The State does not dispute that the factors cited by the Trial Court when it chose to impose the sentence that it did, actually existed. The court has regard to all these circumstances, and the further fact that this Court would exercise and interfere with sentencing discretion of the Trial Court in a given case where the "inadequacy" of sentence is or glaring, or shocks the court's conscience, and also recollects the decisions of the Supreme Court noticed in the preceding parts of this judgment, where the sentence in the case of rape was enhanced from four to seven years, though the minimum prescribed in the category of rape was imprisonment for ten years. The court considers that the impugned judgment and order on sentence, in the given facts and conspectus of circumstances, does not warrant interference.

(7) Soman V. State of Kerla (LIQUOR/HOOCH)

12. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar[1] this Court acknowledged as much and observed as under –

> "2. **In our judicial system, we have not been able to develop legal principles as regards sentencing.** The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines." 13. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. (See: Ramashraya Chakravarti v. State of Madhya Pradesh[2], Dhananjoy Chatterjee alias Dhana v. State of W.B.[3], State of Madhya Pradesh v. Ghanshyam Singh[4], State of Karnataka v. Puttaraja[5], Union of India v. Kuldeep Singh[6], Shailesh Jasvantbhai and another v. State of Gujarat and others[7], Siddarama and others v. State of Karnataka[8], State of Madhya Pradesh v. Babulal[9], Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra[10]).
>
> **In a proportionality analysis, it** is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2)

whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

15. In Sentencing and Criminal Justice, 5th Edition, Cambridge University Press, 2010, Andrew Ashworth cites the four main stages in the process of assessing the seriousness of an offence, as identified in a previous work by Andrew Von Hirsch and Nils Jareborg. (See Pages 108 – 112)

1. Determining the interest that is violated (i.e. physical integrity, material support, freedom from humiliation or privacy/autonomy)

2. Quantification of the effect on the victim's living standard.

3. Culpability of the offender.

4. Remoteness of the actual harm.

16. Ashworth then examines various specific offences to ascertain how seriousness is typically gauged. The most relevant example is that of **drug trafficking**, where the author notes the problem that the offence lies fairly remote from causing people's deaths. Ashworth further notes that harsh sentences for drug trafficking offences is justified more by deterrent rationales than proportionality concerns, although even the deterrent rationales are beset with problems. (See Pages 128 – 130)

17. Here, it needs to be noted that **one major difference between production/sale of spurious liquor and drug trafficking is that in the case of spurious liquor, the consumer does not know what he is consuming, whereas in the case of drugs, the consumer, at least in the initial stages, knowingly and voluntarily chooses to consume the drugs.**

18. Ashworth also examines the impact of unintended consequences on sentencing. He notes that there is a tendency to take those into account in manslaughter and for **causing death by bad driving**. The extent to which unintended consequences may be taken into account would depend, for instance, on the extent to which the offender was put on notice of the risk of death. Thus, where it is known that driving dangerously or **under the influence of alcohol** creates risk for the safety

of others, there would be a greater emphasis on resulting death while determining the sentence. (See Pages 153 – 154).

19. Arguably, one might surmise that **manufacturers of spurious liquor must be able to reasonably foresee that consumption of spurious liquor would affect the health (and possibly life) of others**. Thus, there may be some basis for taking into account the unintended consequences while determining sentence. The remoteness of harm would be a factor when a person, by consuming drugs, dies after a period of sustained use. Where a person consuming spurious liquor dies as a result of such consumption, the harm is much more direct and immediate, and remoteness of harm may not be as much of an issue.

20. Germane to the issue under consideration is a decision of the Supreme Court of Appeal of South Africa in S Nyathi and The State[11] and we may usefully refer to it. The case relates to **the death of six people resulting from the road accident** in which a sedan driven by the appellant in that case collided with a minibus taxi. The impact caused the minibus to overturn, killing six of its occupants. Some other passengers were injured. The appellant was convicted of culpable homicide. The court found that the collision between the two vehicles had taken place on a blind rise where a double barrier line prohibited overtaking by vehicles coming from either direction. It was the admitted position at the trial that forward visibility was restricted. The court observed that overtaking on a barrier line, and specially on a double barrier line, where a motorist should realise that his inability to observe approaching traffic is compounded by the inability of the traffic in the opposite direction to see him is probably the most inexcusably dangerous thing a road user can do. Coming to the question of sentence, the Court observed: "[13] Road accidents with calamitous consequences are frequently caused by inadvertence, often momentary. [Dube v S [2002] JOL (Judgments on Line) 9645 (T), a case mentioned by the regional magistrate, is an example. The appellant was the driver of a bus involved in an accident on a mountain pass which killed twenty eight passengers. On appeal a suspended sentence of two years' imprisonment was substituted for one of six years' imprisonment imposed by the trial court on the footing that the appellant's negligence had been slight.] Overtaking on a double barrier line is not inadvertence. It is a conscious decision to execute a manoeuvre that involves taking a fearfully high risk. Referring then to some earlier decisions of the Court in paragraph

14 of the judgment it observed as under: "[14] In S v Nxumalo 1982 (3) SA 856 (SCA) the court approved a passage from R v Barnardo 1960 (3) SA 552 (A) (at 557D-E) where the court held that although no greater moral blameworthiness arises from the fact that a negligent act caused death, the punishment should acknowledge the sanctity of human life. It affirmed the dicta of Miller J who twenty years earlier in S v Ngcobo 1962 (2) SA 333 (N) at 336H-337B had set out the approach to road death cases. At 861H Corbett JA said: **'It seems to me that in determining an appropriate sentence in such cases the basic criterion to which the Court must have regard is the degree of culpability or blameworthiness exhibited by the accused in committing the negligent act. Relevant to such culpability or blameworthiness would be the extent of the accused's deviation from the norm of reasonable conduct in the circumstances and the foreseeability of the consequences of the accused's negligence. At the same time the actual consequences of the accused's negligence cannot be disregarded. If they have been serious and particularly if the accused's negligence has resulted in serious injury to others or loss of life, such consequences will almost inevitably constitute an aggravating factor, warranting a more severe sentence than might otherwise have been imposed.'** (Emphasis Added)

21. Punishment should acknowledge the sanctity of human life. We fully agree.

22. From the above, one may conclude that:

1. Courts ought to base sentencing decisions on various different rationales – **most prominent amongst which would be proportionality and deterrence.**

2. The question **of consequences of criminal action** can be relevant from both a proportionality and deterrence standpoint.

3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

23. In light of the discussion made above, we are clearly of the view, that the High Court was fully justified in taking into account the death of a person, as a result of consuming the illicit liquor, sold by the appellant as a ground for enhancing his sentence from two years to five years rigorous imprisonment. There was absolutely no illegality or lack of jurisdiction in the order of the High Court and we would have unhesitatingly upheld the order of the High Court but for another reason. It is noted above that a number of appeals against the judgment and order by the High Court came before this Court at the instance of a number of accused. One of them happened to be accused No.25 who was the supplier of the illicit liquor to the appellant and from him the appellant had received the fatal supply that led to the death of Yohannan and sickness of a number of others. The trial court had convicted accused no.25 under Section 57A(2)(ii) of the Act and sentenced him to imprisonment for life and a fine of Rs. fifty thousand with the default sentence of simple imprisonment for six months. He was convicted and sentenced to undergo rigorous imprisonment for five years and a fine of rupees fifty thousand with the default sentence of imprisonment for six months under Section 57A(2)(i) of the Act. He was also convicted under Sections 57A(2)(iii), 55(a)(i) and 58 of the Act. The High Court had maintained the conviction and sentence passed by the trial court. This Court, however, by its judgment and order dated April 4, 2011 in Chandran v. State of Kerala[12], maintained the conviction of accused no.25 under the various provisions as recorded by the trial court and affirmed by the High Court. However, it accepted the plea made on behalf of accused no.25 to reduce his sentence from a life term to ten years imprisonment. Since this Court has deemed fit to reduce the sentence given to accused no.25 from a life term to ten years rigorous imprisonment, we feel that it will not be fair not to give the same concession to the appellant (accused no.41) who was the last and weakest link in the chain. We, accordingly, reduce his sentence from five

years rigorous imprisonment to three years rigorous imprisonment, being the minimum under Section 57A (2) (ii) of the Act. The fines imposed by the courts below for the different offences remain unaltered.

(8) This extract is taken from State of Rajasthan v. Vinod Kumar, (2012) 6 SCC 770 : (2012) 3 SCC (Cri) 299 : 2012 SCC OnLine SC 452 at page 776

9. The statutory requirement for awarding the punishment less than seven years is to record adequate and special reasons in writing. The dictionary meanings of the word "adequate" are commensurate in fitness, sufficient, suitable, equal in magnitude and extent, and fully. "**Special reasons" means exceptional; particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action.** Thus, in a case like the instant one, in order to impose the punishment lesser than prescribed in the statute, there must be exceptional reasons relating to the crime as well as to the criminal.

10. In Meet Singh v. State of Punjab [(1980) 3 SCC 291 : 1980 SCC (Cri) 684 : AIR 1980 SC 1141] , this Court while dealing with expression "special reasons" held that it means special to the accused concerned.

> "7. … The court has to weigh reasons advanced in respect of each individual accused whose case is taken up for awarding sentence. The word 'special' has to be understood in contradistinction to word 'general' or 'ordinary'. … Thus anything which is common to a large class governed by the same statute cannot be said to be special to each of them." (Meet Singh case [(1980) 3 SCC 291 : 1980 SCC (Cri) 684 : AIR 1980 SC 1141] , SCC p. 294, para 7)

Therefore, in the context of sentencing process, special reasons must be "special" to the accused in the facts and circumstances of the case in which the sentence is being awarded.

11. In Madhukar Bhaskarrao Joshi v. State of Maharashtra [(2000) 8 SCC 571 : 2001 SCC (Cri) 34 : AIR 2001 SC 147] this Court examined a similar provision under the Prevention of Corruption Act, 1988 which also contains a provision that the accused shall be imposed the punishment which "shall not be less than one year", however, a lesser punishment may be awarded recording the special reasons. The Court held : (SCC p. 579, paras 17-19)

> "17. … The proviso is in the form of a rare exception by giving power to the court for reducing the imprisonment period below one year only when

there are 'special reasons' and the law required that those special reasons must be recorded in writing by the court.

18. ... Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. ... Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with a very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. ...

19. In the present case, how could the mere fact that this case was pending for such a long time be considered as a 'special reason'? That is a general feature in almost all convictions under the PC Act and it is not a speciality of this particular case. It is the defect of the system that longevity of the cases tried under the PC Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated."

(emphasis added)

12. In State of J&K v. Vinay Nanda [(2001) 2 SCC 504 : 2001 SCC (Cri) 1293 : AIR 2001 SC 611] , while dealing with a similar issue, this Court held as under : (SCC pp. 509-10, paras 15-17)

"15. ... Where the mandate of law is clear and unambiguous, the court has no option but to pass the sentence upon conviction as provided under the statute. ...

16. The mitigating circumstances in a case, if established, would authorise the court to pass such sentence of imprisonment or fine which may be deemed to be reasonable but not less than the minimum prescribed under an enactment.

17. ... For imposing the minimum sentence the court has to record special reasons. 'Special reasons' have to be distinguished from 'good' or 'other reasons'. The fact that the convict had reached his superannuation is not a special reason. Similarly pendency of criminal case for over a period of time can also not be treated as a special reason."

(emphasis added)

13. In State of Karnataka v. Raju [(2007) 11 SCC 490 : (2008) 1 SCC (Cri) 787 : AIR 2007 SC 3225] , this Court dealt with a case of rape of a minor girl below 12 years of age, wherein the High Court reduced the sentence of the accused from seven years to three-and-a-half years. This Court held that the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' rigorous imprisonment, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' rigorous imprisonment can also be awarded. **The Court observed that socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded** for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of relevant circumstances in a dispassionate manner by the court.

19. In State of M.P. v. Bala [(2005) 8 SCC 1 : 2005 SCC (Cri) 1947 : AIR 2005 SC 3567] this Court while dealing with the issue observed : (SCC pp. 6-7, paras 11&17)

"11. The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason.

17. It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim."

(emphasis supplied)

23. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case.

(9) This extract is taken from Dalbir Singh v. State of Haryana, (2000) 5 SCC 82 : 2004 SCC (Cri) 1208 : 2000 SCC OnLine SC 886 at page 86

7. The conditions for applying Section 4 of the PO Act have been delineated in the commencing portion of the provision in the following words:

> "4. 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...."

8. Parliament made it clear that only if the court forms the opinion that it is expedient to release him on probation for his good conduct regard being had to the circumstances of the case. One of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence".

9. Thus Parliament has left it to the court to decide when and how the court should form such opinion. It provided sufficient indication that releasing the convicted person on probation of good conduct must appear to the court to be expedient. The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word expedient is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri [(1975) 1 SCC 138 : AIR 1974 SC 2233] a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus: (SCC p. 145)

> "Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)."

10. It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence…". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.

11. Courts must bear in mind that when any plea is made based on Section 4 of the PO Act for application to a convicted person under Section 304-A IPC, that road accidents have proliferated to an alarming extent and the toll is galloping day by day in India, and that no solution is in sight nor suggested by any quarter to bring them down. When this Court lamented two decades ago that "more people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country", the saturation of accidents toll was not even half of what it is today. So V.R. Krishna Iyer, J., has suggested in the said decision [Rattan Singh v. State of Punjab, (1979) 4 SCC 719 : 1980 SCC (Cri) 17] thus: (SCC p. 720, para 3)

> "Rashness and negligence are relative concepts, not absolute abstractions. In our current conditions, the law under Section 304-A IPC and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces."

12. In State of Karnataka v. Krishna [(1987) 1 SCC 538 : 1987 SCC (Cri) 198] this Court did not allow a sentence of fine, imposed on a driver who was convicted under Section 304-A IPC to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing the death of a human being. In that case this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing

death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

(10) This extract is taken from State of M.P. v. Najab Khan, (2013) 9 SCC 509 : (2014) 1 SCC (Cri) 153 : 2013 SCC OnLine SC 527 at page 512

7. The only point for consideration in this appeal is whether the High Court is justified in reducing the sentence to the period already undergone viz. 14 days, without providing any cogent reason for the conviction under Section 326 read with Section 34 IPC.

11. It is a settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases. In Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eye of the law. It was further observed as under: (SCC pp. 361-62, paras 7-8)

> "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: 'State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.' Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc."

12. This position was reiterated by a three-Judge Bench of this Court in Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [(2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368] wherein it was observed as follows: (SCC p. 281, paras 99-100)

"99. … The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

In that case, the Court further goes on to state that meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

13. In Jameel v. State of U.P. [(2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582] this Court reiterated the principle by stating that the punishment must be

appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: (SCC p. 535, paras 15-16)

> "15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.
>
> 16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

14. In Guru Basavaraj v. State of Karnataka [(2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594 : (2013) 1 SCC (Cri) 972] , while discussing the concept of appropriate sentence, this Court expressed that: (SCC pp. 744-45, para 33)

> "33. … It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored."

15. This Court in Gopal Singh v. State of Uttarakhand [(2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608 : JT (2013) 3 SC 444] held as under:

> "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence…."

Recently, the above proposition was reiterated in Hazara Singh v. Raj Kumar [(2013) 9 SCC 516 : (2013) 6 Scale 142] .

16. In view of the above, we reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

(11) This extract is taken from Baba Natarajan Prasad v. M. Revathi, (2024) 7 SCC 531 : (2024) 3 SCC (Cri) 375 : 2024 SCC OnLine SC 1710 at page 534

C.T. RAVIKUMAR, J.— Leave granted. Salmond defined "crime" as an act deemed by law to be harmful for society as a whole although its immediate victim may be an individual. Long-long ago, Kautilya said:"it is the power of punishment alone which when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king's son or the enemy, that protects this world and the next".

2. In the decision in State of Punjab v. Bawa Singh [State of Punjab v. Bawa Singh, (2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] , this Court held that **it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society,** it was further held.

3. In Bawa Singh case [State of Punjab v. Bawa Singh, (2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] , this Court referred to the earlier decisions in Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159] , and Shailesh Jasvantbhai v. State of Gujarat [Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] , with agreement, in paras 13 and 14 thereof, as under : (Bawa Singh case [State of Punjab v. Bawa Singh, (2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] , SCC pp. 446-47)

> "13. In Hazara Singh v. Raj Kumar [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159] this Court has observed that : (SCC p. 521, para 10)
>
> '10. ... it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the

judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict.'

This Court further observed that : (Hazara Singh case [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159] , SCC p. 521, para 11)

'11. ... The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.'

14. In Shailesh Jasvantbhai v. State of Gujarat [Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] , the Supreme Court opined that : (SCC pp. 361-62, paras 7-8)

'7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that:"State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending

circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.' "

4. Besides the decisions in Hazara Singh [Hazara Singh v. Raj Kumar, (2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159] and Shailesh Jasvantbhai case [Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] , this Court also referred to the decisions in Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat, (2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368] , State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1] , and State of M.P. v. Surendra Singh [State of M.P. v. Surendra Singh, (2015) 1 SCC 222 : (2015) 1 SCC (Cri) 603] therein. Thereupon, in para 17 of Bawa Singh case [State of Punjab v. Bawa Singh, (2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] this Court held thus : (Bawa Singh case [State of Punjab v. Bawa Singh, (2015) 3 SCC 441 : (2015) 2 SCC (Cri) 325] , SCC pp. 447-48)

"17. Recently, in State of M.P. v. Bablu [State of M.P. v. Bablu, (2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1] and State of M.P. v. Surendra Singh [State of M.P. v. Surendra Singh, (2015) 1 SCC 222 : (2015) 1 SCC (Cri) 603] , after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers."

5. Thus, the clamour or claim for comeuppance viz. deserved punishment proportionate to the gravity of the offence is a continuous and continuing demand based on civic sense and unfailing in categories of serious offences where more than individual interest is also involved, the above rule of proportionality in providing punishment is not failed as otherwise it will impact the society. At the same time, we may hasten to add that we shall not be understood to have held that imposition of sentence on such offenders shall be to satisfy the society and we are only on the point that following the rule of proportionality in imposing punishment would promote and bring order and orderliness in society.

6. The case on hand unfolds as grievance of grave deviation of the principle of sentencing thus laid down by this Court and it carries a consequential prayer for enhancement of punishment for conviction for the offence under Section 494 of the Penal Code, 1860 (for short "IPC"). The appellant complainant assails the common judgment [Baba Natarajan Prasad v. P. Gunasekaran, 2022 SCC OnLine Mad 9064] passed in Criminal Appeals Nos. 647 of 2021 and 635 of 2021, respectively, in the captioned appeals dated 26-8-2022 [Baba Natarajan Prasad v. P. Gunasekaran, 2022 SCC OnLine Mad 9064] of the High Court of Judicature at Madras to the extent it imposed only a flea-bite sentence for the conviction of the respondent-accused for the offence under Section 494IPC, and confirmed the acquittal of the co-accused of the said respondents. The fact is that despite the restoration of the conviction entered against them by the trial court after reversing their acquittal by the first appellate court and the consequential imposition of sentence, the respondents in both the appeals who were Accused 1 and 2 have not chosen to challenge the common judgment dated 26-8-2022 [Baba Natarajan Prasad v. P. Gunasekaran, 2022 SCC OnLine Mad 9064].

13. In the aforesaid circumstances, **the sole question surviving for consideration** is **whether the High Court was right in not restoring the sentence imposed for the conviction under Section 494IPC, by the trial court when it accepted the contentions of the appellant and reversed the acquittal of Accused 1 and 2 and restored the conviction entered on them by the trial court. In other words, the question is whether the High Court had shown undeserving leniency and sympathy to Accused 1 and 2 even after finding that they have committed the serious offence of bigamy punishable under Section 494IPC, and whether they were let off with a flea-bite sentence and whether an enhancement of sentence is invited?**

14. In this context, we may say that we are not oblivious of the position of law laid down by this Court in Dalbir Singh v. State of Punjab [Dalbir Singh v. State of Punjab, (1979) 3 SCC 745 : 1979 SCC (Cri) 848] . In the said decision this Court held that decision on question of sentence could never be regarded as precedent. Bearing in mind the said decision, we will proceed to consider the question based on the rule of proportionality in providing punishment followed by this Court. In this context, it is to be noted that under the impugned common judgment [Baba Natarajan Prasad v. P. Gunasekaran, 2022 SCC OnLine Mad 9064] the High Court after restoring conviction for the offence under Section 494IPC, **sentenced Accused 1 and 2 to undergo imprisonment till the rising of the court** and to pay a fine of Rs 20,000 each with default sentence to undergo simple imprisonment for a period of three months. It was also ordered that out of the total fine amount paid, a sum of Rs 20,000 shall be paid to the appellant as compensation.

15. We will consider the requirement or otherwise of enhancement of the corporeal sentence imposed on Accused 1 and 2 based on the settled principle of sentencing being followed by this Court that it is the solemn duty of the Court to strike a proper balance awarding sentence proportionate to the gravity of the offence committed by the accused concerned upon his conviction for serious offence(s). For considering the said question, it is only appropriate to look into the question whether the offence under Section 494IPC, is regarded as a serious offence. The appellant herein contended that a reading of Section 494IPC, would reveal that the said offence, if proved to have been committed, the offender deserves no leniency as it is a serious offence. To buttress the said contention, the learned Senior Counsel relied on the decision of this Court in Gopal Lal v. State of Rajasthan [Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170 : 1979 SCC (Cri) 401] , wherein this Court held that where the offence of bigamy is proved, the Court could not take a lenient view.

16. A reading of Sections 494 and 495IPC, would reveal that the legislature viewed the offence of bigamy as a serious offence. Though no minimum sentence is prescribed under Section 494IPC, the maximum sentence of imprisonment prescribed thereunder for a conviction thereunder is seven years of imprisonment of either description. It is also to be noted that the said offence is compoundable only by the husband or wife of the person so marrying with the permission of the Court. The same offence under Section 494IPC, with concealment of former marriage from person with whom subsequent marriage

is contracted would visit the offender with imprisonment of either description for a term which may extend to ten years and with fine. This offence, which is an aggravated form of bigamy, is non-compoundable. The decision in Gopal Lal case [Gopal Lal v. State of Rajasthan, (1979) 2 SCC 170 : 1979 SCC (Cri) 401] , and the prescription of maximum corporeal sentence imposable under Sections 494 and 495IPC, would undoubtedly suggest that the offence under Section 494IPC, has to be treated as a serious offence.

WHETHER FLEA - BITE SENTENCING IS INTRA VIRES?

17. When once it is found that an offence under Section 494IPC, is a serious offence, the circumstances obtaining in this case would constrain us to hold that the imposition of "imprisonment till the rising of the court" is not a proper sentence falling in tune with the rule of proportionality in providing punishment as mentioned hereinbefore.

18. It is a fact that earlier certain High Courts maintained a view that sentencing an accused to undergo "imprisonment till the rising of the court" would be no sentence at all, according to law. (See the decisions in Shew Shankar Singh v. State [Shew Shankar Singh v. State, 1968 SCC OnLine Cal 174] , Assan Musaliarakath Kunhi Bava, In re [Assan Musaliarakath Kunhi Bava, In re, 1928 SCC OnLine Mad 179 : AIR 1929 Mad 226] , and State of T.N. v. Kanniappan [State of T.N. v. Kanniappan, 1954 SCC OnLine Mad 357 : AIR 1955 Mad 424] .) In the said decisions of the Madras High Court, it was held that a sentence of "imprisonment till the rising of the court" is an evasion of the statutory provision. In this context, it is also to be noted that a contra view was taken by a Division Bench of the Madras High Court in Muthu Nadar, In re [Muthu Nadar, In re, 1945 SCC OnLine Mad 29 : AIR 1945 Mad 313] . The Division Bench held that unless the penal provision provides any fixed term as the minimum, the court has full discretion to pass a sentence of imprisonment for any period if it would be fit.

19. In the decision in Pralhad Dnyanoba Gajbhiye v. State of Maharashtra [Pralhad Dnyanoba Gajbhiye v. State of Maharashtra, 1994 SCC OnLine Bom 122] , the High Court of Bombay held that every confinement of person and every restraint of liberty of free men is imprisonment.

20. It is to be noted that taking into account the proviso to Section 418(1)CrPC, in the decision in Raveendran v. Food Inspector, Pinarayi Panchayat [Raveendran v. Food Inspector, Pinarayi Panchayat, 1977 SCC OnLine Ker 238 : 1977 KLT 155] , the High Court of Kerala held that the proviso to Section 418(1)CrPC, recognises sentence of detention till the rising of court is imprisonment of the description simple imprisonment.

21. We refer to the aforesaid decisions and provisions to say that now it cannot be said that imposing a sentence of "imprisonment till the rising of the court" is impermissible or an action amounting to evasion of statutory provision(s).

22. The said provision viz. Section 418(1)CrPC, and its proviso reads thus:

> "**418. Execution of sentence of imprisonment**.—(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by Section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:
>
> Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct."

23. The proviso to Section 418(1)CrPC, together with the penal provision under Section 494IPC, prescribing no minimum imprisonment, but only the maximum, would definitely make imposition of "imprisonment till the rising of the court" intra vires.

Whether such a flea-bite sentence is sufficient when a conviction is entered under Section 494IPC, only because no minimum sentence is prescribed thereunder -

24. This will take us to the next question as to whether such a flea-bite sentence is sufficient when a conviction is entered under Section 494IPC, only because no minimum sentence is prescribed thereunder. We have already

noted that in the matter of awarding sentence for conviction of an offence which may impact the society, it is not advisable to let off an accused after conviction with a flea-bite sentence. We may hasten to add that we are not oblivious of the decision of this Court in Adamji Umar Dalal v. State of Bombay [Adamji Umar Dalal v. State of Bombay, 1951 SCC 1106 : AIR 1952 SC 14] , wherein this Court held that zeal to crush the evil should not carry the Court away from its judicial mind, and the sentence should not be so unduly harsh as to defeat the ends of justice. **But then, the decision in State of Karnataka v. Krishna [State of Karnataka v. Krishna, (1987) 1 SCC 538 : 1987 SCC (Cri) 198] is also equally relevant. This Court, while enhancing the sentence observed, after characterising the punishment as unconscionably lenient or a "flea-bite" sentence, that consideration of undue sympathy in such cases will lead to miscarriage of justice and undermine confidence of the public in the efficacy of the criminal justice system. In short, there cannot be any doubt with respect to the position that in imposing sentence the Court is to take into consideration the nature of the offence, circumstances under which it was committed, degree of deliberation shown by the offender, antecedents of the offender up to the time of sentence, etc. and, in the absence of any exceptional circumstances, impose sentence in tune with the rule of proportionality in providing punishment though it falls within the realm of judicial discretion.**

25. Now bearing in mind all the aforesaid provisions and decisions, if the question whether Accused 1 and 2 are granted a proper sentence or what was granted was only a flea-bite sentence, we have no option but to hold that imposition of sentence of "imprisonment till the rising of the court" upon conviction for an offence under Section 494IPC, on them was unconscionably lenient or a flea-bite sentence.

26. Certain circumstances revealed from the evidence on record cannot go unnoticed while deciding the question of proper sentence. Earlier, the appellant herein filed HMOP No. 515 of 2012 before the Family Court, Coimbatore, seeking divorce. In the judgment of the trial court, taking note of the evidence adduced, it was noted that the first accused had filed a petition seeking interim maintenance in the above HMOP and based on a petition in that regard the Court had ordered the appellant to pay Rs 5000 per month to the first accused and she had received the maintenance till 13-7-2017. The evidence would further show that a child was born to the first and second accused from their

wedlock in November 2017. The evidence on record would reveal that on 22-1-2019, the first accused herself filed HMOP No. 84 of 2019 seeking dissolution of her marriage with the appellant. In such circumstances, it is evident that the first accused married the second accused while the marriage between the appellant and the first accused was subsisting and not only that, during its subsistence, she had also begotten a child through the second accused.

27. Taking into account all the circumstances, it can be said that undeserving leniency was shown in the case on hand. But then, taking into account the fact that the child born to the first and second accused was aged less than two years when the trial court passed the sentence and that no minimum term of imprisonment is prescribed for the conviction under Section 494IPC, and that the maximum sentence imposable for conviction thereunder is seven years, we are of the considered view that the trial court had virtually struck a balance in fixing the term of one year as the corporeal sentence. But then, taking note of the fact that the said child is now aged only about six years and the sentence for the conviction under Section 494IPC, can be of both descriptions. We think it appropriate to use our judicial discretion to modify the sentence imposed under the impugned judgment [Baba Natarajan Prasad v. P. Gunasekaran, 2022 SCC OnLine Mad 9064] . Accordingly, we modify the term of the sentence awarded to Accused 1 and 2 for the conviction under Section 494IPC, to six months each, making the nature of the sentence as simple imprisonment for the said period. We further modify the fine imposed by reducing the same from Rs 20,000 each to Rs 2000 each, as originally awarded by the trial court. Needless to say, that the default sentence therefor, awarded by the trial court i.e. to undergo simple imprisonment for three months is also restored. If in terms of the impugned judgment, Accused 1 and 2 had already deposited Rs 20,000, after making deduction in terms of the sentence of fine mentioned hereinbefore, the balance amount shall be refunded to them in accordance with the law. In the said circumstances, Accused 1 and 2 shall surrender before the trial court so as to serve out the unserved period of sentence imposed on them by this judgment.

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(12) This extract is taken from *Sunita Devi v. State of Bihar 2024 SCC OnLine SC 986* at page 33

SENTENCING

"If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella's illegitimate baby"

Nigel Walker.
British criminologist
Sentencing in a Rational Society 1 (1969)

Section 235 of the CrPC, 1973

"235. 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 questions of sentence, and then pass sentence on him according to law."

Section 360 of the CrPC, 1973

"360. 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 Penal Code, 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 subsection (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."

Section 3 of the Probation of Offenders Act, 1958

"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 Penal Code, 1860 or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Penal Code, 1860 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 offender, it is expedient so to do, then, notwithstanding 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 of the Probation of Offenders Act, 1958

"4. Power of court to 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 matter 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 offences 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 6 of the Probation of Offenders Act, 1958

"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 to in subsection (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."

28. Before passing the sentence on a convict, after rendering conviction, the Judge shall consider the feasibility of proceeding in accordance with the provisions of Section 360 of the CrPC, 1973 which speaks of releasing a convict on probation of good conduct or after admonition. Being a beneficial provision dealing with a reformative aspect, it is the bounden duty of the Judge to consider the application of this provision before proceeding to hear the accused on sentence. While doing so, the Judge has to hear the accused and the prosecution.

Similarly, the Court has to apply the salient provisions contained under Sections 3, 4 and 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as " **Act, 1958** "). If an offence is considered as an act against the society, the resultant action cannot be retributive alone, as equal importance is required, if not more, to be given to the reformative part. The ultimate goal is to bring the accused back on the rails, to once again be a part of society. Any attempt to ignore either Section 360 of the CrPC, 1973 or the provisions as mandated in the Act, 1958 would make their purpose redundant. It looks as if these laudable provisions have been lost sight of while rendering a sentence. The ultimate objective is to prevent the commission of such offences in future. It can never be done by a retributive measure alone, as a change of heart at the

behest of the accused is the best way to prevent an act of crime. Therefore, we have absolute clarity in our mind, that a trial court is duty bound to comply with the mandate of Section 360 of the CrPC, 1973 read with Sections 3, 4 and 6 of the Act, 1958 before embarking into the question of sentence. In this connection, we may note that sub-section (10) of Section 360 of the CrPC, 1973 makes a conscious effort to remind the Judge of the rigour of the beneficial provisions contained in the Act, 1958.

29. Hearing the accused on sentence is a valuable right conferred on the accused. The real importance lies only with the sentence, as against the conviction. Unfortunately, we do not have a clear policy or legislation when it comes to sentencing. Over the years, it has become judge-centric and there are admitted disparities in awarding a sentence.

30. In a country like ours, sentencing accused persons pursuant to a conviction, on a uniform pattern, would also be prejudicial. When it comes to sentencing, there are various factors such as age, sex, education, home life, social background, emotional and mental conditions, caste, religion and community that constitute aggravating and mitigating circumstances.

31. There is a distinction between knowledge and character. Knowledge is acquired, while character is formed. The formation of a person's character depends upon various factors. More often than not, a convict does not have control over the formation of his character. This leads to certain groups of people inheriting crime. In this connection, we can draw an analogy from nature itself. Before falling on the ground, rainwater remains the same. It is the soil which changes the character of the water. Rainwater partakes in the character of the soil, over which it does not have any control. The issues are extremely complex.

32. A decision of a Judge in sentencing, would vary from person to person. This will also vary from stage to stage. It is controlled by the mind. The environment and the upbringing of a Judge would become the ultimate arbiter in deciding the sentence. A Judge from an affluent background might have a different mindset as against a Judge from a humble one. A female Judge might look at it differently, when compared to her male counterpart. An Appellate

Court might tinker with the sentence due to its experience, and the external factors like institutional constraints might come into play. Certainly, there is a crying need for a clear sentencing policy, which should never be judge- centric as the society has to know the basis of a sentence.

33. Sentencing shall not be a mere lottery. It shall also not be an outcome of a knee-jerk reaction. This is a very important part of the Fundamental Rights conferred under Articles 14 and 21 of the Constitution of India. Any unwarranted disparity would be against the very concept of a fair trial and, therefore, against justice.

34. Various elements such as deterrence, incapacitation and reformation should form part of sentencing. There is a compelling need for a studied scrutiny of sentencing, to address in particular the reformative aspect, while maintaining equality between different groups. Perhaps, much study is also required on the occurence of repeat offences, which could be attributable to certain groups. The nexus between particular types of offences and the offenders forming their own groups has to be taken note of and addressed.

35. The concept of intuitive sentencing is against the rule of law. A Judge can never have unrestrictive and unbridled discretion, based upon his conscience formed through his understanding of the society, without there being any guidelines in awarding a sentence. The need for adequate guidelines for exercising sentencing discretion, avoiding unwanted disparity, is of utmost importance.

36. Courts do take into consideration the mitigating and aggravating circumstances. As we have dealt with illustratively, no research has been undertaken for constituting what are aggravating and mitigating circumstances. While it would be appropriate to follow '*beyond reasonable doubt*' standard in adjudicating aggravating circumstances, the '*balance of probability*' standard is required while construing mitigating circumstances. Courts may also be guided by the conduct of the convict during pre-trial stage, either under incarceration or otherwise. A report may well be called for from the designated authority. The ultimate idea is to eliminate discretion on the part of the Court, which

obviously leads to disparity.

37. As we discuss the issue we have flagged, we understand that the issue is an extremely complex one and it is the duty of the States and the Union of India to deal with the situation by duly considering the three different modes discussed above. There has to be a conscious discussion and debate over this issue which might require constituting an appropriate Commission on Sentencing consisting of various experts and stakeholders. We illustratively suggest "the members from the legal fraternity, psychologists, sociologists, criminologists, executives and legislators". Societal experience would come handy in coming to a correct conclusion. What we have at present is an imposition of a sentence by way of a legislation. There are obvious errors and lacunae, which have been pointed out in the preceding discussion. It may also be imperative for a court to have an assessment to be made by an independent authority on the conduct and behaviour of the accused for the purpose of deciding the sentence. The guidelines which have been proposed by this Court may also be considered. This would include the creation of a competent authority tasked to give a report and its composition.

Manoj v. *State of M.P.*, (2023) 2 SCC 353

"230. The strength of "precedent" and "consistency" is perhaps, therefore, *lowest* when it comes to matters of sentencing, as long as it is within the confines of legality and resulting in "principled sentencing". In other words, the judicial incongruence when it relates to sentencing, would in fact be a positive indicator, rather than a negative one, *provided it is still within the well-defined contours of "principled" sentencing*. For sentencing in capital offences, discretion to arrive at individualised sentences is encouraged, but must be constrained by the "rarest of rare" principle, wherein the court considers aggravating circumstances of the crime, and mitigating circumstances of the criminal (a "liberal and expansive" construction of the latter), which in turn must inform their consideration of whether the option of life imprisonment is unquestionably foreclosed owing to an impossibility [Held to be "probability" and not "impossibility" in *Rajendra*

Pralhadrao Wasnik
v. *State of Maharashtra*, (2019) 12 SCC 460 : (2019) 4 SCC (Cri)
420] to reform.

xxx xxx xxx

233. Therefore, "individualised, principled sentencing" — based on *both* the crime and criminal, with consideration of whether reform or rehabilitation is achievable (held to be "*probable*" in *Rajendra Pralhadrao Wasnik* [*Rajendra Pralhadrao Wasnik* v. *State of Maharashtra*, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420]), and
consequently whether the option of life imprisonment is unquestionably foreclosed — should be the only factor of "commonality" that must be discernible from decisions relating to capital offences. With the creation of a new sentencing threshold in *Swamy Shraddananda (2)* [*Swamy Shraddananda (2)* v. *State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113], and later affirmed by a Constitution Bench in *Union of India* v. *V. Sriharan* [*Union of India* v. *V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri)

695], of life imprisonment without *statutory* remission (i.e. Articles 72 and 161 of the Constitution are still applicable), yet another option exists, before imposition of death sentence. However, serious concern has been raised against this concept, as it was upheld by a narrow majority, and is left to be considered at an appropriate time.

xxx xxx xxx

Practical guidelines to collect mitigating circumstances

248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing

psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh* [*Bachan Singh* v. *State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]. Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

250. Next, the State, must in a *time-bound manner*, collect *additional* information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the

accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — *a fresh report* (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will *further* evidence the reformative progress, and reveal post-conviction mental illness, if any.

252. It is pertinent to point out that this Court in *Anil* v. *State of Maharashtra* [*Anil* v. *State of Maharashtra* , (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] has in fact directed criminal courts to call for additional material : (SCC p. 86, para 33)

> "*33.* ... Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. *We, therefore, direct that the criminal courts, while dealing with the offences like Section 302IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case* ."
>
> (emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

38. Our thought process has been ignited from a book titled " *Discretion, Discrimination and the Rule of Law, Reforming Sentencing in India*", authored by Mr. Mrinal Satish, published by the Cambridge University Press, (2017). The learned author has drawn extensively from the sentencing policy in Israel. Upon a thorough reading of the book, it presents an excellent insight into sentencing policy. The Israeli model takes into consideration numerous factors compiled in the form of guidelines to the Judge, in sentencing an accused.

39. We have also benefitted by looking into the policy adopted in other countries, such as in Canada, New Zealand and UK.

CANADA

Criminal Code (Canada)

Purpose and Principles of Sentencing

Section 718 of the Criminal Code (Canada)

"Purpose

718 The **fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:**

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community."

(emphasis supplied)

Section 718.1 of the Criminal Code (Canada)

"Fundamental principle

718.1 A sentence **must be proportionate to the gravity of the offence** and the **degree of responsibility of the offender."**

(emphasis supplied)

Section 718.2 of the Criminal Code (Canada)

"Other sentencing principles

718.2 A court that imposes a sentence **shall also take into consideration the following principles:**

(a) a sentence should be increased or reduced to account **for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,**

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

(iii.2) evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

(v) evidence that the offence was a terrorism offence,

(vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*, and

(vii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders."

(emphasis supplied)

Procedure and Evidence

Section 720 of the Criminal Code (Canada) "Sentencing proceedings

720(1) A court shall, as soon as practicable after an offender has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed.

Court-supervised programs

(2) The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to attend a treatment program approved by the province under the supervision

of the court, such as an addiction treatment program or a domestic violence counselling program."

(emphasis supplied)

Section 721 of the Criminal Code (Canada) "Report by probation officer

721(1) Subject to regulations made under subsection (2), where an accused, other than an organization, pleads guilty to or is found guilty of an offence, a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing a sentence or in determining whether the accused should be discharged under section 730."

(emphasis supplied)

NEW ZEALAND

Sentencing Act, 2002, New Zealand

Section 3 of the Sentencing Act, 2002

"Part 1 **Sentencing purposes and principles, and provisions of general application**

Preliminary provisions

3 Purposes

The purposes of this Act are—

(a) to set out the purposes for which offenders may be sentenced or otherwise dealt with; and

(b) to promote those purposes, and aid in the public's understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with offenders; and

(c) to provide a sufficient range of sentences and other means of dealing with offenders; and

(d) to provide for the interests of victims of crime."

(emphasis supplied)

Section 7 of the Sentencing Act, 2002

"Purposes and principles of sentencing

7 Purposes of sentencing or otherwise dealing with offenders

(1) The purposes for which a court may sentence or otherwise deal with an offender are—

(a) to hold the offender accountable for harm done to the victim and the community by the offending; or

(b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or

(c) to provide for the interests of the victim of the offence; or

(d) to provide reparation for harm done by the offending; or

(e) to denounce the conduct in which the offender was involved; or

(f) to deter the offender or other persons from committing the same or a similar offence; or

(g) to protect the community from the offender; or

(h) to assist in the offender's rehabilitation and reintegration; or

(i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

(2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to."

(emphasis supplied)

Section 8 of the Sentencing Act, 2002

"8 Principles of sentencing or otherwise dealing with offenders

In sentencing or otherwise dealing with an offender the court—

(a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and

(b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and must impose the maximum penalty prescribed for the offence if the offending is within

the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(c) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(d) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and

(e) must take into account any information provided to the court concerning the effect of the offending on the victim; and

(f) must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A; and

(g) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and

(h) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and

(i) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10)."

(emphasis supplied)

Section 9 of the Sentencing Act, 2002

"9 Aggravating and mitigating factors

(1) In sentencing or otherwise dealing with an offender

the court must take into account the following aggravating factors to the extent that they are applicable in the case:

xxx xxx xxx

(2) In sentencing or otherwise dealing with an offender the court must take into account the following mitigating factors to the extent that they are applicable in the case:

xxx xxx xxx

(3) Despite subsection (2)(e), the court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).

xxx xxx xxx

(4) Nothing in subsection (1) or subsection (2)—

(a) prevents the court from taking into account any other aggravating or mitigating factor that the court thinks fit; or

(b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the court might take into account."

Section 9A of the Sentencing Act, 2002

"9A Cases involving violence against, or neglect of, child under 14 years

(1) **This section applies if the court is sentencing or otherwise dealing with an offender in a case involving violence against, or neglect of, a child under the age of 14 years.**

(2) **The court must take into account the following aggravating factors to the extent that they are applicable in the case:**

(a) the defencelessness of the victim:

(b) in relation to any harm resulting from the offence, any serious or long-term physical or psychological effect on the victim:

(c) the magnitude of the breach of any relationship of trust between the victim and the offender:

(d) threats by the offender to prevent the victim reporting the offending:

(e) deliberate concealment of the offending from authorities.

(3) The factors in subsection (2) are in addition to any factors the court might take into account under section 9.

(4) Nothing in this section implies that a factor referred to in subsection (2) must be given greater weight than any other factor that the court might take into account."

(emphasis supplied)

Section 24 of the Sentencing Act, 2002 "24 Proof of facts

In determining a sentence or other disposition of the case, a court—

(a) may accept as proved any fact that was disclosed by evidence at the trial and any facts agreed on by the prosecutor and the offender; and

(b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.

(2) **If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by one party and disputed by the other,—**

(a) the court must indicate to the parties the weight that it would be likely to attach to the disputed fact if it were found to exist, and its significance to the sentence or other disposition of the case:

(b) if a party wishes the court to rely on that fact, the parties may adduce evidence as to its existence unless the court is satisfied that sufficient evidence was adduced at the trial:

(c) the prosecutor must prove beyond a reasonable doubt the existence of any disputed aggravating fact, and must negate beyond a reasonable doubt any disputed mitigating fact raised by the

defence (other than a mitigating fact referred to in paragraph (d)) that is not wholly implausible or manifestly false:

(d) the offender must prove on the balance of probabilities the existence of any disputed mitigating fact that is not related to the nature of the offence or to the offender's part in the offence:

(e) either party may cross-examine any witness called by the other party.

(3) **For the purposes of this section,— aggravating fact means any fact that—**

(a) the prosecutor asserts as a fact that justifies a greater penalty or other outcome than might otherwise be appropriate for the offence; and

(b) the court accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case

mitigating fact means any fact that—

(a) the offender asserts as a fact that justifies a lesser penalty or other outcome than might otherwise be appropriate for the offence; and

(b) the court accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case."

(emphasis supplied)

Section 25 of the Sentencing Act, 2002

"25 Power of adjournment for inquiries as to suitable punishment

(1) **A court may adjourn the proceedings in respect of any offence after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with for any 1 or more of the following purposes:**

(a) to enable inquiries to be made or to determine the most suitable method of dealing with the case:

(b) to enable a restorative justice process to occur,

or to be completed:

(c) to enable a restorative justice agreement to be fulfilled:

(d) to enable a rehabilitation programme or **course of action to be undertaken** :

(da) to determine whether to impose an instrument forfeiture order and, if so, the terms of that order:

(e) to enable the court to take account of the offender's response to any process, agreement, programme, or course of action referred to in paragraph (b), (c), or (d).

(2) **If proceedings are adjourned under this section** or under section 10(4) or 24A, a Judge or Justice or Community Magistrate having jurisdiction to deal with offences of the same kind (whether or not the same Judge or Justice or Community Magistrate before whom the case was heard) **may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates."**

(emphasis supplied)

Section 26 of the Sentencing Act, 2002 "26 Pre-sentence reports

(1) Except as provided in section 26A, **if an offender who is charged with an offence punishable by imprisonment is found guilty or pleads guilty, the court may direct a probation officer to prepare a report for the court in accordance with subsection (2).**

(2) A pre-sentence report may include—

(a) information regarding the personal, family, whanau, community, and cultural background, and social circumstances of the offender:

(b) information regarding the factors contributing to the offence, and the rehabilitative needs of the offender:

(c) information regarding any offer, agreement, response, or measure of a kind referred to in section 10(1) or the outcome of any other

restorative justice processes that have occurred in relation to the case:

(d) **recommendations on the appropriate sentence or other disposition of the case, taking into account the risk of further offending by the offender:**

(e) **in the case of a proposed sentence of supervision, intensive supervision, or home detention, recommendations on the appropriate conditions of that sentence:**

(f) **in the case of a proposed sentence of supervision, intensive supervision, or home detention involving 1 or more programmes,—**

(i) a report on the programme or programmes, including a general description of the conditions that the offender will have to abide by; and

(ii) confirmation that the report has been made available to the offender:

(g) in the case of a proposed sentence of supervision, intensive supervision, or home detention involving a special condition requiring the offender to take prescription medication, confirmation that the offender—

(i) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of the medication and any known risks; and

(ii) consents to taking the prescription medication:

(h) in the case of a proposed sentence of community work,—

(i) information regarding the availability of community work of a kind referred to in section 63 in the area in which the offender will reside; and

(ii) recommendations on whether the court should authorise, under section 66A, hours of work to be spent undertaking training in basic work and living skills:

(i) in the case of a proposed sentence of intensive supervision or possible release conditions for a

proposed sentence of imprisonment for 24 months or less, the opinion of the chief executive of the Department of Corrections as to whether—

(i) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this paragraph) would facilitate or promote the objective of reducing the risk of the offender reoffending while subject to the sentence or release conditions; and

(ii) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and

(iii) a further condition requiring the offender to submit to electronic monitoring of his or her compliance with a whereabouts condition is warranted, having regard to the likelihood of non-compliance with the whereabouts condition.

(3) The court must not direct the preparation of a report under subsection (1) on any aspects of the personal characteristics or personal history of an offender if a report covering those aspects is readily available to the court and there is no reason to believe that there has been any change of significance to the court since the report was prepared.

(4) **On directing the preparation of a report under subsection (1), the court may indicate to the probation officer the type of sentence or other mode of disposition that the court is considering, and may also give any other guidance to the probation officer that will assist the officer to prepare the report.**

(5) If a court has directed the preparation of a report under subsection (1), the probation officer charged with the preparation of the report may seek the further directions of the court on—

(a) any particular item of information sought by the court; or

(b) any alternative sentence or other mode of disposition that may be considered by the court

if it appears that the sentence or other mode of disposition under consideration is inappropriate."

(emphasis supplied)

Section 31 of the Sentencing Act, 2002

"31 General requirement to give reasons

(1) **A court must give reasons in open court—**

(a) **for the imposition of a sentence or for any other means of dealing with the offender; and**

(b) **for the making of an order under** Part 2.

(2) The reasons may be given under this section with whatever level of particularity is appropriate to the particular case.

(3) Nothing in this section limits any other provision of this or any other enactment that requires a court to give reasons.

(4) **The fact that a court, in giving reasons in a particular case, does not mention a particular principle in** section 8 **or a particular factor in** section 9 **or a consideration under** section 10 **or** section 11 **is not in itself grounds for an appeal against a sentence imposed or an order made in that case."**

(emphais supplied)

UNITED KINGDOM

Coroners and Justice Act, 2009

(UK) PART 4

SENTENCING

CHAPTER 1

Sentencing Council For England and Wales

Section 118 of the Coroner and Justice Act, 2009

"118 Sentencing Council for England and Wales

(1) There is to be a Sentencing Council for England and Wales.

(2) Schedule 15 makes provision about the Council." Schedule 15

THE SENTENCING COUNCIL FOR ENGLAND AND WALES

Constitution of the Council

Schedule 15, Para 1 of the Coroner and Justice Act, 2009

"1 The Council is to consist of—

(a) 8 members appointed by the Lord Chief Justice with the agreement of the Lord Chancellor ("judicial members");

(b) 6 members appointed by the Lord Chancellor with the agreement of the Lord Chief Justice ("non-judicial members")."

Appointment of a person to chair the Council etc.

Schedule 15, Para 2 of the Coroner and Justice Act, 2009

"2 The Lord Chief Justice must, with the agreement of the Lord Chancellor, appoint—

(a) a judicial member to chair the Council ("the chairing member"), and

(b) another judicial member to chair the Council in the absence of the chairing member."

Appointment of judicial members

Schedule 15, Para 3 of the Coroner and Justice Act, 2009

"3(1) A person is eligible for appointment as a judicial member if the person is—a judge of the Court of Appeal,

(a) a puisne judge of the High Court,

(b) a Circuit judge,

(c) a District Judge (Magistrates' Courts), or

(d) a lay justice.

(2) The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.

(3) When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office- holders who exercise criminal jurisdiction in England and Wales.

(4) "Judicial office-holder" has the meaning given by section 109

(4) of the Constitutional Reform Act, 2005 (c. 4)."

Appointment of non-judicial members

Schedule 15, Para 4 of the Coroner and Justice Act, 2009

"4(1) A person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the

following areas—

(a) criminal defence;

(b) criminal prosecution;

(c) policing;

(d) sentencing policy and the administration of justice;

(e) the promotion of the welfare of victims of crime;

(f) academic study or research relating to criminal law or criminology;

(g) the use of statistics;

(h) the rehabilitation of offenders.

(2) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions."

Section 120 of the Coroner and Justice Act, 2009

Guidelines

"**120 Sentencing guidelines**

(1) In this Chapter "sentencing guidelines" means guidelines relating to the sentencing of offenders.

(2) A sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.

(3) The Council must prepare—

(a) sentencing guidelines about the discharge of a court's duty under section 73 of the Sentencing Code (reduction in sentences for guilty pleas), and

(b) sentencing guidelines about the application of any rule of law as to the totality of sentences.

(4) The Council may prepare sentencing guidelines about any other matter.

(5) Where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.

(6) The Council must consult the following persons about the draft guidelines—

(a) the Lord Chancellor;

(b) such persons as the Lord Chancellor may direct;

(c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of

Commons as the Lord Chancellor directs);

(d) such other persons as the Council considers appropriate.

(7) In the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.

(8) In any other case, the Council may, after making such amendments, issue them as definitive guidelines.

(9) The Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.

(10) Subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).

(11) When exercising functions under this section, the Council must have regard to the following matters—

(a) the sentences imposed by courts in England and Wales for offences;

(b) the need to promote consistency in sentencing;

(c) the impact of sentencing decisions on victims of offences;

(d) the need to promote public confidence in the criminal justice system;

(e) the cost of different sentences and their relative effectiveness in preventing re-offending;

(f) the results of the monitoring carried out under section 128."

Section 121 of the Coroner and Justice Act, 2009 "121 Sentencing ranges

(1) When exercising functions under section 120, the Council is to have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in subsections (2) to (9).

(2) The guidelines should, if reasonably practicable given the nature of the offence, describe, by reference

to one or more of the factors mentioned in subsection (3), different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed.

(3) Those factors are—

(a) the offender's culpability in committing the offence;

(b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;

(c) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in question.

(4) The guidelines should—

(a) specify the range of sentences ("the offence range") which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence, and

(b) if the guidelines describe different categories of case in accordance with subsection (2), specify for each category the range of sentences ("the category range") within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.

(5) The guidelines should also—

(a) specify the sentencing starting point in the offence range, or

(b) if the guidelines describe different categories of case in accordance with subsection (2), specify the sentencing starting point in the offence range for each of those categories.

(6) The guidelines should—

(a) (to the extent not already taken into account by categories of case described in accordance with subsection (2)) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating

factors which the Council considers are relevant to such a consideration,

(b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within paragraph (a) or (b) as the Council considers to be of particular significance in relation to the offence or the offender.

(7) For the purposes of subsection (6)(b) the following are to be disregarded—

(a) the requirements of section 73 of the Sentencing Code (reduction in sentences for guilty pleas);

(b) sections 74, 387 and 388 of the Sentencing Code (assistance by defendants : reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;

(c) any rule of law as to the totality of sentences.

(8) The provision made in accordance with subsection (6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range.

(9) The provision made in accordance with subsections (2) to (8) may be different for different circumstances or cases involving the offence.

(10) The sentencing starting point in the offence range—

(a) for a category of case described in the guidelines in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for cases within that category—

(i) before taking account of the factors mentioned in subsection (6), and

(ii) assuming the offender has pleaded not guilty,

and

(b) where the guidelines do not describe categories of case in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence—

(i) before taking account of the factors mentioned in subsection (6), and

(ii) assuming the offender has pleaded not guilty."

Section 128 of the Coroner and Justice Act, 2009

"128 Monitoring

(a) The Council must—monitor the operation and effect of its sentencing guidelines, and

(b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).

(2) The Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—

(a) the frequency with which, and extent to which, courts depart from sentencing guidelines;

(b) the factors which influence the sentences imposed by courts;

(c) the effect of the guidelines on the promotion of consistency in sentencing;

(d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

(3) When reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—

(a) a summary of the information obtained under subsection (1)(a), and

(b) a report of any conclusions drawn by the Council under subsection (1)(b)."

Sentencing Act, 2020 (UK)

Section 3 of the Sentencing Act, 2020 "DEFERMENT OF SENTENCE

3 Deferment order

(1) In this Code **"deferment order" means an order**

deferring passing sentence on an offender in respect of one or more offences until the date specified in the order, to enable a court, in dealing with the offender, to have regard to—

(a) the offender's conduct after conviction (including, where appropriate, the offender's making reparation for the offence), or

(b) any change in the offender's circumstances.

(2) A deferment order may impose requirements ("deferment requirements") as to the offender's conduct during the period of deferment.

(3) Deferment requirements may include—

(a) requirements as to the residence of the offender during all or part of the period of deferment;

(b) restorative justice requirements."

(emphais supplied)

Section 5 of the Sentencing Act, 2020 "5 Making a deferment order

(1) A court may make a deferment order in respect of an offence only if—

(a) the offender consents,

(b) the offender undertakes to comply with any deferment requirements the court proposes to impose,

(c) if those requirements include a restorative justice requirement, section 7(2) (consent of participants in restorative justice activity) is satisfied, and

(d) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to make the order.

(2) The date specified under section 3(1) in the order may not be more than 6 months after the date on which the order is made.

(3) A court which makes a deferment order must forthwith give a copy of the order—

(a) to the offender,

(b) if it imposes deferment requirements that include a restorative justice requirement, to every person

who would be a participant in the activity concerned (see section 7(1)),

(c) where an officer of a provider of probation services has been appointed to act as a supervisor, to that provider, and

(d) where a person has been appointed under section 8(1)(b) to act as a supervisor, to that person.

(4) A court which makes a deferment order may not on the same occasion remand the offender, notwithstanding any enactment."

(emphais supplied)

Section 6 of the Sentencing Act, 2020 "6 Effect of deferment order

(1) Where a deferment order has been made in respect of an offence, the court which deals with the offender for the offence may have regard to—

(a) the offender's conduct after conviction, or

(b) any change in the offender's circumstances."

(emphais supplied)

Section 30 of the Sentencing Act, 2020 "Pre-sentence reports

30 Pre-sentence report requirements

(1) This section applies where, by virtue of any provision of this Code, the pre-sentence report requirements apply to a court in relation to forming an opinion.

(2) If the offender is aged 18 or over, the court must obtain and consider a pre-sentence report before forming the opinion unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report.

(3) If the offender is aged under 18, the court must obtain and consider a pre-sentence report before forming the opinion unless—

(a) there exists a previous pre-sentence report obtained in respect of the offender, and

(b) the court considers—

(i) in the circumstances of the case, and

(ii) having had regard to the information contained in that report or, if there is more than one, the most recent report, that it is unnecessary to obtain a pre-sentence report.

(4) Where a court does not obtain and consider a pre-sentence report before forming an opinion in relation to which the pre-sentence report requirements apply, no custodial sentence or community sentence is invalidated by the fact that it did not do so."

(emphasis supplied)

Section 31 of the Sentencing Act, 2020

"31 Meaning of "pre-sentence report" etc. "Pre-sentence report"

(1) In this Code "pre-sentence report" means a report which—

(a) is made or submitted by an appropriate officer with a view to assisting the court in determining the most suitable method of dealing with an offender, and

(b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State."

40. We find that an exhaustive and detailed exercise has been done by New Zealand. What we have discussed has already been substantially taken into consideration by the aforementioned countries. As it is an important aspect which has escaped the attention of the Government of India, we recommend the Department of Justice, Ministry of Law and Justice, Government of India, to consider introducing a comprehensive policy, possibly by way of getting an appropriate report from a duly constituted Sentencing Commission consisting of experts in different fields for the purpose of having a distinct sentencing policy. We request the Union of India to respond to our suggestion by way of an affidavit within a period of six months from today.

41. In this connection, we would like to place on record the 47th Report of the Law Commission of India, Report by the Committee on Reforms of Criminal Justice, Chaired by Dr.

Justice V.S. Malimath, (2003), Report by the Committee on Draft National Policy on Criminal Justice, Chaired by Dr. N.R. Madhava Menon and decisions rendered by this Court to indicate an emerging need for a distinct sentencing policy

47th Report of the Law Commission of India

CHAPTER 7

DESIRABILITY OF AMENDMENTS -

SUBSTANTIVE POINTS COMMON TO ALL

THE ACTS CONSIDERED

"7.44. A proper sentence is a composite of many factors, including the nature of the offence, the circumstances-extenuating or aggravating-of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education. home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved."

Report by the Committee on Reforms of Criminal Justice System, Chaired by Dr. Justice V.S. Malimath, Vol. I March (2003)

"14.4 NEED FOR SENTENCING GUIDELINES

14.4.1 The Penal Code, 1860 prescribed offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum may be prescribed. **The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge who exercises the discretion. In some**

countries guidance regarding sentencing option and sentencing guideline laws are given in the penal code. There is need for such law in our country to minimise uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.

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(4) Nothing in subsection (1) or subsection (2)—

14.4.5 **Sometimes the courts are unduly harsh while at other times they are liberal. We have already adverted to aspects which Supreme Court said are relevant in deciding as to what are the rarest of the rare cases for imposing death sentence. However, even in such matters uniformity is lacking. In certain rape cases acquittals gave rise to public protests. Therefore in order to bring about certain regulation and predictability in the matter of sentencing, the Committee recommends a statutory committee to lay guidelines on sentencing under the Chairmanship of a former Judge of Supreme Court or a former Chief Justice of a High Court experienced in criminal law with other members representing the Prosecution, legal profession, Police, social scientist and women representative."**

(emphasis supplied)

Report of the Committee on Draft National Policy on Criminal Justice, Chaired by Prof. (Dr.) N.R. Madhava Menon, July, 2007

"5.5 PUNISHMENTS AND SENTENCING

5.5.1 Given the limited options in the choice of punishments now available in the statutes and the inadequate deterrence in the sentence often imposed, there has to be some serious rethinking on the philosophy, justification and impact of sentencing in criminal justice administration. The quantums of fines were prescribed more than a century ago. Imprisonment in practice is reduced to a much shorter period through a variety of practices even when it is for life. **Equality in sentencing is not pursued vigorously and there is no serious attempt yet to standardize the sentencing norms and**

procedures. The objects of punishment are not served in many cases as a result of such incoherent sentencing practices.

5.5.2 What are the policy choices in the matter of punishments and determination of its quantum to achieve the goals of criminal justice? Can community service be made an effective punishment and how is it to be organized? How to make probation a dominant part of disposition in criminal cases? How to achieve equality and fairness in sentencing? These and many related questions are not even raised in India seriously with the result the system seems to be functioning as an end in itself.

There has to be a radical change in the law and practice of sentencing if punishment should serve the cause of criminal justice. A set of sentencing guidelines may be statutorily evolved to make the system consistent and purposeful. Fixing mandatory minimum sentences may not be a worthwhile solution. More importantly, the policy should be to increase the choices in punishment and make the other functionaries of the system (like probation service and correctional administration) to have a voice in the sentencing process and administration.

In short, sentences and sentencing require urgent attention of policy planners if criminal justice is to retain its credibility in the public mind.

5.5.3 A national policy on sentencing shall seek to address the following issues:

(i) The need for criminal law to offer more alternatives in the matter of punishments instead of limiting the option merely to fines and imprisonment.

(ii) In respect of the quantum of punishments, the need for constant review to ensure that it meets the ends of justice and disparity is reduced in similar situations.

(iii) A policy to avoid short-term imprisonments and to prevent overcrowding of jails and other custodial institutions, to be rigorously pursued at all levels.

(iv) The need for specific sentencing guidelines to be evolved in respect of each punishment.

(v) Also the need for an institutional machinery

involving correctional experts for fixing proper punishment."

(emphasis supplied)

Precedents

Dhananjoy Chatterjee v. *State of W.B.*, (1994) 2 SCC 220

"**14.** In recent years, the rising crime rate — particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. **Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.**

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

(emphasis supplied)

Swamy Shraddananda (2) v. *State of Karnataka* , (2008) 13 SCC 767

"**48.** That is not the end of the matter.**Coupled with the deficiency of the criminal justice system is the lack of consistency in the sentencing process even by this Court. It is noted above that *Bachan Singh* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] laid down the principle of the rarest of rare cases. *Machhi Singh* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], for practical application crystallised the principle into five definite categories of cases of murder and in doing so also considerably enlarged the scope for imposing death penalty. But the unfortunate reality is that in later decisions neither the rarest of rare cases principle nor the *Machhi Singh* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] categories were followed uniformly and consistently.**

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50. The same point is made in far greater detail in a report called "*Lethal Lottery, The Death Penalty in India*" compiled jointly by Amnesty International India and People's Union for Civil Liberties, Tamil Nadu & Puducherry. The report is based on the study of the Supreme Court judgments in death penalty cases from 1950 to 2006. One of the main points made in the report (see Chapters 2 to 4) is about the Court's lack of uniformity and consistency in awarding death sentence.

51. The truth of the matter is that the question of death penalty is not free from the subjective element and the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the Judges constituting the Bench.

52. The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in

which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court in giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal justice system. Thus the overall larger picture gets asymmetric and lopsided and presents a poor reflection of the system of criminal administration of justice. This situation is a matter of concern for this Court and needs to be remedied."

(emphasis supplied)

Soman v. *State of Kerala*, (2013) 11 SCC 382

"15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In *State of Punjab* v. *Prem Sagar* [(2008) 7 SCC 550 : (2008) 3 SCC (Cri) 183] this Court acknowledged as much and observed as under : (SCC p. 552, para 2)

> "*2.* In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines."

Section 354 of the CrPC, 1973

"354. Language and contents of judgment.—

(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Penal Code, 1860 or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Penal Code, 1860 and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision."

42. Section 354 of the CrPC, 1973 though merely deals with the language and contents of judgment, also sheds light on the fact that a judgment contains two distinct parts, wherein the first part deals with the conviction and the second deals with the sentence. Sub-section (1)
(c) of the aforesaid provision has to be understood to

mean that a Judge is expected to consider the aggravating and mitigating circumstances. In such view of the matter, sub-section (3) of the aforesaid provision is more clarificatory, keeping in mind the nature of the offence committed. As a convict is heard on sentence, it follows that any decision on sentence has to indicate the reasons for exercise of judicial discretion by the Judge.