II – WORKSHOP

KRISHNA DISTRICT

TOPIC - VIII

REMEDIES, RELIEFS, SENTENCING AND PUNISHMENTS

<table>
<thead>
<tr>
<th>S.No</th>
<th>Name of the Officer</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sri Dr. SSS. Jaya Raju, IX Addl. District Judge, Machilipatnam</td>
<td>1-15</td>
</tr>
<tr>
<td>2</td>
<td>Smt. B.Krishna Veni, Prl. Senior Civil Judge, Machilipatnam.</td>
<td>16-20</td>
</tr>
<tr>
<td>3</td>
<td>Smt. D. Sony, Spl.J.M.F.C for Trying P &amp; E Offences, Machilipatnam.</td>
<td>21-41</td>
</tr>
<tr>
<td>4</td>
<td>Sri P. Tirumala Rao, III Metropolitan Magistrate, Vijayawada.</td>
<td>42-62</td>
</tr>
<tr>
<td>5</td>
<td>Sri S. Srikanth, Junior Civil Judge, Vuyyuru.</td>
<td>63-79</td>
</tr>
</tbody>
</table>
Introduction:

No one is born a criminal. the environment or the economic conditions, or the circumstances may force a person to commit crime. Therefore, crime has to be defined in its practical context by keeping in view the manifold implications of the social, cultural and psychological factors. Durkheim\(^1\) emphasizes that crime is a natural phenomenon of the society as everyone in the society is involved in some form or the other of deviant behavior at sometime or the other. According to this view, no society is free from crime as crime is a part and parcel of each and every society. Further, Tennenbaum\(^2\) says: "Crime is the web and woof of society, it is not an accident...not an accident." Ramsay Clark\(^3\) says "Crime is not a just sordid happening..... it is human beuaher." Michel and Adler add, "Crime is that behavior which is prohibited by the criminal code."\(^4\) And Millar holds, "Crime is the omission or commission of an act, which the law forbids."\(^5\) Parmelee\(^6\) defines crime as an act of forbidden and punished by the law, which is almost always immoral according to the prevailing ethical standards.

James Williams, considers that crime is greed of the individual to possess something valuable which he will try to take by illegal means, if he is unable to obtain it legally. Stephen comments, a crime is a violation of right considered in reference to evil tendency of such violation as regards the community at large.\(^7\) Rammohan\(^8\) views crime as an act of violation of law and criminal is a person who commits such acts. Becker\(^9\) says that crime is a form of disorder, a breakdown of consensus and morality which are products of the social system. According to the sociological conceptions of crime is an act which is socially harmful. According to Sutherland, the hypothesis of

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differential association is that criminal behavior is learned in association with those who define such behavior favorably and in isolation from those who define it unfavorably, and that a person in an appropriate situation engages in such criminal behavior if, and only if, the weight of the favorable definitions exceeds the weight of the unfavorable definitions.10

Merton giving a slightly different sense to it and uses that concept of criminal behavior.11 When a society holds out goals (such as wealth) with the suggestion that all could and should attain them, yet does not make them equally available, those unable to attain these goals by legitimate means may be driven to use illegitimate means, which cause to involve in criminal activities. Merton’s theory explains delinquency as a result of the gap between the available means and the goals for which the delinquent is strongly motivated by his society. A valid and feasible explanation of crime is made by Sutherland as cultural deviance, Merton as anomie and Durkheim as social control. Thus, the crime means fundamentally a violation of conduct-norms. Reckless12 observes In advanced societies which have transcribed their rules of conduct into universal law, crime is a violation of the Code.

But the more valid, organizing and central aspects of crime are summerised by the report of the United States Presidents’ Commission of Law enforcement, as it states, "In a sense, social and economical conditions ‘cause’ crime."13 The social concept of crime and criminals has changed and is changing fast. "In olden days, it is said that every crime was treated as a major offence whereas now we classify them as Felonies which are defined in the statutes as the most serious crime, such as robbery, burglary, homicide, larceny, rape, auto-theft and similar offences such as misdemeanors which are less serious than felonies."14

It is widely believed that in the primitive society there was no crime, except, ‘wrong’ which was known as ‘tort’ and the modern concept of crime has originated from this term ‘tort’ only. According to Steinmetz and Oppenheimer15 there were crimes in primitive society such as treason, witchcraft, offences against religion, incest, breaches of hunting rules etc. But research in etymology shows that even among the primitive societies, there

were acts of danger and threat to the groups in the form of violation of taboos, customs and beliefs. In primitive times crime was mainly attributed to the influence of evil spirits and the major purpose of punishment was to placate the Gods.

The criminal is not a criminal unless he comes under the grip of the law as the laws in vogue represent the will of the society. According to Garofalo,\textsuperscript{16} criminal law should include the description of the acts specifically forbidden by law. Laws change from time to time according to the values of the society, therefore the concept of crime also changes from time to time. Man is not inherently guilty, but he is circumstantially a knave. Beccaria and Bentham were not wrong when they said that the criminal was one of the ordinary population who yielded to temptation. Lambrose differed from this and said that the criminal was different from the normal man. Goring found a criminal mentally inferior and having special characteristics. Thus, one after another, criminologists have been contradicting each other. No body can deny that the background and antecedents of every individual criminal is necessary to determine the causes of crime. It is necessary because the human nature as well as environment conditions are responsible for the development and deterioration of personality complex. If anyone is unable to adjust himself to society, it implies that he is deemed to be a failure and may turn out to be anything -- insance, criminal pervert, introvert, and so on. It will be worth nothing to quote Haikewral\textsuperscript{17} who says, "From the social point of view crime or delinquency implies such behavior of the individual as interferes with the order of human relationships which society regards as a primary condition for its existence." Therefore, in the name of, and for the sake of innate and inherent goodness of man, he should be given proper judicious treatment inside the prison. It means that prisons should function as reforms homes, and no one should step out of prison as a deprived man.

The present paper on the subject ‘Remedies, Reliefs, Sentencing and Punishments’ is a sub-topic on the subject of ‘framing of charges and writing of Judgments in Criminal Cases’. For convenience and systematic discussion the topic is presented in the following manner:

\textbf{A) Remedies,} \\
\textbf{B) Reliefs,} \\
\textbf{C) Sentencing,} \\
\textbf{D) Punishments,}

\textsuperscript{16} Garofalo, R. Cariminology, Little Brown Bosten, 1940.
\textsuperscript{17} Haikerwal ‘Comparative Study of Penology’, p.2 (Quoted from Varma, P. “Crime, Criminal and Convict”, Ram Prasad & Sons, Agra, 1963, p.23.)
The only object of the law is to approximation of justice and it is well settled principle that the concept of justice is the supreme. The judgment in criminal case is final stage and end product of the trial. The judgment in general comprises of mainly two parts: (a) determination of guilt of an accused in respect to the charges leveled against him and (b) punishment and sentencing of an accused for the offence he had committed. As per the Indian Constitution, the Liberty of an individual is paramount important and great concern in our judicial system. In criminal cases the sentence follows the conviction. It must be born in mind that the Courts shall ensure that the sentence consists of element of reformation of the criminal and repartition of the victim and also the law and order of the society at large. Thus, punishment awarded to the offender must meet the above objects and the Court has bounden duty to impose proper and reasonable punishment considering the socio-economic factors, aggravating and mitigating circumstances of the case, submission of the offender at the time of hearing of the accused before awarding the punishment etc., There is no hard and fast rule that can be laid down to determine the right or proper measurement of the punishment. For instance, a simple imprisonment of a day or an hour to a respectable person in the society may have deterrent effect than a serious and sever punishment to a hard core criminal.

A) Remedies and B) Reliefs:

Many a times the criminal offences are also civil wrongs and the victims in theory are entitled to sue their offenders in a civil Court for damages. But very few people, who are victims of crime, are prepared to initiate civil action against the offenders since they have to take further burden of pursuing that person for redress through the civil Courts. This involves the victims of crime to further spend their time and money in pursuing the civil litigation so initiated. If the criminal Courts make an award of compensation to the victims while imposing an appropriate punishments on the offender, at least in cases which are factually and straight forward, it will mitigate further owes of the victims of the crime and will also mitigate or undo the evil effects of the wrongful act committed by the offender shall be concomitant that of the punishment.

Power to make compensation order is contained in Sec. 357 Cr.P.C which empowers the Court to order payment of compensation. For instance, following the judgment of the Hon’ble Supreme Court in Goa Plast (P) Ltd, V. Chico Unsula D’Souja (2004 (1) ALT (Crl.) 135 (SC) sentence can be modified directing the accused to pay compensation of twice the amount of cheque to the complainant in N.I.Act cases. The Court can direct the accused person to pay compensation to the person who has suffered loss or injury as held in case
of Siby V. Vilasini (1998 (2) (Crl.) 312 (Ker.). While convicting an accused the Court is empowered to award a compensation to the victim for the injury caused to him by the accused as held in the case of Joshi V. State of Kerala, 1995 (2) ALT (Crl.) 694 (Ker.).

The object of Sec. 357 that was introduced by Act of 5 of 2009, is to provide compensation payable to the persons who are entitled to recover the damages from the person sentenced. The Court can direct the accused to pay the compensation or the State to the victims where the compensation awarded under the above proviso is not adequate and where the case had ended in acquittal or discharge, and the victims is required to be rehabilitated. In Suresh V. State of Haryana, (2015 (1) ALD (Crl.) 522 (SC) ), the Hon’ble Supreme Court had taken judicial notice of the fact that 25 out of the 29 states have notified victim compensation scheme and directed the other states to notify their schemes within one month from the date of receipt of a copy of the order. Later, State of Andhra Pradesh framed such scheme towards compliance of the Order of the Apex Court. At present the definition of ‘Victim’ has been expanded to cover and include within its scope the victims who are sexually exploited for commercial purposes, trafficking, sufferers of acid attack and also a dependent who is leading life on the income of the victim and who require rehabilitation. The guidelines were given to the District Legal Services Authority (for short DLSC) in Shaik Ahmed Basha @ Bash a V. Staet of Andhra Pradesh (2007 (1) ALD (Crl.) 257. The Hon’ble Supreme Court in Harikrishana V. State of Haryana (1989 Cri.L.J 116(120) while dealing with the scope of sub-section (3) of Sec.357, had observed that Courts have seldom invoked such provision and it empowers the Court to award compensation to victims while passing judgment of conviction.

It is important to mention here that under Sec.5 of the Probation of Offenders Act, 1958, the Courts are empowered to direct the release of an offender under Sec.3 or Sec.4 and may at the same time further direct the offender to pay compensation as the Court thinks reasonable for loss of injury caused to any person while commission of the offence and also such costs of the proceedings as the Court thinks reasonable.

Another important provision is Art.39-A of the Constitution which provides free legal aid to the citizens to ensure justice, and right to life and liberty as enshrined under Art.21 of the Constitution. For quick reference the above two articles are extracted here below:-

**Art.39-A: Equal justice and free legal aid:** The State shall secure that the operation of the legal system promotes Justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable
legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

**Art.20:- Protection in respect of conviction for offences:** (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

The object of the Art.39-A is to ensure opportunities for securing justice which cannot be denied to any citizen by reason of economic or other disabilities. The procedure is provided under Section 304 Cr.P.C and free legal aid is available to the accused also. After all remedies of revision, and appeal are exhausted, then the government may suspend the sentence of imprisonment or remit either the whole or part of the sentence or commute the sentence from sentence to death to any other punishment, from sentence of imprisonment for life from sentence rigorous imprisonment to simple imprisonment for a term which the person might have been sentenced or fine and the sentences of imprisonment. The power of suspension, remission, commutation and such other reliefs can be exercised only where the person convicted is in the custody of jail. Therefore, no application for suspension of sentence or remission in the form of imprisonment or commutation or sentences can be made to the government unless the accused surrenders to the jail.

**Remission** of sentence is also available to the convict which actually means waiver of the entire period of the balance of imprisonment which is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial. When once remission is granted, it is not revocable. Granting of remission is the policy of the governments. Remissions may be by restricting the sentence to a period of imprisonment already undergone.

**Commutation** of sentence means, altering the sentence from one grade to a lower grade. Rigorous imprisonment may be converted into simple imprisonment or imprisonment can be converted into fine. Death sentence may be converted into life sentence to life sentence to a sentence of 14 years imprisonment and the sentence of 14 years may be reduced to any term of imprisonment. The word “remission” is explained in the case of **Ram Deo Chauhan @ Raj Nath Chauhan V. State of Assam (AIR 2001 SC 2231)** and it was further held that remission of sentence does not mean acquittal. The
Court will not normally interfere with the remission of sentence (Ashok Kumar Barik V. State of Orissa, 1998 (8) SCC 519) as grant of remission under Sec.432 Cr.P.C vests absolutely with the appropriate government to grant, except those mentioned in Sec.433-A of Cr.P.C.

C) Sentencing:

It is necessary to examine the provisions that deal with the hearing of sentence under the following provisions of Criminal Procedure Code.

(i) Pre-sentence hearing under Sec.235(2) – If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law. As per settled principle hearing must be given on question of sentence since it is mandatory. It is contemplated by Sec.235(2) that 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, nature of information of collected to be collected at Pre-sentencing hearing. Court must play proactive role to record all relevant information. Some of the information relating to crime to be culled out from the stage prior to sentencing under Sec. 313 Cr.P.C. Circumstances not pertinent in conviction also pay an important role in selection of sentence. List of mitigating circumstances also play an important role in selection of sentence. As interpreted in Bachen Singh's Case (AIR 1980 SC 898) Sec. 235(2) Cr.P.C provides for ‘bifurcated trial ‘ which means the case of the accused has to be regularly heard like a trial and not a mere empty formality or an exercise in an idle ritual.

It is statutory obligation cast on the Court in a case where both Sec.235(2) r/w Sec.354 (3) apply in view of the law laid down in Bachan Singh case. The law declared by the Supreme Court shall be binding on all courts within territory of India under Art.141. The mandate of Art.141 of the Constitution cannot be ignored either by trial Court or High Court as the above twin provisions of the Code assimilate the concept of 'procedure established by law' within the meaning of Art.21 of the Constitution. According to Art.21, no person shall be deprived of his life and liberty except according to procedure established by law. ( Rameshbhai Chandubhai Rathod V. State of Gujarat, 2009 (5) SCJ 309). In Menaka Gandhi V. Union of India and another (AIR 1978 SC 597) as well as in the former case the constitutionality of death penalty was upheld on the doctrine of ‘due process’, While considering the death penalty of convicts in Nirbhaya rape and death case, the Hon’ble Supreme Court, in a voluminous judgment consists of 430 pages clearly opined that the attitude of the offenders amounted to “bestial proclivity” and that the incident “sounds like a story from a different world where humanity is treated
with irreverence”. The three-Judge Bench comprising Justice Dipak Misra, Justice R. Banumathi and Justice Ashok Bhushan then dismissed the Appeals filed by the convicts, confirming the capital punishment awarded to them by the Trial Court. In a landmark ruling on punishment in multiple rape-cum-murder cases, the Supreme Court on Tuesday, July 19, 2016 held that a trial court could award multiple jail terms followed by a life sentence to those convicted of heinous crimes and order these to run consecutively. The provisions under Sec.235 and 354 of Cr.P.C are engrafted to see that proper appreciation of the evidence takes place and proper opportunity of hearing as regards to punishment be afforded. Where minimum sentence was imposed, question of providing opportunity under Sec.235(2) Cr.P.C. does not arise. If the Sessions Court finds that there is no evidence against the accused to prove the charges, acquittal of the accused is under Sec.235(1) but not under 235(2). Object of the action under Sec.235(2) is humanist and sentencing decision taken without following the requirement of the above proviso in letter and spirit may have to be replaced by an appropriate order. The circumstances pleaded by the accused must be taken into account for taking lenient sentences as held in Kamalakar Nandram Bhasker V. State of Maharashtra, (2004 (1) ALT (Crl.) 118 SC).

Sec.235(2) Cr.P.C also refer as ‘unless proceeds in accordance with the provisions of Section 360’ as such it is apt to refer Sec.360 at this juncture. The Court can pass an Order under the referred proviso to release the accused on probation of good conduct or after admonition. As per provisions of Sec.360, an accused could be dealt with under this section, subject to conditions therein. If the accused is not dealt with under the provisions of Sec.360, the Court shall record its special reasons as to why the proviso is not applied as held in Kamalakshu V. State of Kerala (1998 (1) ALT (Crl.) 42 (Ker.).

Sec. 248(2) : After conclusion of the trial, if the Magistrates finds the accused guilty, but does not proceed in accordance with the provisions of Secs.325 or Sec.360, he shall, after hearing the accused on the question of sentence, pass sentence against him according to law.

Sec.255(2) : This section empowers the magistrate to pass sentence upon the accused according law, if he does not proceed in accordance with the provisions of Sec.252 or Sec.360 after finding the accused guilty.

Sec.300: This provision deals with the right of the accused against “Double Jeopardy” Art. 20 (2) of the constitution and Sec. 300 of Cr.P.C lays down that no person shall be prosecuted and punished for the same offence more than once:- The right of the accused against Double Jeopardy is the recognition of the latin maxim - “Nemo debit bis vexari pro eadem causa” that means no man shall be punished or put in Jeopardy or Peril twice for the same offence.
**Sec. 325(3)**: According to this proviso a procedure is laid when the Magistrate cannot pass sentence sufficiently severe. The chief-Judicial Magistrate to whom the proceedings are submitted, may if he thinks fit, examine the parties, recall and examine any witness who has already given evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and according to law.

**Sec.353 (7)**: Sub-section (7) provides that no judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

**Secs.354 (3) and (4)**: This provision deals with the language and contents of judgment. Proviso 3 of the Section says that 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. Clause (4) of Sec.354 says that 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.

**Sec.465**: In determining whether any error, or irregularity in any proceedings under this Code has occasioned a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in proceedings. The appellate Court may reverse by reason if any error, omission or irregularity is being committed by the trial Court.

**D) Punishments:**

Punishment as a concept presupposes guilt or proved responsibility for the offence committed. The early objectives of punishment were only retribution and deterrence, first one is to satisfy the victim and the second one is to protect the society. The purpose of punishment is not purely punitive, but re-socialization of the individual offender. According to Haag18 "Punishment" is a deprivation or suffering imposed by law and int he modern times our courts impose three basic penalties; death, imprisonment, and fines. The word "punishment" means "to cleanse", i.e. cleansing of body is necessary for every type of disease, but here it is related to guilty. It is a form of infliction of pain on the criminal for his misdeeds. Thus, punishment has its basis in the spirit of Vengeance and Vindication. Vengeance is self-serving as it is

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The Holy Bible rejects Vengeance and the Lord, speaking through Moses, Commands (Leviticus, 19:18): "Thou shall not avenge" and again (Romans, 12:19 ‘Vengeance is mine I will repay’, and (Hebrews 10:30); ‘Vengeance belongeth unto me; I will recompense’. Revenge is absorbed in the enforcement of Laws by authority through retribution here and thereafter which the Bible supports, (Genisis 9:16): "Whose Sheddeth man’s blood, by man shall his blood be shed’. (K.J.V). When it becomes regulated by custom, the vengeance will take the shape of nascent law. The vindication is expressed by imposing the punishment on the wrong doer to restore or to reassert the values which are destroyed.

The methods of punishment are: (a) Retribution, (b) Deterrence, (c) Correction, and (d) Re-socialization or rehabilitation. in modern times, it is based mostly on the idea of correction, reformation, and rehabilitation of the offender delinquent. In pre-modern societies, punishments were meted outside the prison. In the course of the evolution of civilization, imprisonment became the chief mode of punishment. The evolution of punishment can be seen in the following way:

(a) **RETRIBUTION:**

This theory is the oldest and its consideration with all the theories of punishment involves an examination into the grounds upon which its infliction is justified. It is often maintained that retribution for an injury is the result of a universal and natural impulse. It has been contended that the prevalence of this impulse provides justification for retributive punishment. Since punishment is imposed for a past offence, it can be more but never less than retribution. And as retribution refers to past events, so does revenge. It was pointed out that retribution is a sharply disparaged and a disguised form of vengeance. Retribution is imposed by Courts after a guilt plea or trail in which the accused is found guilty of committing a crime. Retributive punishment is dispensable to the maintenance of any social order - just or unjust. According to the retribution theory, punishment is justified as an end in itself. In other words the commission of the crime is the ground of punishment. We look to the past rather than the future. We deal with the offence rather than the offender.

(b) **DETERRENCE:**

The principle and the most established utilitarian grounds for correction is that of deterrence which, in recent years, has frequently been designated as prevention. Criminologists, for generations, have placed so much
trust in the policy of deterrence in which they regarded deterrence and prevention as virtual synonyms. Deterrence simply refers to the prospect (or the memory) of pain and also seems to refer to the employment of terror such as a stimulus. In fact, there was a time when mankind was so brutal and uncouth that only drastic demonstrations seemed to suffice as stimuli against proposed crime. It makes man brutal and thus contributes to aggressiveness instead of reducing it.

Generally speaking there are two forms of deterrence, general deterrence and special deterrence, the former is the employment of a public notice that a given deterrent will follow wrong doing. It is a message addressed to the public at large. The punishment of the offender deters prospective offenders and others by telling them: "This will happens to you if you violate the Law." But the later 'deterrence' has its terror aspect and simply relies deprivation i.e. deprivation of freedom. This deprivation of freedom is necessarily accompanies by a certain regimentation in the sense that unavoidable human beings are placed into an enforced community. The following forms of punishments will have deterrent effect on the society and public. They are:

(i) Death – punishment for death may be award in the following offences under I.P.C. Waging or attempting to wage war or abetting the waging of war against the Government of India (Sec.121), Abatement of mutiny actually committed (Sec.132), giving or fabricating false evidence upon which an innocent person suffers death (Sec.194), murder (Sec.302), abatement of suicide of a child, an insane or intoxicated person (Sec.305), attempt to murder by a person under sentence of imprisonment for life, if hurt is caused (Sec.307), and dacoity with murder (Sec.396). The Sessions Courts have discretionary powers in passing death sentence which is also called “Capital Punishment” which occupies highest grade of punishment. The capital punishment is imposed in extreme and rarest of rare cases. The capital punishment is imposed on an accused who commits a per-planned and premeditated murder in cold blood. Most of the developed countries have removed death sentences from their respective Code due to pressure and agitations and recommendations from Sociologists, Reformists, Criminologists and International Human Right activists.

(ii) Imprisonment for Life: In the Code of Criminal Procedure Amendment Act, 1955 “transportation for life” was substituted with “imprisonment for life”. It is a notion of the general public that imprisonment for life means only 14 years and the convict shall be released as soon as the 14 years period is lapsed which is a wrong presumption.; The life convict is not entitled automatic release on completion of fourteen years imprisonment. Unless on special
occasions, the Government may pass an order considering the good behavior and conduct of the convict remitting the balance of imprisonment for life.

(iii) **Rigorous Imprisonment or simple imprisonment:** There are certain offences in the IPC for which rigorous imprisonment is imposed by the Courts. For instance, House trespass (Sec.439), and fabricating false evidence with intent to procure conviction of an offence which is capital by the Law (Sec.194 of IPC). During rigorous imprisonment the convict is put to do hard labor such as digging earth, cutting stones, agriculture, grinding corn, drawing water, carpentry etc., However, the Hon'ble Apex Court suggested that the offenders imposed hard labor should be paid minimum wages. In *Sunil Batra V. Delhi Administration (AIR 1980 SC 1675)* the Hon'ble Supreme Court observed that hard labor in Sec.53 has to receive a humane meaning. Simple imprisonment is imposed for the lighter offences covered under Secs 168–169, Secs. 172-174, 178, 341, and 500 as they are not serious offences.

(iv) **Solitary Confinement:** Sec.73 of IPC empowers the Courts even to impose solitary confinement to certain persons and in relation to certain offences which is part of the imprisonment. A harsh and hardened convict may be confined in a separate cell to correct his conduct and he is isolated from other inmates of the prison and all connections are severed with other world. The only object of such punishment is to reform the hardened and habitual offender and in order to experience him with loneliness, However, Sec.74 limits the solitary confinement as it would have serious and adverse affects on the human beings and creates mental derangement as such In any case it shall not exceed 14 days at a time with intervals between the periods. When the imprisonment awarded exceeds three months, such confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of Solitary confinement of not less duration than such periods.

(v) **Enhanced punishment:** Sec.75 of the Code permits to impose enhanced punishment for certain offences under Ch.XII or Ch.XVII of IPC, after previous convictions. According to the above section whoever, having been convicted by a Court in India, of an offence punishable under Ch.XII or Ch.XVII of the Code, with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of the above two Chapters with imprisonment for life, or to imprisonment of either description for a term which may extend to ten years. Secs. 230 to 263-A of IPC explains about the offences relating to Coins and Government Stamps. Secs. 378 to 462 of Ch.XVII of IPC, explains offences against property.

(vi) **Forfeiture of properties:** It is divestiture of specific property without compensation in consequence of some default or act of forbidden by law. The Courts may order of forfeiture of property of the accused in certain occasions.
In white collar crimes where a government employees or any private person accumulates black money and black assets, and there is no genuine answer and proof for such money and properties with such person the, Court may award for forfeiture of property. Similarly, in cases of smugglers, goondas, anti-national personalities etc, the Government or the Courts are empowered to forfeiture of property of such anti-social elements.

(vii) **Fine:** Courts may impose fine along with or without imprisonment at the time of passing sentence. The Code mentions the punishment of fine for several offences. Sec.63 says that the amount of fine shall not be excessive, where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited.

(viii) **Sentence of imprisonment for non-payment of the fine:** Sec. 64 lays down that in every case of an offence punishable with imprisonment as well as fine, without fine or with fine only, the Court is competent to direct the accused to pay fine, in default of payment of the fine, the offender shall suffer imprisonment for a certain term. Sec.65 lays down that default period shall not exceed one-fourth of the term of imprisonment which the maximum fixed for the offence, if the offence be punishable with imprisonment as well s fine. Sec.66 and 67 also deals with the non-payment of fine by the offenders.

(c) **CORRECTION/REFORMATION:**

In the contemporary society, punishment is based mostly on the idea of correction or reformation of the criminal. According to K. T. Thomas J “Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good, but circumstances transform him into a criminal” As such, the modern penologists look into the social and mental frame work of the offender. Within the orbit of this frame work, we can observe the good or bad heritage, environment, physical make-up and personality. It is not the physical person of the individual who is to be dealt with or penalized, but it is the mind which has to be reformed or rehabilitated and the same is widely recognized that the individual treatment is necessary in order to reform the criminals.

(d) **RESOCIALISATION AND REHABILITATION:**

Galtung says that rehabilitation of the criminal means preventing him from his criminal acts by providing opportunities for legal living in the general sphere of society, and the re-socialization, on the other hand, it means that the criminal is provided with a chance to make himself good by availing the opportunities that are present in the prison. Newly internalized normative structures and reformed personality prevent him from engaging in criminal acts that would violate his own new standards of proper and expected
behaviour. On the basis of the above explanation a conclusion may be drawn with regard to re-socialization. Since the majority of our correctional efforts end at best in re-socialization and rehabilitation of the convict, the inmate of prison is expected to lead law-abiding conduct upon his release. Hence, the objective of imprisonment should be reformation and rehabilitation. The criminal is more in need of basic training in the direction of rehabilitation as his present drives which are harmful to the society. The objective of reformation or rehabilitation is to see that a convict is placed in a better condition in every way than when he was received.

Mahatma Gandhi suggests "Punish or hurt the crime but not the criminal". Till the end of 19th century correctional institutions kept inflicting punishment upon the criminal without arresting the roots of crime itself. Later, this idea was changed with the realization that the 'cause' is the decisive factor for any criminal to commit a crime. Punishment must prevail in the society for its harmony and safety. At the same time the offender must also be treated and reformed so that the criminal may not commit the crime again after undergoing the punishment. Mahatma Gandhi says "Criminals should be treated as patients in hospitals and the jails should be hospitals admitting such patients for treatment and care." He was saying exactly what modern penologists and criminologist propagating today. The penologists hold that the criminal should not be punished the restoration of his behavior and also a sufficient amount of reformation is necessary. Thus, in recent times the attitudes towards accused and the methods of treating offenders have been drastically changed.

Probation and Parole or furlough are seen as useful methods in this regard. Probation and Parole as viable alternatives to imprisonment demand careful selection, intensive supervision and professional guidance in order to be effective techniques in rehabilitating or reforming the offenders.

(a) PROBATION

Probation under section 360 Cr.P.C. is the suspension of sentence by the court in accordance with the offender's own acknowledgment of obligation conditionally. The probation system was started in Boston by a shoemaker named John Augustus, who secured the release of drunkards by paying fine and helped them refrain from drinking. This system took birth in 19th century. This programme got a legal sanction when the state of Massachusetts passed the first probation law in 1878. In India the word probation was first used in Criminal Procedure Code, 1898, under Section 562 (old Cr.P.C) as per such provision, offenders have the provision for the release
on probation for good conduct. The Government of India passed Central Probation of Offenders Act in 1958, which aimed at selected categories of offenders and it has emerged as one of the most progressive features of the modern correctional system. The probation approach is based on the realization that crime is a serious phenomenon which can be tackled in the community itself and thus many offenders can be salvaged and rehabilitated in society. Probation draws its strength from this realization that sentence should fit the offender and not merely the offence. In State of Karnataka V. Muddappa (1999(9) Supreme 415) it was held that there is no statutory bar for application of Sec..4 of the P.O.Act to an offence under Sec. 304 Part-II where the maximum punishment is neither death nor imprisonment for life.

(b) **PAROLE & FURLOUGH:**

Parole is a system of releasing the prisoners under supervision before the expiry of the prison sentence. They are, however, not officially released from the prison till the end of the parole period. If they violate the rules of parole they can be sent back to the prison. A parolee unlike the probation serves is a portion of his prison sentence. Parole and Furlough being distinct and granted on different grounds, no discrimination exist in not treating period spent on parole as part of sentence while the period of furlough treated as such, especial especially when statutory rule does not provide so, even if condition laid down for release on parole and furlough are one and the same. **Rayapudi Lakshmi V. Superintendent, Central Prison, 2001(2) ALT 471** it was held that period of parole shall not be treated as part of sentence. The parole system, for the first time, was introduced by Maconcillie in England as well as in America. These countries learnt one great truth; what ever may be the nature of the crime, the personality in the man remains same. If we develop a sense responsibility in the prisoner there is every chance of saving him. The parole system came into being with the opening of the Elmire Reformation in 1876. All the states in America had adopted this by 1944. The parole system comes under the purview of Section 432 of the Criminal Procedure Code of India.

According to Krishna Iyer.J “Every saint has a past, every sinner has a future”. The purpose of parole is to aid the offender to organize his life in conformity with the standards of the community. Parole is considered to be more flexible to the corrective endeavors in the free society. Many of the trained correctional social worlders are employed as probation and parole officers to undertake the responsibility of supervising the probationers and parolees and to help them abide by the conditions of their bond which the courts or the parole boards prescribes for good and satisfactory conduct.
Criminal law provides various remedies and reliefs to victims and accused who are main stakeholders at various stages. My topic is confined to remedies and reliefs provided at the end of the case. The main object of criminal law is to award punishment to accused on the event of his conviction. Conviction and sentence form part of judgment. Conviction means finding guilty, and sentence means quantum of punishment.

Let us examine the meanings of words, remedy, relief, sentence and punishment.

`Remedy` means mechanism provided to enforce right. It is a mode prescribed by law to enforce a duty or redress a wrong.

`Relief` means final result in remedial action. It is a thing which a court gives in the final judgment.

`Sentence` means judicial determination of the punishment to be inflicted on a convicted person.

`Punishment` means penalty for commission of crime. Various kinds of penalties are provided under section 53 of IPC.

**Remedies and reliefs available to victims**

Criminal law aims to reform the offenders for their effective re-assimilation in the social mainstream from which they deviated. No equal importance is given to victims of crime who have suffered loss or injury. State takes action against the wrong doers as a part of its duty to maintain peace and harmony in the society. The traditional view was that grievance of the victim is sufficiently satisfied by conviction and sentence of the accused. However, this view has been changed in the modern society. During the recent past the idea of payment of compensation to victims of crime has gained importance. The accused injures the victim mainly apart of State. So, victims need some compensation for the loss or injury caused to them by the accused. Such a step would increase value to criminal administration of justice. Mere conviction and sentence does not console the victims. So, law recognized the plait of the victims and incorporated sections 357, 357A, 357B and 357C in Cr.P.C. Section 357 of Cr.P.C empowers the court to order convicted person to pay compensation and costs to the victims.
Section 357: Order to pay compensation:

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

a) in defraying the expenses properly incurred in the prosecution;

b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

c) when any person is convicted of any offence for having caused the death of another person of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona-fide purchaser of such property for the loss of the same if such property is restored to the possession of

c) the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for Remedies, Reliefs, Sentencing and Punishment presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

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

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.

When a court imposes sentence of fine, it can order the whole or part of fine recovered to be applied in meeting the expenses for prosecution, in payment of compensation for any loss or injury caused to the victims.
Section 357 also empowers the court to order compensation where fine does not form part of sentence. According to section 357 (3) of Cr.P.C court can direct the convicted person to pay compensation to the victims.

**Section 357A: Victim compensation scheme :-**

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the Trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in Remedies, Reliefs, Sentencing and Punishment acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section(4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

**Section 357B: Compensation to be in addition to fine under Section 326A or Section 376D of Indian Penal Code:-**

The compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of Indian Penal Code.
Section 357C: Treatment of victims:

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

Fine imposed on convicts under section 326A and 376D of IPC shall be paid to the victims of those offences and the compensation payable by the Government under 357A of Cr.P.C shall be in addition to that fine.

In fixing the amount of compensation the courts should take into account the nature of crime, the injury suffered, the capacity of the accused and etc. The compensation amount can be recovered as fine in the light of section 421 and 431 of Cr.P.C. Court can pass imprisonment in default of payment of compensation. It was held in R.Mohan Vs.A.K.Vijaya Kumar reported in 2012 Crl.L.J 3953.

As per section 359 in the trial of non-cognizable offence instituted upon complaint where the court finds guilty of accused, it can direct the convicted to pay costs incurred by the complainant in conducting prosecution.

Court can order the state to pay compensation to the victims on failure of police in conducting prosecution. Presently, section 357A provides scheme for payment of compensation to the victim even though the prosecution does not take place. It is mandatory for all the hospitals to provide first aid or medical treatment, free of cost to victims of acid attack or rape.

Remedies and Reliefs to the Accused:

The accused has right to be heard on quantum of sentence. It is the duty of the court to hear the accused before imposing penalty.

Section 360 of Cr.P.C empowers the court to release the accused on probation of good conduct or after admonition.

Eligible accused has remedy to be released on probation of good conduct instead of sentencing him at once to any punishment. The court can release the convict after due admonition in certain cases.

The Probation of Offenders Act, 1958 also provides release of the convicted person on certain grounds.

The Provisions under section 360 of Cr.P.C and section 4 of Probation of Offenders Act do not co-exist at the same time in the same area. It was held in a case reported in 2007(I) SCJ 988 in the case of Chinni Vs. State of Uttar Pradesh.
**Remedy to claim set off:**

As per section 428 of Cr.P.C, on conviction, accused is entitled for set off of his pre-trial detention against the imprisonment awarded for the offences. As per section 428 of Cr.P.C where an accused has convicted for an offence and sentenced imprison, the period of detention undergone by such accused during the investigation, inquiry and trial shall be set off against the term of imprisonment imposed.

**Remedy against wrongful arrest:**

As per section 358 of Cr.P.C court can impose penalty by way of compensation on the complainant, who is responsible for wrongful arrest of the accused. This compensation should also be recovered as if it were fine. In case the complainant does not pay fine, court can impose imprisonment for 30 days.

**Sentence and Punishment:**

The main object of criminal law is to punish the accused. Section 53 of I.P.C and other laws provide different kinds of punishment namely death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property and fine. The law prescribes two or more kinds of punishments as cumulative or alternative punishments like death or imprisonment for life, imprisonment or / and fine. It is for the court to decide suitable kind of punishment to be imposed in a particular case. The court shall bear in mind theories of punishments while awarding punishment. Nature of offence, severity of offence, age of the accused, social and economical background of the accused, mental condition of the accused and other factors should be considered while awarding punishment. The accused shall be given an opportunity to be heard before awarding punishment.

When the accused is convicted for more offences than one, punishment shall be given for each offence. As per section 31 of Cr.P.C such imprisonments shall run consecutively unless the court directs that such punishments shall run concurrently.

As per section 71 of IPC where the offence is made up of parts, any of which part itself an offence, the accused shall not be punished with the punishment of more than one of such of offences unless it be so expressly provided. If, A beats B with a stick for 10 times, A cannot be punished for each blow. He can be convicted for an offence punishable under section 324 of IPC.

Section 75 of IPC provides enhanced punishment in certain cases. In case of previous conviction, the accused is liable for enhanced punishment.
INTRODUCTION:

The sole aim of law is approximation of justice. It goes without saying that concept of justice is Supreme. The Judgment in a criminal case is the end product of trial. The Judgment comprises mainly two parts. The first part pertaining to determination of guilt of an offender regarding the charge or offence which an offender faces. Second part pertaining to punishment and sentencing of an offender for the crime committed or the charge faced by an offender.

The Liberty of an individual is a matter of great constitutional importance in our system of Governance. It is need less to state that sentence follows conviction. A duty is cast on the Judges to see that a sentence shall consist, element of reformation of the criminal, the reparation of the victim and also keeping the society at large. A punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment.

It is well known that punishment is one of the oldest method of controlling crime and criminality. However, variations in modalities of punishment, namely, severity, uniformity and certainty are noticeable because of variations in general societal reaction to law-breaking. In some societies punishments may be comparatively severe, uniform, swift and definite while in others it may not be so. This accounts for the variations in use of specific methods of punishment from time to time.

An enquiry into the various forms of punishments which were in practice in different societies through ages would reveal that forms of punishment were mainly based on deterrence and retribution which have lost all significance in modern penology. The primitive societies did not have well developed agencies of criminal justice administration, therefore, settlement of private wrongs was entirely a personal matter and aggrieved party could settle the issue directly with the wrong-doer.

HISTORICAL ASPECT:

The decade of 1970 is significant from the point of view of sentencing policy and law reforms for several reasons. 41st and 42nd Law Commission reports under took critical analysis of sentencing policy, new provisions section 235(2) and 248(2) of Criminal procedure code have been included i.e., right to
pre-sentence hearing under section 361 of Criminal Procedure Code relating to court, to record reasons where reformative and favorable sentencing powers are not deployed in cases. Section 354(3) obligates the court to record reasons in case of death penalty. The 1976, 1978 bill have taken initiative in rationalizing the traditional forms of punishments by proposing new and alternative forms of punishments and varying scales of punishment in appropriate cases. Eg., community service, compensation to victim, public censure, disqualification from holding officer. Normally, mechanics of sentencing has several aspects namely such as (1) pre-sentence hearing, (2) sentence discretion, (3) recent current trends in sentence.

**MEASURE OF PUNISHMENT:**

The twin objects of punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. The court ought to take into consideration, the nature of the offence, the circumstances in which crime was committed, and degree of deliberation shown by the offender, age, character and antecedents of an offender. No sentence even appears to be vindictive. An excessive sentence defeats its own object and leads to further undermine the respect for the law. A deterrent sentence is wholly justified, when the offender is hard core criminal and offence is out of deliberation and pre-planning. The seriousness of the offence and its general effect on the public tranquility measures the punishment. Therefore, the measure of guilt is the measure of punishment. The law indicates the gravity of the act by the maximum penalty provided for its punishment and the courts will have to consider how far the crime committed falls short of maximum punishment and whether there are any extenuating circumstances justifying the adoption of a lower punishment than the maximum provided. While imposing sentence, proportion between the gravity of the offence and the punishment has to be maintained. The court should not pass a severe sentence disproportionate to the nature and gravity of the offence committed and at the same time the court also should be careful not to award an inadequate sentence, since the same would fail to produce a deterring effect on the offender.

The general principle is that the punishment and the crime should be equal or equivalent. One way of ensuring equality is to repeat what the offender has done with roles reversed. But just as one can repay the borrowed sugar by returning something else deemed to be of equal value, so punishment gives offenders their “just deserts” if it inflicts upon them the degree of suffering which is judged to be equivalent to the suffering caused by their respective crimes. Interpreted in this manner, the principle resembles the utilitarian
doctrine in some respects in that it reduces both the crime and the punishment to a common denominator, the suffering caused against which they may be compared. It differs from utilitarianism in insisting that punishment must equal the crime irrespective of the consequences produced by such equality. So, even when a lesser punishment will serve to reduce a crime more effectively than a greater punishment, the latter is still to be meted out if it is deserved in accordance with the facts and circumstances of the case.

**SENTENCE:**

A sentence is a decree of punishment of the court in Criminal Procedure. The sentence can generally involve a decree of imprisonment, a fine and or other punishments against a person convicted of a crime. Those imprisoned for multiple crimes will serve a consecutive sentence (in which the period of imprisonment equals the sum of all the sentences served sequentially, or one after the next), a concurrent sentence (in which the period of imprisonment equals the length of the longest sentence where the sentences are all served together at the same time).

**STATUTORY PROVISIONS:**

1. In case of an offender other that a Juvenile, a magistrate, under section 29 of Cr.P.C., may pass a sentence of imprisonment for a term not exceeding 3 years or fine not exceeding ten thousand rupees or of both. Here it is important to note that under many categories of offences punishment prescribed is more than the above prescribed limit, however while passing sentence in such cases magistrate cannot exceed the sentencing limits but he has an option under S. 325 Cr.P.C. to forward accused to the Chief Judicial Magistrate. A sentence of imprisonment in default, as per S.30 Cr.P.C., should not be in excess of power u/s 29 Cr.P.C. and should not exceed 1/4 th of the term of imprisonment which the magistrate is empowered to inflict. However, it may be in addition to substantive sentence of imprisonment for the maximum term awarded by the magistrate u/s29. In case of conviction of several offences at one trial, as per S.31 Cr.P.C., the court may pass separate sentences, subject to the provisions of S.71 of the I.P.C. The aggregate punishment and the length of the period of imprisonment must not exceed the limit prescribed by S.71 I.P.C.

2. In case of several sentences to run concurrently, it is not necessary to send offender for trial before higher court only for the reason that aggregate punishment for several offences is in excess of punishment which the magistrate is competent to inflict on conviction of single offence. However, proviso to S.31 Cr.P.C. provides that:
(a) in no case shall such person be sentenced to imprisonment for a longer period that 14 years;
(b) the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for single offence.

3. Having considered the relevant substantive and procedural aspects of sentencing it is necessary to see as to how a judge or magistrate is expected to apply this provision. S.235(2) Cr.P.C. mandates that accused must be heard on the question of sentence. This provision is, in fact, a reflection of the new trend in penology. At such a stage judge is expected to consider question of sentencing in light of various factors such as prior criminal record, age, employment, educational background, home life, sobriety of the offender so also the factors such as social adjustment, emotional and mental condition and prospect of his returning to normal path.

4. Section 360 of Cr.P.C. and the Probation of Offenders Act recognize the importance of environmental influence in commission of crime and prescribe remedy whereby offenders can be reformed and rehabilitated in the society. By virtue of S.8 (1) of the General Clauses Act, in States where provisions of the Probation of Offenders Act have been brought in force the provisions of S.360 Cr.P.C. need not be made applicable. S.3, 4 and 6 are the backbone of the Probation of offenders Act. S.3 empowers court to release after due admonition an offender found to be guilty of having committed offences punishable u/s379, 380, 381, 404 and 420 I.P.C. or any other offence punishable with imprisonment for not more than two years or with fine or both. The term previous conviction includes previous order u/s 4 of the Act. Sec. 4 authorises a court to release an offender on probation of good conduct on his entering into a bond with or without surety to appear and receive sentence when called upon during such period not exceeding 3 years and meantime keep the peace and be of good behaviour, if the offence committed by him is not punishable with death or imprisonment for life. The factors relevant u/s 4 are (1) circumstances of the case (2) nature of offence (3) character of offender.

5. S.6 prohibits court from sentencing an offender under 21 years of age to imprisonment unless satisfied that it would not be desirable to deal with him u/s 3 or S.4. The court has to record reasons in case where it passes any sentence of imprisonment on an offender below 21 years of Age. S.6(2) makes it obligatory for a court to call for report of probation officer and consider the same as well as any other information available to it relating to character and physical and mental condition of the offender.

**SUSPENSION OF SENTENCE**

“Suspension” means to take or withdraw sentence for the time being. It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence, and if no conditions are imposed, the
person authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should undergo the rest of the sentence without assigning any reason. This position is given in the Law commission 41st Report P.281 Para 29.1; and also in cases like **Ashok Kumar Vs. Union of India reported in AIR 1991 SC 1792**; **State of Punjab Vs. Joginder Singh reported in AIR 1990 SC 1396**.

Section 389 (1) and (2) of Cr.P.C deals with a situation where convicted person can get a Bail from appellate court after filing the criminal appeal. Section 389 (3) Cr.P.C. deals with a situation where the trial court itself can grant a bail to convicted accused enabling him to prefer an appeal. Since we are concerned with the power of the trial court to suspend the sentence, section 389 (3) must be taken into account.

Section 389 (3) Cr.P.C. is applicable only in the following conditions:

1. the court must be the convicting court,
2. The accused must be convicted by the court,
3. The convict must be sentenced to imprisonment for a term not exceeding three years,
4. the convict must express his intent to present appeal before the appellate court,
5. The convict must be on bail on the day of the judgment,
6. There should be right of appeal (**Mayuram Subramanian Srinivasan Vs. CBI reported in (2006) 5 SCC 752**).

**DIFFERENCE IN OPERATION OF SUB-SECTION (1) & (3) OF SECTION 389 CR.P.C. :**

1. Sub-Section (1) comes into play when appeal is pending, but subsection (3) comes into play when the convict expresses his intention to present appeal.
2. Sub-Section (1) speaks of “suspension “ first and then talks of “Release on bail” or “Own bond” but Sub-section (3) deals with “Release on bail” first and then “suspension” is then the “automatic” effect.
3. Sub-section (1) does not prescribe that the accused must be on bail BUT Sub-section (3) can be used only if the accused is on bail on the day of judgment.
4. Sub-section (1) gives option to release the convict on “bail” or “his own bond” BUT Trial Court vide Sub-section (3) does not have power to release the
convict on “his own bond”. However trial Court can also relieve the accused on his own bond if the accused is poor etc.

5. In a nutshell, vide Sub-Section (1) suspension is cause and bail is effect and vide sub-section (3) bail is cause and suspension is effect.

**SUSPENSION OF FINE:**

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of Cr.P.C., however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount, imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once.

**PRE-SENTENCE HEARING:**

The sentence awarded has to satisfy many conflicting demands. It has to satisfy the victims of the crime and the society in general that the culprit has been adequately and appropriately punished. It should leave an impression on the offender that he is punished for the offence he has committed and shall remind him that commission of crime won’t do any good to him and that if he commits or repeats the commission of the offence and continue crime as his career, he will be caught and punished, and thereby deter and prevent him from committing or repeating the commission of the offence. The punishment imposed also should bring home the reformation of the offender and restore him to the society as its prodigal member. The punishment also shall take care of reparation of the victims by providing adequate and reasonable compensation. Thus, exploration of the modern penology made the task of Judges in exercising their discretion to choose and impose sentence complex and complicated. Thus, there shall be material or evidence before the court relating to crime, socioeconomic, psychological and personal aspects of the
offence, and in some cases of the victim, to arrive at a just and adequate sentence order.

**REMISSION :**

Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial and appeals. When once remission is granted, it is not revocable. Apart from granting, remission of sentences, in individual cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone.

**COMMUTATION :**

Commutation of sentence means, altering the sentence from one grade to lower grade. Rigorous imprisonment may be converted into simple imprisonment. Imprisonment can be converted into fine. Death sentence may be converted into life sentence and life sentence to a sentence of 14 years imprisonment. The sentence of 14 years may be reduced to any term of imprisonment.

Here also, the government needs to take the exigencies of the case before commuting the sentence. Before exercising the power of suspension, remission and commutation, the government will call for and obtain opinion of the presiding officer of the court which ordered or confirmed the conviction. The opinion may not be treated as recommendation or as a binding advice. The opinion may be taken into consideration only. The commutation once granted is not revocable.

**PUNISHMENT :**

Punishment is a method of protecting society by reducing the occurrence of criminal behaviour. Punishment can protect society by deterring the potential offenders, preventing the actual offender from committing further offences and by reforming and turning him into a law abiding citizen. The following are the some of the rights available to the accused, sentencing and punishment.

**DHARMASHASTRA INTERPRETATION OF PUNISHMENT :**

It must be stated that even the Hindu Shastras have emphasized on King's power to punish the law-breaker and protect the law-abider. According to Manu, King was Danda Chaatra Dhari i.e., holder of Danda (Punishment)
and Chhatra (Protector). According to Gautam the word danda meant restraints. Vasista Samhita also upheld King's power to punish and destroy the wicked and the evil. But “punishment must be awarded after due consideration of place, time, age learning of the parties and the seat of injury”. For Manu, Danda i.e., punishment was the essential characteristic of law. He justified punishment because it keeps people under control and protects them. To quote him, “Punishment remains awake when people are asleep, so the wise have recognized punishment itself as a form of Dharma”. Punishment maintains law and order, it protects person and property. The fear of punishment is an essential attribute of judicial phenomena. Offenders refrain from wrongdoing for fear of punishment and, therefore, punishment and law are inseparable.

**FORMS OF PUNISHMENT:**

The history of early penal systems of most countries reveals that punishment were tortuous, cruel and barbaric in nature. It was towards the end of eighteenth century that humanitarianism began to assert its influence on penology emphasizing that severity should be kept to a minimum in any penal programme. The common modes of punishment prevalent in different parts of the world included corporal punishments such as flogging mutilation, branding, pillories chining prisoners together etc., simple or rigorous imprisonment, forfeiture of property and fine.

**Flogging:**

Of all the corporal punishments, flogging was one of the most common methods of punishing criminals. In India, this mode of punishment was recognized under the Whipping Act, 1864 which was repealed and replaced by similar Act in 1909 and finally abolished in 1955. The English penal law abolished whipping even earlier. In Maryland (U.S.A) whipping was recognized as late as 1953 although its use was limited only to “wife-beating”. Flogging as a mode of punishment it being used is most of the middle-east countries even to this day.

Penological researches have shown whipping as a method of punishment has hardly proved effective. Its futility is evinced by the fact that most of the hardened criminals who were subjected to whipping repeated their crime. There is a general belief that whipping may serve some useful purpose in case of minor offences such as eve-teasing, drunkenness, vagrancy, shop-lifting etc. but it does not seem to have the desired effect on offenders charged with major crimes.
Mutilation:

Mutilation was yet another kind of corporal punishment commonly in use in early times. This mode of punishment was known to have been in practice in ancient India during Hindu period. One or both the hands of the person who committed theft were chopped off and if he indulged in sex crime his private part was cut off. The system was in practice in England, Denmark and many other European countries as well.

The justification advanced in support of mutilation was that it serves as an effective measure of deterrence and retribution. The system, however, stands completely discarded in modern times because of its barbaric nature. It is believed that such punishments have an inevitable tendency to infuse cruelty among people.

Branding:

As a mode of punishment, branding of prisoners was commonly used in oriental and classical societies. Roman penal law supported this mode of punishment and criminals were branded with appropriate mark on the forehead so that they could be identified and subjected to public ridicule. This acted as a forceful weapon to combat criminality. England also branded its criminals till 1829 when it was finally abolished.

Stoning:

Stoning the criminals to death is also known to have been in practice during the medieval period. This mode of sentencing the offender is still in vogue in some of the Islamic countries, particularly in Pakistan, Saudi Arabia etc., The offenders involved in sex-crimes are generally punished by stoning to death. The guilty person is made to stand in a small trench dug in the ground and people surrounded him from all sides and pelt stone on him until he dies. Though it is a punishment barbaric in nature, but due to its deterrent effect, the sex crimes particularly, the crimes against women are well under control in these countries.

Pillory:

Pillory was yet another form of cruel and barbaric punishment which was in practice until the end of the 19th century. The criminal was made to stand in a public place with his head and hands locked in an iron frame so that he could not move his body. The offender could also be whipped or branded while in pillory. He could be stoned if his offence was of a serious nature. At times, the ears of the criminal were nailed to the beams of the pillory.
The system of pillory existed slightly in different form during the Moghul rule in India. Hardened criminals and dangerous offenders were nailed in wall and shot or stoned to death. The punishment undoubtedly was more cruel and brutal in form and, therefore, it finds no place in modern penal systems.

**Fines:**

The imposition of fine was a common mode of punishment for offence which were not of a serious nature and especially those involving breach of traffic rules or revenue law. This mode of punishment is being extensively used in almost all the sentencing systems of the world even today. Fines by way of penalty may be used in case of property crimes and minor offences such as embezzlement, fraud, theft, gambling, loitering disorderly conduct etc., Other forms of financial penalty include payment of compensation to the victim of the crime and payment of costs of the prosecution. Financial penalty may be either in shape of fine or compensation or costs.

The Indian Penal Code provides for imposition of fine:

(i) as the only disposition method;

(ii) as an alternative of imprisonment;

(iii) as a punishment in addition to imprisonment;

(iv) the actual amount of fine to be imposed is left to the discretion of the sentencing court.

Fine as an alternative to imprisonment is used only against short-term imprisonment i.e., imprisonment upto 2 or 3 years. The real problem involved in imposition of financial penalties is the quantum of fine or costs and enforcement of its payment. The usual methods of enforcement are forfeiture of property, and threat of incarceration. Recovery of fines from the source of income of the offender may also be one of the methods of enforcing this penalty.

In India, however, in the matter of recovery of fines the provisions of Section 421 of the Code of Criminal Procedure, 1973 would apply. The Code provides that when a Court imposes a sentence of fine or a sentence of which fine forms a part, it may direct that whole or part of the fine may be paid as a compensation to the victim for the loss or injury caused to him on account of the crime.

In determining the amount and method of fine, the court should take into consideration the financial resources of the defendant and the nature of burden that its payment will impose on him. Normally, court should not
sentence an offender only to pay a fine, when any other disposition is authorized by law, unless having regard to the nature and circumstances of the crime and prior history and antecedents of the offender, the sentence of fine alone is deemed sufficient for a protection of public interest.

While awarding the sentence of fine, the court must keep in mind the gravity of offence and the financial capacity of the offender to pay the amount of fine. Besides, it is not desirable to impose fine in addition to death sentence or long term imprisonment, which may be an unnecessary burden on the family of the convicted person. In case of default in payment of fine leading to imprisonment of the accused, the ideal policy is to convert unpaid fine into imprisonment not automatically but by a court decision in each individual case.

**Forfeiture of Property :**

Section 53 of the Indian Penal Code provides forfeiture of property as a form of punishment. There are two offences specified under Sections 126 and 169 of IPC which provide for confiscation of property besides the punishment of imprisonment with or without fine.

Section 126 provides that a person committing depredation on territories of Power of peace with the Government of India shall be punished with imprisonment of either description for a term which may extend to seven years and also liable to fine and the property so used or intended to be used in committing such depredation or acquired by such depredation shall be liable to forfeiture.

According to the provision contained in Section 169, IPC, a public servant who being a public servant is legally bound not to purchase or bid for certain property, if he does so either in his own name or in the name of another, or jointly, shall be punished with imprisonment which may extended to two years or with fine or with both and the property, if purchased shall be confiscated.

**Security Bond :**

A security bond for good behavior though strictly speaking not a punishment, may serve a useful purpose as a form of restraint on the offender. This may entail compulsory treatment or supervision of the offender. The court may “defer” sentence on some offender conditionally subject to his normal behavior. This ‘conditional disposal’ of offender is increasingly being recognized as an effective mode of corrective justice in modern penology.
The purpose of this nominal measure of punishment is to offer an opportunity to the offender to become a law abiding citizen and chances of the reformation are better than those who are imprisoned or subjected to institutional sentence. That apart, the family members of the offender are not adversely affected by this mode of punishment as they are not deprived of their bread winner.

**Banishment:**

The practice of transporting undesirable criminals of far-off placed with a view to eliminating them from society has been commonly used in most parts of the world for centuries. In England, war criminals were usually transported to distant Austro-African colonies. The terms transportation, banishment exile and outlawry though similar, have different connotations. The difference, however seems immaterial for the present purpose. Exile as a device merged into outlawry with earlier religious element largely supplanted by a political motive.

The practices of transportation is known to have existed in penal system of British India as well. It was popularly called “Kalapani”. Dangerous criminals were dispatched to remote island of Andaman and Nicobar. It had a psychological effect on Indians because going beyond the seas was looked with disfavor from the point of view of religion and resulted in outcasting of the person who crossed the seas. The practice came to an end during early forties after these islands came in occupation of Japanese. It was finally abolished in 1955.

**Solitary Confinement:**

Confining the convicts in solitary prison cells without work was a common, mode of punishment for hardened criminals in medieval times. Solitary confinement was intended for elimination of criminals from society and at the same time incapacitating them from repeating crime. The deterrence involved in this mode of punishment was deemed necessary for prevention of crime. The monotony involved in this kind of punishment had the most devastating effect on criminals. Man by nature is known to be a social being hence he cannot bear the pangs of separation and living in complete isolation from his fellowmen. Therefore, segregation of convicts into isolated prison cells under the system of solitary confinement resulted in disastrous consequences and the prisoners undergoing the sentence either died untimely or became insane. Besides, they became more furious and dangerous to society if at all they chanced to come out of the prison alive after completing their term of solitary confinement. As a result of these ill-effects on prisoners the system of
solitary confinement soon fell into disuse and it was finally withdrawn as a measure of punishment.

The provisions relating to solitary confinement are contained in Sections 73 and 74 of the Indian Penal Code. Section 73 provides that the Court may order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole according to the following scale:

(i) for a period not exceeding one month if the term of imprisonment does not exceed six months;

(ii) for a period not exceeding two months if the term of imprisonment does not exceed one year;

(iii) for a period not exceeding three months if the term of imprisonment exceeds one year.

Section 74 IPC limits the solitary confinement, when the substantive sentence exceeds three months, to seven days in any one month. That is to say solitary confinement must be imposed at intervals. A sentence inflicting solitary confinement for the whole term of imprisonment is illegal, though it may be for less than fourteen days.

**Imprisonment for Life:**

The Indian Penal Code prescribes five types of punishment namely (1) Death, (2) Life imprisonment, (3) Imprisonment, which may be (a) rigorous or (b) simple, (4) Forfeiture of property, and (5) Fine. Thus imprisonment for life has been authorized as a form of punishment under section 53 of the Indian Penal Code as amended by Act 26 of 1955 with effect from 1st January, 1956. The Hon’ble Supreme Court in *Naib Singh Vs State reported in AIR 1983 SC 855* held that the “nature” of the punishment of imprisonment for life is rigorous imprisonment only and a criminal court could under section 418 of the Code of Criminal Procedure, 1973 by issuing a warrant, direct the execution of sentence of life imprisonment in a prison. The Criminal law (Amendment) Act, 1983 has incorporated imprisonment for life of either description, rigorous or simple, in the amended Section 376 of the Indian Penal Code. There are in all fifty-one sections in the Penal Code which provides for sentence of imprisonment for life.

Section 57 of the Indian Penal Code provides that in calculating fraction of term of imprisonment, imprisonment for life shall be reckoned as imprisonment for twenty years.
The executive authorities are competent under Section 55, IPC or under Section 433 (b) of the Code of Criminal Procedure to commute sentence of imprisonment for life to one of rigorous imprisonment not exceeding in term of fourteen years. Such commuted sentence would entitle life convicts to be set free after undergoing the maximum sentence of fourteen years inclusive of the period of remissions earned during his incarceration. But in actual practice it is seen that the prison authorities are illegally detaining the life convicts for a much longer period than the aforesaid maximum 14 years holding that the nature of sentence of life imprisonment does not alter by the aforesaid provision of IPC or Cr.P.C., and the sentence remains a sentence of life imprisonment and does not covert into a maximum sentence of imprisonment for 14 years by theses provisions. This dichotomy, however, needs to be resolved by parliamentary intervention though necessary amendments in the existing criminal law.

Capital Punishments:

Of all the forms of punishments, capital punishment is perhaps the most debated subject among the modern penologists. There are arguments for and against the utility of this mode of sentence. The controversy is gradually being resolved with a series of judicial pronouncements containing elaborate discussion on this complex penological issue.

The offences which are punishable with death sentence under the Indian Penal Code include:

(i) waging war against the State (Sec.121);
(ii) abetment of mutiny (Section 132);
(iii) Giving or fabricating false evidence leading to procure one’s conviction for capital offence (Section 194);
(iv) murder (Section 302);
(v) abetment of suicide committed by a child or insane (Sec.305)
(vi) attempt to murder by life convict, if hurt is cased (Sec.307)
(vii) kidnapping for ransom, etc., (Section 364-A), and
(viii) dacoity with murder (Section 396).

It is significant to note that although the aforesaid offences are punishable with death but there being alternative punishment of life
imprisonment for each of them, it is not mandatory for the Court to award exclusively the sentence of death for these offences. In fact, where the Court is of the opinion that the award of death sentence is the only appropriate punishment to serve the ends of justice in a particular case it is required to record ‘Special reasons’ justifying the sentence stating why the award of alternative punishment i.e., imprisonment for life would be inadequate in that case.

**AUTHORITATIVE PRONOUNCEMENTS:**

In Dr. Bhagare Vs State of Maharashtra reported in AIR 1974 SC 476, the Hon’ble Supreme Court held that the question of sentence is a matter of judicial discretion. The relevant considerations in determining the sentence, broadly stated include the motive for and the magnitude of the offence and the manner of its commission. “Thus, no hard and fast rule can be laid down to determine the right measure punishment. A day’s imprisonment to an honorable man may have more deterrent effect than a life imprisonment spent in prison by hardened criminal. Thus, to determine right measure of sentence, the gravity of offence, the position and status of the offender, the previous character and the existence of aggravating and extenuating circumstances have to be considered by the court. Thus, it is always desirable to prescribe maximum punishments leaving the imposition of desirable sentence within the maximum prescribed to the discretion of the court.”

In Rajeev vs. State of Rajasthan reported in AIR 1996 SC 787, the Hon’ble Supreme Court cautioned, “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 crime is perpetrated, the enormity of crime warranting public abhorrence and it should respond to society's cry for justice against criminal”.

The Hon’ble Apex Court responding to this criticism observed in S.C. Bahri vs State of Bihar reported in AIR 1994 SC 2420 “Crime and punishment have a moral dimension of considerable complexity that must guide sentencing in any enlightened society. The criticism of Judicial sentencing has raised its head in various forms, that it is inequitable as evidenced by desperate sentences, that it is ineffective; or that it is unfair being either inadequate or in some cases harsh. It has been often expressed that there is a considerable disparity in sentencing an accused found to be guilty for same offence. This sentencing variation is bound to reflect because of the varying degrees of seriousness in the offences and/or verifying characteristics of the offender himself. Moreover, since no two offences or offenders can be identical the charge or label of
variation as disparity in sentencing necessarily involves a value based judgment.”

Impressing the reformatory object of punishment, Hon’ble Chief Justice Gajendragadkar observed in \textit{Indochina Navigation Company Ltd. Vs Jusjeet Singh reported in AIR 1964 SC 1146}, “It must be remembered that ordinary offences with which the normal criminal law of the country deals, are committed by persons either under the pressure of provoked or unbalanced emotions, or as a result of adverse environment and circumstances and so while dealing with these criminals who is many cases deserve a sympathetic treatment and in a few cases, are more sinned against than sinners, criminal law treats punishment more as reformative or corrective than as a deterrent or punitive measure”.

In \textit{Ishardas Vs State of Punjab reported in AIR 1972 SC 1295}, the Hon’ble Apex Court observed that the Prevention of Food Adulteration Act is enacted with aim of eradicating antisocial evil against public health and court should not lightly resort to the provisions of Probation of Offenders Act. The 47th report of the Law Commission has recommended the exclusion of the Probation Act to social and economic offences.

In \textit{Pyarali K. Tejani vs Madhav R. Dange reported in AIR 1974 SC 228}, the Hon’ble Supreme Court has cautioned that ‘The kindly application of the probation principle is negatived by the imperatives of social defence. No chances can be taken by society with a man whose antisocial operations disguised as a respectable trade, imperil numerous innocents’.

The Hon’ble Supreme Court in two decisions (i) \textit{Bodhisattva Gautam vs Subhara Chakrobarty reported in (1996) 1 SCC 490} and (ii) \textit{T.K. Gopal alias Gopi vs State of Karnataka reported in (2000) 6 SCC 168}, has emphasized the victim oriented approach to be considered while considering the question of sentence.

In \textit{Ratansingh vs State of Punjab reported in AIR 1980 SC 84}, the Hon’ble Supreme Court observed that in accident case, when life is lost and when driving is rash no compassion can be shown. The Supreme Court further observed that sentencing must have a policy of correction.

The Hon’ble Supreme Court in \textit{Dalbirsingh case} observed “Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal court cannot treat the nature of offence u/s 304-A IPC As attracting the benevolent provisions of probation. Such driver must always keep in mind the fear psyche that if he is convicted of offence for causing death of human being due to his callous driving of vehicle
he cannot escape from 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 accident due to callous driving of automobiles."

In Jagmohan Sing vs State of U.P. reported in AIR 1973 SC 847, the Hon’ble Apex Court felt its inability to eliminate capital punishment from Indian penology and held that deprivation of life is constitutionally permissible provided it is done according to the procedure established by law.

In Ediga Anamma vs State of A.P reported in AIR 1974 SC 799, the Hon’ble Apex court came closer to achieve this goal by means of statutory interpretation. In this case, the convict Ediga Annamma was a young woman of the age of 24 years having one infant. Her conviction was confirmed, but the Lordship faced, to quote his own words ‘punitive dilemma’. His Lordship Justice V.R. Krisna Iyer was humane to consider the ethos of rural area where the murders occurred and was moved by the pathetic position of a young woman who was starved and was thrown out by her husband and father-in-law and who was living with her parents along with her child. His lordship also considered human significance in the sentencing context by appreciating the boarding horror of hanging haunting the prisoner in her condemned cell for over two years.

In Bachan Singh vs State of Punjab reported in AIR 1980 SC 898 which is a landmark judgment in the truest sense, as it stabilized the use of discretion while sentencing within the tangible framework, the Hon’ble Apex Court while interpreting S. 354(3) and 235(2) Cr.P.C. elaborated two aspects, firstly that the extreme penalty can be inflicted only in gravest cases of extreme culpability and secondly, in making the choice of sentence due regard must be paid to the circumstances of the offender also. The Apex Court in its prophetic observation said, “A real and abiding concern for the dignity of the human life postulates resistance to taking a life through law’s instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

The Hon’ble Supreme Court in Ravikant S.Patil Vs. Sarvabhouna Bagali reported in (2007) 1 SCC 673 has held “15. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non existent, but only non-operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay
of the order of conviction specifying the consequences if conviction was not stayed, that is the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction”.

The Hon’ble Supreme Court in Santa Singh’s Case reported in AIR 1976 (4) SCC 190 observed that “Non-Compliance of the requirement of the hearing of the accused contemplated under these provisions of law is not a mere irregularity, curable under section 465 Cr.P.C but it is an illegality which vitiates the sentence.”

In Shivmohansing Vs State of Delhi reported in AIR 1977 SC 949, the Hon’ble Supreme Court (Sri Justice V.R. Krishna Iyer) observed, “Hearing is obligatory at the sentencing stage. The humanist principle of individualizing punishment to suit the person and his circumstances is best served by hearing the culprit even on the nature and quantum of the penalty to be imposed.”

The Hon’ble Supreme Court, in Dagdu Vs.State Of Maharashtra reported in AIR 1977 SC 1206 held that in every case where it is found that section 235 (2) is not complied, it is not necessary to remand the case to the trial court in order to afford to the accused, an opportunity to be heard on the question of sentence. If the accused makes a grievance of non-compliance of this provision is made for the first time before the Appellate Court, it would be open to that court to remedy the breach by giving an opportunity of hearing the accused on the question of sentence, and perhaps it must inevitably happen where the conviction is recorded for the first time by a higher court. Further held that remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious and fair, disposal of cases.

In Tarlok Singh Vs. State Of Punjab reported in AIR 1977 SC (1747), the Hon’ble Supreme Court held that it is more appropriate for the Appellate court to give an opportunity to the parties in terms of section 235 (2) to produce the material they wish to adduce instead of going through exercise of sending the case back to the trial court, since the same will save time and help produce prompt justice.

The Hon’ble Apex Court in Ramnarayan’s case reported in (1973) 2 SCC 8691 held “Broad object of punishment is in Individual interest of accused persons and also against interest of society to which he belongs and further
held any court before fixing the sentence has to look into four aspects (1) Determination of the general range for the category of the offence, (2) preliminary and lacing of the offence within that range by reference to its gravity, its intrinsic seriousness, (3) Calculation of the allowances for mitigating circumstances or the aggravating circumstances, (4) Two or more offences committed by a person whether concurrently or separately sentences should run."

In Mohd. Munna Vs. Union of India reported in (2005)7 SCC 417, the Hon’ble Apex Court held that in the absence of an order of remission formally passed by the appropriate government, there is no provision in IPC or Cr.P.C., under which a sentence of life imprisonment could be treated as for a term of 14 years or 20 years and further a life convicted could not claim remission as a matter of right.

While expressing its views about fine as a punishment the Hon’ble Supreme Court in Admji Umar Dalal Vs. State reported in AIR 1952 SC 14 observed as “In imposing fine, it is necessary to have as much regard to the pecuniary circumstances of the accused person as to the character and magnitude of the offence”.

A landmark judgment of the Hon’ble Supreme Court handed down in Kartik Biswas Vs. Union of India reported in AIR 2005 SC 3440, deserves special mention in the context of Section 53 of IPC and Section 32 of the Prisoners Act, 1900 which relate to imprisonment for life. The court made it clear that life imprisonment is not equivalent to imprisonment for 14 years or for 20 years. Elaborating the point further the Apex Court ruled that there is no provision either in IPC or in Cr.P.C., whereby life imprisonment could be treated as 14 years or 20 years without there being a formal remission by the appropriate government. Section 57 of IPC provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years is applicable for the purpose of remission when the matter is considered by the Government. But the Prison Act and the Rules made thereunder do not confer any authority or power to commute or remit the sentence.

REMEDIES:

The mounting toll of criminality and alarming rise of crime rate has become a problem of national concern all over the world. Most countries now recognize that prevention of crime and treatment of offenders is not an isolated problem; that social defence and correction cannot be considered as unrelated to the total culture and the social and economic fabric of society. This is evidence from the fact that the “battle against crime does not end at the court-
room door but continues through imprisonment to release and beyond”. Despite improved correctional methods and recent innovations in criminal procedure and sentencing law, the problem of crime and criminal continues as a challenge to “new era of penology”.

With the changing trends in penology, the old penal philosophy which rejected any intervention by the behavioral sciences stands completely discarded. The old belief that harsh and lengthy punishments are necessary for the security of the society has become obsolete in the present context.

Despite legal, social, psychological and penal measures for combating crime, the problem still persists in alarming dimensions. With the change of time, new crimes are coming up and the traditional crimes are vanishing fast. The advancement in knowledge of human behavior and growth of commerce and industries have brought in their wake new complexities in life. These complexities account for the rising incidence of criminality. It is, therefore apparent that crime, though an evil, is an inevitable phenomenon of a progressive society. There is no reason to be upset with the present increase in crime rate. Nor should it create a misleading impression that the penal programmes have totally failed or proved ineffective. It must be stated that criminality in India is far less than in many other countries of the world. The reason being that Indian society still retains the virtues of tolerance, mutual respect and co-existence through its social institutions such as religion, family, parental, control, etc.,

Before concluding, a word must be said about the general tendency among people to keep away from agencies administering criminal law and justice. Instances are not wanting when people watch a crime being committed in their presence but they never report it to the police because of the fear of the culprit or possible harassment from the police or tiresome trial and court procedure. A commoner always prefers to avoid police or law courts even at the cost of suffering a slight harm or injury. He refrains from instituting criminal proceedings against the offender to avoid the botheration of contacting police or visiting law-courts. This apathy of people towards law enforcement agencies provides fertile ground for offenders to carry on their criminal activities undeterred which hinders the cause of crime prevention. It must be accepted that there a great divergence in practice and precepts so far working of police and law courts is concerned. The problem of justice through an extensive propaganda and convince people that these institutions are meant to help and not to harass them. Prevention of crime should be treated as everyone’s concern.
Yet another potential cause which adversely affects the crusade against crime prevention is lack of adequate proportionality between crime and punishment. It has been pointed out by Friedman that “the criminal law continues to have a decisive reflection on social consciousness of society”. Therefore, protection of society and stamping out criminals must be the object of law which should be achieved by imposing appropriate sentence. In other words, in operating the sentencing system, the proportion between crime and punishment should be the guiding principle and serious crimes must be punished with severity. The Supreme Court has expressed deep concern for the disappearance of the principle of proportionality from criminal law in recent times and warned some very undesirable consequences of such disproportionate punishment. Imposition of sentence without considering its impact on the social order may be in reality a futile exercise.

CONCLUSION:

Indeed, a judge may be justified in awarding a severe and exceptionally lengthy sentence on grounds of dangerousness of the crime or a lighter one for rehabilitation or reformation of the criminal, but a sentence out of all proportions to the crime is repugnant. In other words, the sentence must be warranted by the crime. A kind of balance between crime and punishment, therefore, seems inevitable for judicial sentencing. Judicial authorities all over the world have been struggling hard to establish a coherent set of principles for judicial sentencing but the fundamental question is as to which of the four, namely, deterrence, retribution, prevention or reformation, should take precedence in the process of sentencing. The social impact of crime where it relates to offences against women, dacoity, kidnapping, misappropriation of public money and other offences involving moral turpitude which have great impact on social order and public interest per se require exemplary treatment and any liberal attitude or leniency in respect of such offences is bound to be counter productive in the long run and the common man is likely to lose faith in Courts and criminal justice system.
INTRODUCTION

We all know that each and every criminal case should be disposed of either ACQUITTAL or CONVICTION. The present topic is relating to conviction of accused. Whenever accused is convicted of an offence, the Court has to pass sentence and punish him. In some cases the main moto of the victim is not only to punish the accused, but also for compensation. There are certain reliefs to the victims and there are some remedies and reliefs to the convicted accused.

‘Remedy’ means mechanism provided to enforce right. It is a mode prescribed by law to enforce a duty or redress a wrong.

‘Relief’ means final result in remedial action. It is a thing which a court gives in the final judgment.

‘Sentence’ means judicial determination of the punishment to be inflicted on a convicted person.

‘Punishment’ means penalty for commission of crime. Various kinds of penalties are provided under section 53 of IPC.

REMEDIES AND RELIEFS AVAILABLE TO VICTIMS:

Criminal law aims to reform the offenders for their effective re-assimilation in the social mainstream from which they deviated. No legal importance is given to victims of crime who have suffered loss or injury. State takes action against the wrong doers as a part of its duty to maintain peace and harmony in the society. The traditional view was that grievance of the victim is sufficiently satisfied by conviction and sentence of the accused. However, this view has been changed in the modern society. During the recent past the idea of payment of compensation to victims of crime has gained importance. The accused injures the victim mainly apart of State. So, victims need some compensation for the loss or injury caused to them by the accused. Such a step would increase value to criminal administration of justice. However, mere conviction and sentence does not console the victims. So, law recognized the plait of the victims and incorporated sections 357, 357A, 357B and 357C in Cr.P.C.
Section 357 of Cr.P.C empowers the court to order convicted person to pay compensation and costs to the victims.

Section 357 Cr.P.C : Order to pay compensation :

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied :

(a) In defraying the expenses properly incurred during prosecution;

(b) In the payment to any person of compensation for any loss or injury caused by the offence to the victim, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss caused to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona-fide purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal, has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

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

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this Section.
When a court imposes sentence of fine, it can order the whole or part of fine recovered to be applied in meeting the expenses for prosecution, in payment of compensation for any loss or injury caused to the victims.

Section 357 of Cr.P.C also empowers the court to order compensation where fine does not form part of sentence. According to section 357 (3) of Cr.P.C, court can direct the convicted person to pay compensation to the victims.

Section 357A: Victim compensation scheme:

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the Trial Court, at the conclusion of trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases ended in Remedies, Reliefs, Sentencing and Punishment or acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State Legal Services Authority or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under subsection (4) the State Legal Services Authority or the District Legal Services Authority shall, after due enquiry, award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.
Section 357B : Compensation to be in addition to fine under Section 326A or Section 376D of Indian Penal Code:

The compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of Indian Penal Code.

Section 357C : Treatment of victims:

All hospitals, public or private, whether maintain by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.

Fine imposed on convicts under section 326A and 376D of IPC shall be paid to the victims of those offences and the compensation payable by the Government under Sec.357A of Cr.P.C shall be in addition to that fine.

In fixing the amount of compensation, the courts should take into account of the nature of crime, the injury suffered, the capacity of the accused and etc. The compensation amount can be recovered as fine in the light of sections 421 and 431 of Cr.P.C. Court can pass imprisonment in default of payment of compensation. It was held in R.Mohan Vs. A.K.Vijaya Kumar reported in 2012 Crl.L.J 3953.

As per Section 359 of Cr.P.C, in the trial of non-cognizable offence instituted upon complaint where the court finds guilty of accused, it can directly be convicted to pay costs incurred by the complainant in conducting prosecution.

Court can order the State to pay compensation to the victims on failure of police in conducting prosecution. Presently, section 357A provides scheme for payment of compensation to the victim even though the prosecution does not take place. It is mandatory for all the hospitals to provide first aid or medical treatment, free of cost to victims of acid attack or rape.

Remedies and Reliefs to the Accused:

The accused has right to be heard on quantum of sentence. It is the duty of the court to hear the accused before imposing penalty.

Section 360 of Cr.P.C empowers the court to release the accused on probation of good conduct or after admonition. Entitled accused has remedy to be released on probation of good conduct instead of sentencing him at once to
any punishment. The court can release the convict after due admonition in certain cases.

The Probation of Offenders Act, 1958 also provides release of the convicted person on certain grounds:

The Provisions under section 360 of Cr.P.C and section 4 of Probation of Offenders Act do not co-exist at the same time in the same area. It was held in a case reported in 2007(I) SCJ 988 between Chinni Vs. State of Uttar Pradesh.

Remedy to claim set off:

As per section 428 of Cr.P.C, on conviction, accused is entitled for set off his pre-trial detention against the imprisonment awarded for the offences. As per section 428 of Cr.P.C where an accused has convicted for an offence and sentenced to imprisonment, the period of detention undergone by such accused during the investigation, inquiry and trial shall be set off against the term of imprisonment imposed.

Remedy against wrongful arrest:

As per section 358 of Cr.P.C, court can impose penalty by way of compensation on the complainant, who is responsible for wrongful arrest of the accused. This compensation should also be recovered as if it were fine. In case, the complainant does not pay fine, court can impose default sentence for 30 days.

SENTENCE:

The sentence can generally involve imprisonment, fine and / or other punishments against the accused. Those imprisoned for multiple crimes will serve a consecutive sentence i.e., one after expiration of other, OR a concurrent sentence i.e., all the sentences are executed at a time.

PUNISHMENT:

Punishment is a method of protecting society by reducing the occurrence of criminal offences. Punishment can protect the society by deterring the potential offenders, preventing the actual offender from committing further offences and by reforming him into a law abiding citizen.

The following are the some of the rights available to the accused, sentencing and punishment.

I. SUSPENSION OF SENTENCE:

“Suspension” means to take or withdraw sentence for the time being. It is an act of keeping the sentence in abeyance at the pleasure of the person who is
authorized to suspend the sentence, and if no conditions are imposed, the person authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should undergo the rest of the sentence without assigning any reason. This position is given in the Law commission 41st Report P.281 Para 29.1; and also in cases like Ashok Kumar Vs. Union of India (AIR 1991 SC 1792); State of Punjab V. Joginder Singh (AIR 1990 SC 1396).

Section 389 (1) and (2) of Cr.P.C deals with a situation where convicted person can get a Bail from appellate court after filing the criminal appeal. Section 389 (3) deals with a situation where the trial court itself can grant a bail to convicted accused enabling him to prefer an appeal. Since we are concerned with the power of the trial court to suspend the sentence, section (3) must be taken into account.

Section 389 (3) is applicable only in the following conditions:

1. The court must be the convicting court,
2. The accused must be convicted by the court,
3. The convict must be sentenced to imprisonment for a term Not exceeding three years,
4. the convict must express his intention to prefer appeal before the appellate court,
5. The convict must be on bail on the day of the judgment,
6. There should be right of appeal (Mayuram Subramanian Srinivasan Vs. CBI (2006) 5 SCC 752)).

Trial Court's Power U/sec. 389 (3) of Cr.P.C:

1. Trial Court has power to release such convict on bail.
2. Trial court has power to refuse the bail if there are “Special Reasons”
3. Trial Court has power to release such convict for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate court.
4. Thereafter, it is provided that “the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended”. So what is important to take note of, is that first the Trial Court has to decide whether there are Special reasons to refuse the bail. If the trial court does not find any special reasons for rejection of the bail, then the convict has to be released on bail for enabling him to present appeal to the appellate court.
Features of section 389 (3):

1. The convict shall not be released on bail “as of right” but he will have to satisfy that he is “eligible” to be released on bail:

2. If the trial court is satisfied that there are “Special reasons” for not releasing the convict on bail, then the Trial Court can very well do:

3. The sole purpose of this provision is to enable the convict to present appeal to the appellate court:

4. No maximum period is prescribed for releasing the convict on bail;

5. Under this section 389 (3) suspension of sentence is “deemed” suspension;

6. Suspension of sentence is by-product of the accused being released on bail;

7. The trial court has no power to suspend the sentence and then order the release of the convict on bail.

So the order of trial court should be like this:

“The convicted is released on bail, since he intends to prefer appeal against the judgment and order of this court and there are no special reasons for refusing bail, for such period as will afford sufficient time to present the appeal within limitation period and obtain the orders of the Appellate court under Sub-Section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended”

Difference in operations of Sub-Section (1) (3):

1. Sub-Section (1) comes into play when appeal is pending But sub-section (3) comes into play when the convict expresses his intention to present appeal.

2. Sub-Section (1) tells “suspension “ first and then talks of “Release on bail” or “Own bond” But Sub-section (3) tells “Release on bail” first and then “suspension” is then the “automatic” effect.

3. Sub-section (1) does not prescribe that the accused must be on bail BUT Sub-section (3) can be used only if the accused is on bail on the day of judgment.

4. Sub-section (1) gives option to release the convict on “bail” or “his own bond” BUT Trial Court vide Sub-section (3) does not have power to release the convict on “his own bond”. However trial Court can also relief the accused on his own bond if the accused is poor etc.

5. In nutshell, vide Sub-Section (1) suspension is cause and bail is effect and vide sub-section (3) bail is cause and suspension is effect.
Suspension of Fine:

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of the code, however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount, imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once.

4. Hon'ble Supreme court in Ravikant S.Patil Vs. Sarvabhouma Bagali (2007) 1 SCC 673 has held that: Para-15 “It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non existent, but only non-operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction”.

II. Right of the accused against “Double Jeopardy”:

Art. 20 (2) of the constitution and Sec. 300 of Cr.P.C Art. 20 (2) of the constitution lays down that” no person shall be prosecuted and punished for the same offence more than once: The right of the accused against Double Jeopardy is the recognition of the latin maxim -“Nemo debit lis vexari pro et
eden causa” that means no man shall be punished or put in Jeopardy or Peril twice for the same offence.

Article 20 (2) of Constitution of India bars prosecution and punishment after an earlier punishment for same offence. Where the complaint is permitted to be withdrawn and as a result the accused is acquitted. Trial of accused on fresh complaint for the same offence base on the same facts would be barred by section 300 Cr.P.C (Eciyo coconut oils Pvt. Ltd Vs. State of Kerala 2002 (2) crimes 147).

Second trial is barred when accused is convicted or acquitted. There is a difference between acquittal and discharge, discharge of the accused does not amount to acquittal and thus no bar on proceedings U/sec. 300 Cr.P.C in Ranvir Singh Vs. State of Haryana, 2008 Crl.J2152 (2155) (P&H).

III. RIGHT OF THE ACCUSED AND APPLICATION OF THE PRINCIPLE OF “RESJUDICATA’ OR ISSUE -ESTOPPEL” TO CRIMINAL PROCEEDINGS:

The maxim Res-Judicata pro veritate occipitur, is no less applicable to criminal than to civil proceedings. In Lalta Vs. The State of U.P., in AIR 1970 SC 133 the Apex court of India, held that when an issue of fact has been tried by a competent court on a former occasion and a finding of the fact has been reached in favour of the accused, such a finding would constitute an estoppel or res-judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even might be permitted by the terms of section 300 (2), code of Criminal Procedure, 1973. Section 300 does not preclude the applicability of this rule of issue – estoppel.

The same view has been affirmed in some other decisions. The legal position has further been explained in Muthuswamy Asari Vs. Jaya Mohan, 1982 Crl. L.J NOC 31 (Kerala) where in it was held that this plea of res-judicata or issue -estoppel is entirely different from the plea of double jeopardy or Autrefois acquit. This broader plea is available to the defence even when the narrower plea of double jeopardy is not available. The consequence is that when an issue of fact has been tried and decided by a competent court in a former trial in favour of the accused, it cannot be upset in subsequent trial even for a distinct offence.

The Supreme Court in A.R. Antuley Vs. R.S. Nayak., AR 1988 Supreme Court 1531 further explained the legal position. It was held there in that this code ought to recognize the distinction between finality of judicial order qua the parties and the review ability for application to other cases. Between the parties
even a wrong decision can operate as res-judicata. The doctrine of res-judicata is applicable even to criminal trite.

IV. RIGHT OF THE ACCUSED NOT TO SUFFER IMPRISONMENT FOR PERIOD LONGER THAN MAXIMUM:

Ordinarily when a person is accused of an offence or when a person is accused of more offences than one, the sentences of imprisonment imposed on him are directed to run concurrently, but even on assumption that the sentence of imprisonment may be consecutive, the under trial prisoners concerned have already suffered incarceration for the maximum period for which they could have been sent to jail on conviction. There is absolutely no reason why they should be allowed to continue to remain in jail for a moment longer, since such continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the constitution.

V. RIGHT OF ACCUSED TO BE HEARD ON QUESTION OF SENTENCE IN WARRANT CASES:

The relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in Section 235 (2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248 (2) of the same code.

This provision of hearing on question of sentence is mandatory. Non – compliance with the provisions of section 235 (2) of the code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence.

PRE-SENTENCE HEARING:

Therefore, the sentence awarded has to satisfy many conflicting demands. It has to satisfy the victims of the crime and the society in general that the culprit has been adequately and appropriately punished. It should leave an impression on the offender that he is punished for the offence he has committed and shall remind him that commission of crime won’t do any good to him and that if he commits or repeats the commission of the offence and continue crime as his career, he will be caught and punished, and thereby deter and prevent him from committing or repeating the commission of the offence. The punishment imposed also should bring home the reformation of the offender and restore him to the society as its prodigal member. The punishment also shall take care of reparation of the victims by providing adequate and reasonable compensation. Thus, exploration of the modern
penology made the task of Judges in exercising their discretion to choose and impose sentence complex and complicated. Thus, there shall be material or evidence before the court relating to crime, socioeconomic, psychological and personal aspects of the offence, and in some cases of the victim, to arrive at a just and adequate sentence order.

Information relating to these aspects may be found to some extent from the material gathered by the investigating agency during the investigation and proved by the prosecution, and also from the evidence produced during trial. But is is a known experience that this material so produced before the court is hardly adequate to assist the court to meet the punitive dilemma in arriving at an appropriate sentence. The consideration of these aspects relates to post conviction stage. It is also a fact that the counsel appearing for the accused feels shy to seek permission of the court to adduce evidence or to advance arguments on behalf of the accused touching the aspects of the sentence, with an apprehension that the court may take it as the accused accepting the guilt and is under an expectation of conviction. On the other hand, if an opportunity is provided after conviction dealing with aspects relating to the sentence to be imposed on the convict, the same will afford an opportunity both for the prosecution and also to the accused to place relevant material and evidence before the court, which will make the task of the court easy and meaningful, and the same will be of immense help for the court to arrive at just and adequate sentence. Thus, there should be a stage, after conviction of the accused and before passing sentence order, in criminal proceedings, dealing with an inquiry purely relating to the aspects of the sentence.

**Position under criminal procedure code 1973:**

Section 235 is a provision dealing with hearing of the accused on question of sentencing, after passing the order of conviction in trials before the court of sessions, which reads as follows;

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 provision of section 360, hear the accused on question of sentence, and then pass sentence on him according to law. Section 248 deals with the hearing of the accused before passing sentence, after he is convicted in trial of warrant cases by Magistrates and it reads thus:

   a. if, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.
b. Where, in any case under this chapter, the Magistrate find the accused guilty, but does not proceed in accordance with the provisions of Sec. 325 or Sec. 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law. In every trial before a court of session or in a warrant case before magistrate’s court, the court must, first decide as to the guilt of the accused and deliver a Judgment convicting or acquitting the accused. If the accused is acquitted, it will be the end of the trial. But if the accused is convicted, then the court has to “hear the accused on question of sentence, and then pass sentence on him according to law” Thus, when a Judgment is rendered convicting the accused, the accused at that stage, shall be heard in regard to the sentence and only after hearing him, the court shall proceed to pass the sentence. Supreme Court, in SANTA SINGH Vs. STATE OF PUNJAB CASE (AIR 1976 (4) SCC 190), dealt with the scope and meaning of the words “hear the accused” and held as follows:

“We are, therefore, of the view that the hearing contemplated by Sec. 235 (2) is not confined merely to hearing oral submissions, but it is also intended to given 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 in to 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 the proceedings”.

CONSEQUENCES OF NON-COMPLIANCE:

Non-Compliance of the requirement of the hearing of the accused contemplated under these provisions of law is not a mere irregularity, curable under section 465 Cr.P.C, but it is an illegality which vitiates the sentence.

Hon’ble Supreme court of India, in SANTA SINGH’S CASE (AIR 1976 (4) SCC dealing with the non-compliance of section 235 (2), held as follows: “The next question that arises for consideration is whether non compliance with section 235 (2) is merely an irregularity which can be cured by section 465 or it is an illegality which vitiates the sentence. Having regard to object and the setting in which the new provision of section 235 (2) was inserted in the 1973 code there can be no doubt that it is one of the most fundamental part of the criminal procedure and non-compliance thereof will ex-facie vitiate the order. Even if it be regarded as an irregularity the prejudice caused to the accused would be inherent and implicit because of the infraction of the rules of natural justice which have been incorporated in this statutory provision, because the
accused has been completely deprived of an opportunity to represent to the court regarding the proposed sentence and which manifestly results in a serious failure of the justice”.

POWER OF APPELLATE COURTS:

Now, after the introduction of these provisions dealing with pre-sentence hearing in criminal trials, the sessions and warrant case trials shall be considered as consisting of two parts one dealing with pre-conviction stage, and another dealing with post-conviction stage, and therefore, even in a case where the appellate court set aside the sentence imposed by a criminal court for non-compliance of these provisions, the case can be remitted back for re-trial of the post – conviction stage and there is no need to order a de novo trial.

In SANTA SINGHS’s case (AIR 1976 (4) SCC 190) Santhasingh, the appellant before the Supreme Court was convicted and sentence to death for an offence under section 302 of IPC on the same day (on 26th February 1975) in a single judgment, and the sessions Judge did not give hearing to the appellant in regard to the sentence to be imposed on him. On appeal, the Supreme Court found the sentence, imposed on Santhasingh, without hearing him on sentence as required under section 235 (2), is illegal and therefore, while confirming the conviction of Santhasingh under section 302 of IPC, set aside the sentence of death and remanded the case to the Sessions court with a direction to impose appropriate sentence, after giving an opportunity to the appellant and hearing him in regard to the question of sentence, in accordance with the provisions of section 235 (2), as interpreted in the Judgment.

But Hon’ble Supreme Court, in DAGDU VS. STATE OF MAHARASHTRA (AIR 1977 SC 1206) held that in every case where it is found that section 235 (2) is not complied, it is not necessary to remand the case to the trial court in order to afford to the accused, an opportunity to be heard on the question of sentence. If the accused makes a grievance of non-compliance of this provision is made for the first time before the Appellate Court, it would be open to that court to remedy the breach by giving an opportunity of hearing the accused on the question of sentence, and perhaps it must inevitably happen where the conviction is recorded for the first time by a higher court. Hon’ble Supreme Court also further held that remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious and fair, disposal of cases.

In TARLOK SINGH VS. STATE OF PUNJAB (AIR 1977 SC (1747)), Supreme Court felt that it is more appropriate for the Appellate court to give an opportunity to the parties in terms of section 235 (2) to produce the material
they wish to adduce instead of going through exercise of sending the case back to the trial court, since the same will save time and help produce prompt justice.

**Nature of hearing:**

The “hearing” contemplated under these provisions is not confined to oral submissions by the prosecution or the accused. The same entitles both the parties to produce evidence, oral or documentary, it they choose to do so, and if the circumstances warrant abduction of such an evidence.

The Hon’ble Supreme Court in **DAGDU VS. STATE OF MAHARASHTRA** (1977 Crl. L.J 1206 (1222)) held as follows: “That opportunity has to be real and effective which means that the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence.”

**Duty of the Court:**

The Role of the Judge at the stage of hearing on sentence is no passive and he has to actively participate in the enquiry and make every endeavor to get all the facts and evidence, which have bearing in determining the sentence. The role of the court is stated in **EMMINS ON SENTENCING** (At Page 79 (2nd Edtn)) in the following passage: “The procedure between conviction and sentence is markedly different from that which pertains to the trial itself. The role of the judge or bench of magistrates changes from that of an umpire to one of a collector of information about the offence and the offender. Rules relating to the admissibility of evidence are some what relaxed, and the combative or
adversarial style of the opposing lawyers is less marked. The judge takes a more central and active role in the gathering of information, which comes from a variety of sources, in reaching the sentencing decision.” The mere putting a question asking the accused what he will say about the sentence, is not the compliance of the requirement of “hearing of the accused on sentence” in true spirit of Sec. 235 (2) Cr.P.C. The importance of the role participation of the Judge and the duty cast upon him during “hearing on sentence” under section 235 (2) Cr.P.C is elaborately discussed and appropriate directions are given in MUNIAPPAN Vs. STATE OF TAMILNADU (AIR 1981 SC 1220) in the following lines:

“We are also not satisfied that the learned sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that when the accused was asked on the question of sentence, he did not say anything”.The obligation to hear the accused on the question of sentence which is imposed by section 235 (2) of the Criminal Procedure code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of criminal. It is the bounden duty of the Judge to cast aside the formalities of the court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under section 235 (2) and the answers which the accused makes to those questions are beyond the narrow constraints of Evidence Act. The court, while on the question of sentence, is in an altogether different in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction”.

Therefore, it is clear that mere putting a question formally and mechanically by the court to the accused asking him, what he will say about the sentence, is not the hearing contemplated to be given to the accused to determine the sentence to be imposed under Sec. 235 (2) Cr.P.C.

Here, it is appropriate to refer to the observations of Hon’ble JUSTICE V.R. KRISHNAIYER, IN MOHAMMAD GIASUDDIN VS. STATE OF ANDHRA PRADESH (AIR 1977 SC 1926 (1928)) which reflects the deficiencies in Indian Judicial system in respect of sentencing.
“Before the trial court, there was a formal, almost pharisaic, fulfillment of the pre-sentencing provision in section 248 (2) Cr.P.C 1973. The opportunity contemplated in the sub-section has a penalogical significance of far-reaching import, which has been lost on the trial Magistrate. For he disposed of this benignant obligation by a brief ritual:

“I made of the accused that they were found guilty under Sec. 420 of IPC and the punishment contemplated thereof”. Reform of the black letter law is a time-lagging process. But judicial metabolism is sometimes slower to assimilate the spiritual substance of creative ideas finding their way into the statute book. This may explain why the appellate courts fell in line with the Magistrate’s mechanical approach and confirmed the condign punishment of 3 years rigorous imprisonment. All the three tiers the focus was on the serious nature of the crime (cheating of young men by a government servant and his black guardly companion) and no ray of light on the ‘criminal’ or on the pertinent variety of social facts surrounding him penetrated the forensic mentation. The humane art of sentencing remains a retarded child of the Indian Criminal Justice System”.

Adjournment before sentence:

Supreme Court, in ALLAUDDIN MIAN VS. STATE OF BIHAR (AIR 1989 SC 1456 (1466)) and again in MALKIAT SINGH VS. STATE OF PUNJAB (1991 4 SCC 341) indicated the need to adjourn the case to a future date after pronouncing the verdict of conviction and call upon the prosecution as well as the defense to place before it, the relevant material having bearing on the sentence and thereafter to determine the sentence to be imposed. In these two decisions the proviso to sub-section (2) of section 309 of the Code of Criminal Procedure, 1973 was not considered. This proviso reads as follows:

“Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him”.

In state of Maharasstra Vs. Sukdev Singh (AIR 1992 SC 2100 (2128)), the Hon’ble Supreme Court considered the implication of this proviso and held as follows:

“The proviso must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section. That section emphasises that an inquiry or trial once it has begun should proceed from day to day till the evidence of all the witnesses in attendance has been recorded so that they may not be unnecessarily vexed. The underlying object is to discourage frequent adjournments. But that does not mean that the proviso
precludes the court from adjourning the matter even where the interest of justice so demands. The proviso may not entitle an accused to an adjournment but it does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice as enshrined in S.235 (2) of the Code. Expeditious disposal of a criminal case is indeed the requirement of Art. 21 of the Constitution, so also a fair opportunity to place all relevant material before the court is equally the requirement of the said article. Therefore, if the court feels that the interest of justice demands that the matter should be adjourned to enable both sides to place the relevant material touching on the question of sentence before the court, the above extracted proviso cannot preclude the court from doing so."

In RAM DEO CHAUHAN VS. STATE OF ASSAM (2001 AIR SCW 2159), the Supreme Court after considering the above stated decisions held as follows:

"We, therefore, choose to use this occasion for reiterating the legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence.

1. When the conviction is under Section 302 of IPC (with or without the aid of section 34 or 149 or 120 B of IPC) if the sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. Section 235 (2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence.

2. In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.

3. The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.

4. In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge proposes to impose death penalty) the proviso to Section 309 (2) is not a bar for affording such time.

5. For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict of the sentence is pronounced. Further detention will depend upon the process of law."
The recent trend of criminal justice system is to reform the criminal rather than to punish him. In India reformatory theory of punishment reflects in section 360 of the code of criminal procedure and section 3 and 4 of the Probation of offenders Act, 1958. As per section 3 of the probation of offenders Act, 1958 the court may release the convict on due admonition when he is found guilty of having committed an offence punishable under Section 379, 380, 381, 404 or 420 of Indian Penal Code or offence punishable with imprisonment for not more than two years, and no previous conviction is proved against him. Under section 4 of the said Act when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court is of the opinion that it is expedient to release him on probation of good conduct, then the court may instead of sentencing him to any punishment release him on his executing bond, with or without sureties to appear and receive sentence when called upon during such period, not exceeding 3 years, and in the meantime to keep the peace and be of good behaviour. Therefore, benefit of Probation of Offenders Act should be given to convict in deserving cases.

Section 428 of code of Criminal Procedure is a new provision. It confers a benefit on a convict reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under trial prisoner.

Section 428 of the Code permits the accused to have the period undergone by him in jail as an under trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period.

Substantive law imposing liability of penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect held in Rao Shiv Bhadur Singh Vs. State of Vindhya Pradesh, AIR 1953 SC 394.

RIGHT TO APPEAL IN CASE OF CONVICTION (SECTIONS. 351, 374, 379, 380 OF Cr.P.C and Articles. 132 (1) and 136 (1) OF THE CONSTITUTION):
Notwithstanding anything in the criminal code, appeal to the court to which decrees or orders made in such court are ordinarily appealable, Non-filling of appeal by co-accused cannot be treated as a factor against accused, it would not be in any event take away right of accused to file appeal (VADAMALAI VS. SYED THASTHAKEET, AIR 2009 SC 1956).

RIGHT TO FILE APPEAL AGAINST THE ORDER OF CONVICTION (SECTION 372, 373, 374 CR.P.C AND ARTICLE 132 (1), 134-A):

The right of appeal is not a natural or inherent, it is a creature of statute (SAJID ALI .VS. STATE OF NCT, 2007 (2) CRIMES 268 (DEL)). Right of appeal can neither be interfered with or impaired not it can be subjected to any condition (Dilip S.Dhanukar Vs. Kotak Mahindra Co.Ltd. 2007 Crl. L.J. 2417 (2421) SC).

RIGHT TO BE RELEASED ON PAROLE OR FURLOUGH (SECTIONS 5 (A) AND 5 (B) OF THE PRISONERS ACT, 1894):

The parole and furlough rules are part of the penal and prison system with a view to humanise the prison system. All fixed term sentences of imprisonment of above 18 months are subject to release on parole after a third of the period of sentence has been served. It is a provisional release from confinement but is deemed to be a part of the imprisonment.

RIGHT OF THE ACCUSED UNDER-TRIAL OR CONVICT TO LIVE WITH HUMAN DIGNITY AND RIGHT TO MEET HIS RELATIONS:

Under Article 21 of the Constitution of India, the right to ‘life’ includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

PROPER EXEUCTUION OF SENTENCE:

The accused has right to proper execution of sentencing includes consulting president of India and begs pardon under Article 72, Governor under Article 161 of Indian Constitution.

REMISSION:

Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the
disposal of the case through trial and appeals. When once remission is granted, it is revocable.

Apart from granting, remission of sentences, in individual cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone.

Commutation of sentence means, altering the sentence from one grade to lower grade. Rigorous imprisonment may be converted into simple imprisonment. Imprisonment can be converted into fine. Death sentence may be converted into life sentence and life sentence to a sentence of 14 years imprisonment. The sentence of 14 years may be reduced to any term of imprisonment. Here also, the government needs to take the exigencies of the case before commuting the sentence. Before exercising the power of suspension, remission and commutation, the government will call for and obtain opinion of the presiding officer of the court which ordered or confirmed the conviction. The opinion may not be treated as recommendation or as a binding advice. The opinion may be taken into consideration only. The commutation once granted is not revocable.

In a decision “Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam, AIR 2001 SC 2231 = (5) SCC-714= 2001 (4) Scale 116 = 2001 (4) Supreme 363” Remission of sentence does not mean acquittal.

In a decision “Subash Chander Vs. Krishna Lal AIR 2001 SC 1903 2001 (4) SCC 458 – 2001 (3) Scale 130 = 2001 Supreme 268 – 2001 Cr.LJ 1825”. Imprisonment for life means imprisonment for rest of the life of the convict unless appropriate government chooses to exercise its discretion to remit either the whole or part of the sentence under Sec. 401 of the Criminal Procedure Code.

To be entitled to remission in life sentence, the prisoner shall have undergone clear 14 years imprisonment excluding jail remissions. Sec. 433-A Cr.P.C Union of Inidal Vs. Sadha Singh AIR 1999 SC 3833 = 1999 (8) SCC 375 = 2000 Cr.LJ 15.

Sec. 472 Cr.P.C period during which the accused was under trial shall be excluded from the period of remission in sentence granted. Joginder singh Vs. State of Punjab, 2001 (8) SCC 306.

Grant of remission under Sec. 432 Cr.P.C vests absolutely with the appropriate Government. The government can grant remission to all convicts except those mentioned in Sec. 433-A. The Government may grant remission to
certain classes of convicts and exclude some others. The classification made here shall be reasonable. Rape is not an offence excluded for purposes of remission under Sec. 433-A. However, a notification of the Government included persons convicted for rape are a class not entitled for the benefit of remission. The classification made between persons convicted for other general offences and persons convicted for rape is held reasonable and accordingly held valid. 2003 (4) ILD (SC) 131.

CONCLUSION:

The court is expected to strike balance at the time of imposing sentence, The sentence shall not too harsh and too lenient. The Judge should give thought to gravity of the offence, degree of participation of the convict in the offence and his subsequent attitude towards the case. While awarding any sentence a judge must visualise the effect of sentence on the offender and also the society. Generally, in all cases excepting offence of immense gravity, a judge should ask himself whether he can avoid sentencing of sending the offender to prison. He must keep in mind that short sentences expose an offender to all bad influences of imprisonment without enabling him to any benefit from it. In such cases, the court should see whether benefit of Probation of Offenders Act, 1958 can be extended OR can order the convict to stand before the Court till raising as per the provision u/Sec.354(4) of Cr.P.C, when the offence is having punishment up to 7 years. In order to anticipate such an effect, the judge must be equipped with adequate information about the offender and the statistics. Judicial visits to Jails and correction homes from time to time, is a welcome step which may enable a judge to see the actual effect of sentences passed. Apart from it, a judge is required to have social outlook.
Paper Presented by
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SENTENCE:-
A sentence is a decree of punishment of the court in Criminal procedure. The sentence can generally involve a decree of imprisonment, a fine and / or other punishments against a defendant convicted of a crime. Those imprisoned for multiple crimes will serve a consecutive sentence (in which the period of imprisonment equals the sum of all the sentences served sequentially, or one after the next), a concurrent sentence (in which the period of imprisonment equals the length of the longest sentence where the sentences are all served together at the same time)

PUNISHMENT:-
Punishment is a method of protecting society by reducing the occurrence of criminal behaviour. Punishment can protect society by deterring the potential offenders, preventing the actual offender from committing further offences and by reforming and turning him into a law abiding citizen. The following are the some of the rights available to the accused, sentencing and punishment.

SUSPENSION OF SENTENCE:-
“Suspension” means to take or withdraw sentence for the time being. It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence, and if no conditions are imposed, the person authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should undergo the rest of the sentence without assigning any reason. This position is given in the Law commission 41st Report P.281 Para 29.1; and also in cases like Ashok Kumar Vs. Union of Inida (AIR 1991 SC 1792); State of Punjab V. Joginder Singh (AIR 1990 SC 1396).

2. Section 389 (1) and (2) of Cr.P.C deals with a situation where convicted person can get a Bail from appellate court after filing the criminal appeal. Section 389 (3) deals with a situation where the trial court itself can grant a bail to convicted accused enabling him to prefer an appeal. Since we are concerned with the power of the trial court to suspend the sentence, section 389 (3) must be taken into account.

Section 389 (3) is applicable only in the following conditions:-
1. the court must be the convicting court,
2. The accused must be convicted by the court,
3. The convict must be sentenced to imprisonment for a term Not exceeding three years,
4. the convict must express his intent to present appeal before the appellate court,
5. The convict must be on bail on the day of the judgment,
6. There should be right of appeal *(Mayuram Subramanian Srinivasan Vs. CBI (2006) 5 SCC 752)).

**Trial Court's Power U/sec. 389 (3) of Cr.P.C:-**
1. Trial Court has power to release such convict on bail.
2. Trial court has power to refuse the bail if there are “Special Reasons”
3. Trial Court has power to release such convict for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate court.

3. Thereafter, it is provided that “the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended”. So what is important to take note of, is that first the Trial Court has to decide whether there are special reasons to refuse the bail. If the trial court does not find any special reasons for rejection of the bail, then the convict has to be released on bail for enabling him to present appeal to the appellate court. **Features of section 389 (3):**

1. The convict shall not be released on bail “as of right” but he will have to satisfy that he is “eligible” to be released on bail:
2. If the trial court is satisfied that there are “Special reasons “ for not releasing the convict on bail, then the Trial Court can very well do:
3. The sole purpose of this provision is to enable the convict to present appeal to the appellate court:
4. No maximum period is prescribed for releasing the convict on bail;
5. Under this section 389 (3) suspension of sentence is “deemed” suspension;
6. Suspension of sentence is by-product of the accused being released on bail;
7. The trial court has no power to suspend the sentence and then order the release of the convict on bail.

**So the order of trial court should be like this:**

“The convicted is released on bail, since he intends to prefer appeal against the judgment and order of this court and there are no special reasons for refusing bail, for such period as will afford sufficient time to present the appeal within limitation period and obtain the orders of the Appellate court under Sub-Section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended”
Difference in operations of Sub-Section (1) (3):

1. Sub-Section (1) comes into play when appeal is pending But subsection (3) comes into play when the convict expresses his intention to present appeal.

2. Sub-Section (1) tells “suspension” first and then talks of “Release on bail” or “Own bond” But Sub-section (3) tells “Release on bail” first and then “suspension” is then the “automatic” effect.

3. Sub-section (1) does not prescribe that the accused must be on bail BUT Sub-section (3) can be used only if the accused is on bail on the day of judgment.

4. Sub-section (1) gives option to release the convict on “bail” or “his own bond” BUT Trial Court vide Sub-section (3) does not have power to release the convict on “his own bond”. However trial Court can also relief the accused on his own bond if the accused is poor etc.

5. In nutshell, vide Sub-Section (1) suspension is cause and bail is effect and vide sub-section (3) bail is cause and suspension is effect.

Suspension of Fine:

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of the code, however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount, imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once.

4. Hon’ble Supreme court in Ravikant S.Patil Vs. Sarvabhouma Bagali (2007) 1 SCC 673) has held that:

Para- 15 “It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non existent, but only non-operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is the appellant would incur
disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction”.

Right of the accused against “Double Jeopardy” Art; 20 (2) of the constitution and Sec. 300 of Cr.P.C Art. 20 (2) of the constitution lays down that” no person shall be prosecuted and punished for the same offence more than once:

The right of the accused against Double Jeopardy is the recognition of the latin maxim - “Nemo debit bis vexari pro eadem causa” that means no man shall be punished or put in Jeopardy or Peril twice for the same offence. Article 20 (2) of Constitution of India bars prosecution and punishment after an earlier punishment for same offence. Where the complaint is permitted to be withdrawn and as a result the accused is acquitted. Trial of accused on fresh complaint for the same offence base on the same facts would be barred by section 300 Cr.P.C (Eciyo coconut oils Pvt. Ltd Vs. State of Kerala 2002 (2) crimes 147 ). Second trial is barred when accused is convicted or acquitted. There is a difference between acquittal and discharge, discharge of the accused does not amount to acquittal and thus no bar on proceedings U/sec. 300 Cr.P.C in Ranvir Singh Vs. State of Haryana, 2008 Crl.J2152 (2155) (P&H).

RIGHT OF THE ACCUSED AND APPLICATION OF THE PRINCIPLE OF “RES-JUDICATA OR ISSUE -ESTOPPEL” TO CRIMINAL PROCEEDINGS:-

The maxim Res- Judicata pro veritate accipitur, is no less applicable to criminal than to civil proceedings.

In Lalta Vs. The State of U.P., in AIR 1970 SC 133 the Apex court of India, held that when an issue of fact has been tried by a competent court on a former occasion and a finding of the fact has been reached in favour of the accused, such a finding would constitute an estoppel or res-judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even might be permitted by the terms of section 300 (2), code of Criminal Procedure, 1973. Section 300 does not preclude the applicability of this rule of issue -estoppel.

The same view has been affirmed in some other decisions.

The legal position is further been explained in Muthuswamy Asari Vs. Jaya Mohan, 1982 Crl. L.J NOC 31 (Kerala) where in it was held that this plea of res-judicata or issue -estoppel is entirely different from the plea of double
jeopardy or Autrefois-acquit. This broader plea is available to the defence even when the narrower plea of double jeopardy is not available. The consequence is that when an issue of fact has been tried and decided by a competent court in a former trial in favour of the accused, it cannot be upset in subsequent trial even for a distinct offence.

The Supreme Court in **A.R. Antuley Vs. R.S. Nayak., AR 1988 Supreme Court 1531** further explained the legal position. It was held there in that this code ought to recognize the distinction between finality of judicial order qua the parties and the review ability for application to other cases. Between the parties even a wrong decision can operate as res-judicata. The doctrine of res-judicata is applicable even to criminal traite.

**RIGHT OF THE ACCUSED NOT TO SUFFER IMPRISONMENT FOR PERIOD LONGER THAN MAXIMUM:**

Ordinarily when a person is accused of an offence or when a person is accused of more offences than one, the sentences of imprisonment imposed on him are directed to run concurrently, but even on assumption that the sentence of imprisonment may be consecutive, the under trial prisoners concerned have already suffered incarceration for the maximum period for which they could have been sent to jail on conviction. There is absolutely no reason why they should be allowed to continue to remain in jail for a moment longer, since such continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the constitution.

**RIGHT OF ACCUSED TO BE HEARD ON QUESTION OF SENTENCE IN WARRANT CASES:**

The relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in Section 235 (2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248 (2) of the same code.

This provision of hearing on question of sentence is mandatory. Non – compliance with the provisions of section 235 (2) of the code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence. **PRE-SENTENCE HEARING:**

Therefore, the sentence awarded has to satisfy many conflicting demands. It has to satisfy the victims of the crime and the society in general that the culprit has been adequately and appropriately punished. It should leave an impression on the offender that he is punished for the offence he has committed and shall remind him that commission of crime won’t do any good to him and that if he
commits or repeats the commission of the offence and continue crime as his career, he will be caught and punished, and thereby deter and prevent him from committing or repeating the commission of the offence. The punishment imposed also should bring home the reformation of the offender and restore him to the society as its prodigal member. The punishment also shall take care of reparation of the victims by providing adequate and reasonable compensation. Thus, exploration of the modern penology made the task of Judges in exercising their discretion to choose and impose sentence complex and complicated. Thus, there shall be material or evidence before the court relating to crime, socioeconomic, psychological and personal aspects of the offence, and in some cases of the victim, to arrive at a just and adequate sentence order.

Information relating to these aspects may be found to some extent from the material gathered by the investigating agency during the investigation and proved by the prosecution, and also from the evidence produced during trial. But is is a known experience that this material so produced before the court is hardly adequate to assist the court to meet the punitive dilemma in arriving at an appropriate sentence. The consideration of these aspects relates to post conviction stage. It is also a fact that the counsel appearing for the accused feels shy to seek permission of the court to adduce evidence or to advance arguments on behalf of the accused touching the aspects of the sentence, with an apprehension that the court may take it as the accused accepting the guilt and is under an expectation of conviction.

On the other hand, if an opportunity is provided after conviction dealing with aspects relating to the sentence to be imposed on the convict, the same will afford an opportunity both for the prosecution and also to the accused to place relevant material and evidence before the court, which will make the task of the court easy and meaningful, and the same will be of immense help for the court to arrive at just and adequate sentence.

Thus, there should be a stage, after conviction of the accused and before passing sentence order, in criminal proceedings, dealing with an inquiry purely relating to the aspects of the sentence.

**POSITION PRIOR TO 1973:**

There was no provision dealing with the post-conviction and presentencing stage, in the criminal procedure code, 1898.

In *JAGMOHAN SINGH V. STATE OF UTTAR PRADESH (AIR 1973 SC 947 (959))* Constitutional validity of death sentence is questioned on the ground that no procedure is laid down by law for determining whether the sentence of death or something less is appropriate in the case. Negativing this contention, the Supreme Court held as follows;
“The sentence follows the conviction, and it is true that no formal procedure for producing evidence with reference to the sentence is specifically provided. The reason is that relevant facts and circumstances impinging on the nature and circumstances of the crime are already before the court. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the court unless there is something in the evidence itself which belies him or the public prosecutor for the state challenge the facts. If the matter is relevant and essential to be considered, there is nothing in the criminal procedure code which prevents additional evidence being taken. It must, however, be stated that it is not the experience of criminal courts in India that the accused with a view to obtaining a reduced sentence ever offers to call additional evidence.”

While emphasizing the importance of post-conviction stage, when the judge shall hear the accused on the question of sentence, Mr. Justice V.R Krishna Iyer, in Ediga Annamma Vs. State of Andhra Pradesh (AIR 1974 SC 799 (803)) held as follows:

“Modern penology regards crime and criminal as equally material when the right sentence has to be picked out, although in our processual system there is neither comprehensive provision nor adequate machinery for collection and presentation of the social and personal date of the culprit to the extent required in the verdict on sentence. However, in the criminal procedure code, 1973 about to come in to force, parliament has wisely written into the law a post-conviction stage when the Judges shall “hear the accused on the question of sentence and then pass sentence on him according to law (Sentence 235 and Section 248).

In any scientific system which turns the focus, at the sentencing stage, not only on the crime but also the criminal, and seeks to personalise the punishment so that the reformatory component is as much operative as the deterrent element, it is essential 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”.

In its 48th Report, the law commission, while recommending the insertion of a provision, which would enable the accused to make a representation against the sentence to be imposed, after the judgment of the conviction had been passed, observed as follows: -

“IT is now being increasingly recognized that a rational and consistent sentencing policy require the removal of several deficiencies in the present system. One such deficiency is the lack of comprehensive information as to characteristics and backgrounds of the offender.
We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to co-operative in the process."

These recommendations of Law commission were considered and keeping in view, among others, the principle that an accused should get a fair trial in accordance with the accepted principles of natural justice, sub-section (2) of section 235 and sub-section (2) of section 248 are enacted in the code of criminal procedure 1973, providing for the hearing of the accused, after conviction.

Position under criminal procedure code 1973:-

**Section 235** is a new provision dealing with hearing of the accused on question of sentencing, after passing the order of conviction in trials before the court of sessions, which reads as follows;

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 provision of section 360, hear the accused on question of sentence, and then pass sentence on him according to law. **Section 248** deals with the hearing of the accused before passing sentence, after he is convicted in trial of warrant cases by Magistrates and it reads thus:-

1. if, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.
2. Where, in any case under this chapter, the Magistrate find the accused guilty, but does not proceed in accordance with the provisions of Sec. 325 or Sec. 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

In every trial before a court of session or in a warrant case before magistrate's court, the court must, first decide as to the guilt of the accused and deliver a Judgment convicting or acquitting the accused. If the accused is acquitted, it will be the end of the trial.

But if the accused is convicted, then the court has to “hear the accused on question of sentence, and then pass sentence on him according to law” Thus, when a Judgment is rendered convicting the accused, the accused at that stage, shall be heard in regard to the sentence and only after hearing him, the court shall proceed to pass the sentence.

Supreme Court, in **SANTA SINGH Vs. STATE OF PUNJAB CASE (AIR 1976 (4) SCC 190)**, dealt with the scope and meaning of the words “hear the accused” and held as follows:

“We are, therefore, of the view that the hearing contemplated by section 235 (2) is not confined merely to hearing oral submissions, but it is also intended to given 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 in to 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 the proceedings”.

CONSEQUENCES OF NON-COMPLIANCE:-

Non-Compliance of the requirement of the hearing of the accused contemplated under these provisions of law is not a mere irregularity, curable under section 465 Cr.P.C but it is an illegality which vitiates the sentence. Supreme court of India, in SANTA SINGH’S CASE (AIR 1976 (4) SCC 190), dealing with the non-compliance of section 235 (2), held as follows:

“The next question that arises for consideration is whether non compliance with section 235 (2) is merely an irregularity which can be cured by section 465 or it is an illegality which vitiates the sentence. Having regard to object and the setting in which the new provision of section 235 (2) was inserted in the 1973 code there can be no doubt that it is one of the most fundamental part of the criminal procedure and non-compliance thereof will ex-facie vitiate the order. Even if it be regarded as an irregularity the prejudice caused to the accused would be inherent and implicit because of the infraction of the rules of natural justice which have been incorporated in this statutory provision, because the accused has been completely deprived of an opportunity to represent to the court regarding the proposed sentence and which manifestly results in a serious failure of the justice”.

POWER OF APPPELLATE COURTS:-

Now, after the introduction of these provisions dealing with presentence hearing in criminal trials, the sessions and warrant case trials shall be considered as consisting of two parts one dealing with pre-conviction stage, and another dealing with post-conviction stage, and therefore, even in a case where the appellate court set aside the sentence imposed by a criminal court for non-compliance of these provisions, the case can be remitted back for retrial of the post – conviction stage and there is no need to order a de nova trial.

In SANTA SINGHS’s case (AIR 1976 (4) SCC 190) Santhasingh, the appellant before the Supreme Court was convicted and sentence to death for an offence under section 302 of IPC on the same day (on 26th February 1975) in a single judgment, and the sessions Judge did not give hearing to the appellant in regard to the sentence to be imposed on him. On appeal, the Supreme Court
found the sentence, imposed on Santhasingh, without hearing him on sentence as required under section 235 (2), is illegal and therefore, while confirming the conviction of Santhasingh under section 302 of IPC, set aside the sentence of death and remanded the case to the Sessions court with a direction to impose appropriate sentence, after giving an opportunity to the appellant and hearing him in regard to the question of sentence, in accordance with the provisions of section 235 (2), as interpreted in the Judgment.

But Supreme Court, in **DAGDU VS. STATE OF MAHARASHTRA (AIR 1977 SC 1206)** held that *in every case where it is found that section 235 (2) is not complied, it is not necessary to remand the case to the trial court in order to afford to the accused, an opportunity to be heard on the question of sentence. If the accused makes a grievance of non-compliance of this provision is made for the first time before the Appellate Court, it would be open to that court to remedy the breach by giving an opportunity of hearing the accused on the question of sentence, and perhaps it must inevitably happen where the conviction is recorded for the first time by a higher court.*

Supreme Court also further held that *remand is an exception, not the rule, and ought therefore to be avoided as far as possible in the interests of expeditious and fair, disposal of cases.*

In **TARLOK SINGH VS. STATE OF PUNJAB (AIR 1977 SC (1747)),** Supreme Court felt that it is more appropriate for the Appellate court to give an opportunity to the parties in terms of section 235 (2) to produce the material they wish to adduce instead of going through exercise of sending the case back to the trial court, since the same will save time and help produce prompt justice.

**Nature of hearing:-**

The “hearing” contemplated under these provisions is not confined to oral submissions by the prosecution or the accused. The same entitles both the parties to produce evidence, oral or documentary, if they choose to do so, and if the circumstances warrant abduction of such an evidence.

The Supreme Court in **DAGDU VS. STATE OF MAHARASHTRA (1977 Crl. L.J 1206 (1222))**, held as follows:-

“That opportunity has to be real and effective which means that the accused must be permitted to adduce before the court all the data which he desires to adduce on the question of sentence.”

Supreme Court, in **RAJENDRA PRASAD VS. STATE OF U.P (1979 CRL.L.J. 792 (818)),** held:

“Where the accused is convicted for an offence under section 302 of IPC, the court should call upon the Public Prosecutor at the stage of S.235 (2) to state to the court whether the case is one where the accused as a matter of justice
should be awarded the extreme penalty of law or the lesser sentence of imprisonment for life. If the public prosecutor informs the court he is of the opinion that the case is not the one where extreme penalty is called for and if the Session Judge agrees with the submission, the matter should end there. If on the other hand the Public Prosecutor states that the case calls for extreme penalty prescribed by law, the court would be well advised to call upon the Public Prosecutor to state and establish, if necessary, by leading evidence the facts for seeking extreme penalty prescribed by law. Then it would be open to the accused to rebut this evidence either by oral submissions, or if need it, by leading evidence. Thereupon it is for the Judge to determine what would be the appropriate sentence"

**DUTY OF THE COURT:-**

The Role of the Judge at the stage of hearing on sentence is no passive and he has to actively participate in the enquiry and make every endeavor to get all the facts and evidence, which have bearing in determining the sentence. The role of the court is stated in **EMMINS ON SENTENCING (At Page 79 (2nd Edtn))** in the following passage:-

“The procedure between conviction and sentence is markedly different from that which pertains to the trial itself. **The role of the judge or bench of magistrates changes from that of an umpire to one of a collector of information about the offence and the offender. Rules relating to the admissibility of evidence are some what relaxed, and the combative or adversarial style of the opposing lawyers is less marked. The judge takes a more central and active role in the gathering of information, which comes from a variety of sources, in reaching the sentencing decision.**

The mere putting a question asking the accused what he will say about the sentence, is not the compliance of the requirement of “hearing of the accused on sentence” in true spirit of Sec. 235 (2) Cr.P.C. The importance of the role participation of the Judge and the duty cast upon him during “hearing on sentence” under section 235 (2) Cr.P.C is elaborately discussed and appropriate directions are given in **MUNIAPPAN Vs. STATE OF TAMILNADU (AIR 1981 SC 1220))** in the following lines:-

“We are also not satisfied that the learned sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that when the accused was asked on the question of sentence, he did not say anything”.The obligation to hear the accused on the question of sentence which is imposed by section 235 (2) of the Criminal Procedure code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. **The Judge must make a genuine effort to elicit from the accused all information which will**
eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of criminal. It is the bounden duty of the Judge to cast aside the formalities of the court scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of section 235 (2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under section 235 (2) and the answers which the accused makes to those questions are beyond the narrow constraints of Evidence Act. The court, while on the question of sentence, is in an altogether different in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction”.

Therefore, it is clear that mere putting a question formally and mechanically by the court to the accused asking him, what he will say about the sentence, is not the hearing contemplated to be given to the accused to determine the sentence to be imposed under Ss. 235 (2) Cr.P.C.

Here, it is appropriate to refer to the observations of JUSTICE V.R. KRISHNAIYER, IN MOHAMMAD GIASUDDIN VS. STATE OF ANDHRA PRADESH (AIR 1977 SC 1926 (1928)) which reflects the deficiencies in Indian Judicial system in respect of sentencing.

“For the trial court, there was a formal, almost pharisaic, fulfillment of the pre-sentencing provision in section 248 (2) Cr.P.C 1973. The opportunity contemplated in the sub-section has a penalogical significance of far-reaching import, which has been lost on the trial Magistrate. For he disposed of this benignant obligation by a brief ritual:

“I made of the accused that they were found guilty under Sec. 420 of IPC and the punishment contemplated thereof”.

Reform of the black letter law is a time-lagging process. But judicial metabolism is sometimes slower to assimilate the spiritual substance of creative ideas finding their way into the statute book. This may explain why the appellate courts fell in line with the Magistrate’s mechanical approach and confirmed the condign punishment of 3 years rigorous imprisonment. All the three tiers the focus was on the serious nature of the crime (cheating of young men by a government servant and his black guardly companion) and no ray of light on the ‘criminal’ or on the pertinent variety of social facts surrounding him penetrated the forensic mentation. The humane art of sentencing remains a retarded child of the Indian Criminal Justice System”. 
Adjournment before sentence:

Supreme Court, in **ALLAUDDIN MIAN VS. STATE OF BIHAR** (AIR 1989 SC 1456 (1466)) and again in **MALKIAT SINGH VS. STATE OF PUNJAB** (1991 4 SCC 341) indicated the need to adjourn the case to a future date after pronouncing the verdict of conviction and call upon the prosecution as well as the defense to place before it, the relevant material having bearing on the sentence and thereafter to determine the sentence to be imposed.

In these two decisions the proviso to sub-section (2) of section 309 of the Code of Criminal Procedure, 1973 was not considered. This proviso reads as follows:

“Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him”

In state of **Maharastra Vs. Sukdev Singh** (AIR 1992 SC 2100 (2128)), the Supreme Court considered the implication of this proviso and held as follows:

“The proviso must be read in the context of the general policy of expeditious inquiry and trial manifested by the main part of the section. That section emphasises that an inquiry or trial once it has begun should proceed from day to day till the evidence of all the witnesses in attendance has been recorded so that they may not be unnecessarily vexed. The underlying object is to discourage frequent adjournments. But that does not mean that the proviso precludes the court from adjourning the matter even where the interest of justice so demands. The proviso may not entitle an accused to an adjournment but it does not prohibit or preclude the court from granting one in such serious cases of life and death to satisfy the requirement of justice as enshrined in S.235 (2) of the Code. Expeditious disposal of a criminal case is indeed the requirement of Art. 21 of the Constitution, so also a fair opportunity to place all relevant material before the court is equally the requirement of the said article. Therefore, if the court feels that the interest of justice demands that the matter should be adjourned to enable both sides to place the relevant material touching on the question of sentence before the court, the above extracted proviso cannot preclude the court from doing so.”

In **RAM DEO CHAUHAN VS. STATE OF ASSAM** (2001 AIR SCW 2159), the Supreme Court after considering the above stated decisions held as follows:

“We therefore choose to use this occasion for reiterating the legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence.

1. When the conviction is under Section 302 of IPC (with or without the aid of section 34 or 149 or 120 B of IPC) if the sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to
hear the accused on the question of sentence. Section 235 (2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence.

2. In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.

3. The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and the sentence shall also be pronounced on the same day.

4. In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge proposes to impose death penalty) the proviso to Section 309 (2) is not a bar for affording such time.

5. For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict of the sentence is pronounced.

Further detention will depend upon the process of law."

BENIFIT OF PROBATION OF OFFENDER'S ACT, 1958 :-

The recent trend of criminal justice system is to reform the criminal rather than to punish him. In India reformatory theory of punishment reflects in section 360 of the code of criminal procedure and section 3 and 4 of the Probation of offenders Act, 1958. As per section 3 of the probation of offenders Act, 1958 the court may release the convict on due admonition when he is found guilty of having committed an offence punishable under Section 379, 380, 381, 404 or 420 of Indian Penal Code or offence punishable with imprisonment for not more than two years, and no previous conviction is proved against him. Under section 4 of the said Act when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court is of the opinion that it is expedient to release him on probation of good conduct, then the court may instead of sentencing him to any punishment release him on his executing bond, with or without sureties to appear and receive sentence when called upon during such period, not exceeding 3 years, and in the meantime to keep the peace and be of good behaviour. Therefore, benefit of Probation of Offenders Act should be given to convict in deserving cases.

RIGHT OF THE ACCUSED CONVICT AS TO SET OFF THE PERIOD OF DETENTION UNDERGONE BY HIM (SECTION 428 OF THE CODE OF CRIMINAL PROCEDURE, 1973:-

Section 428, code of Criminal Procedure is a new provision. It confers a benefit on a convict reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under trial prisoner. Section 428 of the Code permits the accused to have the period undergone by him in jail as an under trial prisoner set off against the period of sentence
imposed on him irrespective of whether he was in jail in connection with the same case during that period.

**PROTECTION AGAINST CONVICTION OR ENHANCED PUNISHMENT UNDER EX-POST FACTO LAW (ARTICLE 20 (1) OF THE CONSTITUTION):**

Substantive law imposing liability of penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect held in *Rao Shiv Bhadur Singh Vs. State of Vindhya Pradesh, AIR 1953 SC 394.*

**RIGHT TO APPEAL IN CASE OF CONVICTION (SECTIONS. 351, 374, 379, 380 OF CR.P.C AND ARTICLES. 132 (1) AND 136 (1) OF THE CONSTITUTION):**

Not withstanding anything in the criminal code, appeal to the court to which decrees or orders made in such court are ordinarily appealable Nonfilling of appeal by co-accused cannot be treated as a factor against accused, it would not be in any event take away right of accused to file appeal (*VADAMALAI VS. SYED THASTHAKEET, AIR 2009 SC 1956*).

**RIGHT TO FILE APPEAL AGAINST THE ORDER OF CONVICTION (SECTION 372, 373, 374 CR.P.C AND ARTICLE 132 (1), 134-A):**

the right of appeal is not a natural or inherent, it is a creature of statute (*SAJID ALI VS. STATE OF NCT, 2007 (2) CRIMES 268 (DEL)*). Right of appeal can neither be interfered with or impaired nor it can be subjected to any condition (*Dilip S.Dhanukar Vs. Kotak Mahindra Co.Ltd. 2007 Crl. L.J. 2417 (2421) SC*).

**RIGHT TO BE RELEASED ON PAROLE OR FURLOUGH (SECTIONS 5 (A) AND 5 (B) OF THE PRISONERS ACT, 1894):**

The parole and furlough rules are part of the penal and prison system with a view to humanise the prison system. All fixed term sentences of imprisonment of above 18 months are subject to release on parole after a third of the period of sentence has been served. It is a provisional release from confinement but is deemed to be a part of the imprisonment.

**RIGHT OF THE ACCUSED UNDER TRIAL OR CONVICT TO LIVE WITH HUMAN DIGNITY AND RIGHT TO MEET HIS RELATIONS:**

Under Article 21 of the Constitution of India, the right to 'life' includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse
forms, freely moving about and mixing and commingling with fellow human beings.

PROPER EXECUTION OF SENTENCE:-
The accused has right to proper execution of sentencing includes consulting president of India and begs pardon under Article 72, Governor under Article 161 of Indian Constitution.

XIV. REMISSION:
Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial and appeals. When once remission is granted, it is not revocable.

Apart from granting, remission of sentences, in individual cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone.

Commutation of sentence means, altering the sentence from one grade to lower grade. Rigorous imprisonment may be converted into simple imprisonment. Imprisonment can be converted into fine. Death sentence may be converted into life sentence and life sentence to a sentence of 14 years imprisonment. The sentence of 14 years may be reduced to any term of imprisonment.

Here also, the government needs to take the exigencies of the case before commuting the sentence. Before exercising the power of suspension, remission and commutation, the government will call for and obtain opinion of the presiding officer of the court which ordered or confirmed the conviction. The opinion may not be treated as recommendation or as a binding advice. The opinion may be taken into consideration only. The commutation once granted is not revocable.

In a decision “Ram Deo Chauhan @ Raj Nath Chauhan Vs. State of Assam, AIR 2001 SC 2231 = (5) SCC-714= 2001 (4) Scale 116 = 2001 (4) Supreme 363” Remission of sentence does not mean acquittal.

In a decision “Subash Chander Vs. Krishna Lal AIR 2001 SC 1903 = 2001 (4) SCC 458 – 2001 (3) Scale 130 = 2001 Supreme 268 – 2001 Cr.LJ 1825”. Imprisonment for life means imprisonment for rest of the life of the convict unless appropriate government chooses to exercise its discretion to remit either the whole or part of the sentence under Sec. 401 of the Criminal Procedure Code.

To be entitled to remission in life sentence, the prisoner shall have undergone clear 14 years imprisonment excluding jail remissions. Sec. 433-A Cr.P.C

Sec. 472 Cr.P.C period during which the accused was under trial shall be excluded from the period of remission in sentence granted. Joginder Singh Vs. State of Punjab, 2001 (8) SCC 306.

Grant of remission under Sec. 432 Cr.P.C vests absolutely with the appropriate Government. The government can grant remission to all convicts except those mentioned in Sec. 433-A. The Government may grant remission to certain classes of convicts and exclude some others. The classification made here shall be reasonable. Rape is not an offence excluded for purposes of remission under Sec. 433-A. However, a notification of the Government included persons convicted for rape are a class not entitled for the benefit of remission. The classification made between persons convicted for other general offences and persons convicted for rape is held reasonable and accordingly held valid. 2003 (4) ILD (SC) 131.


CONCLUSION:-

The Code of Criminal Procedure, 1973. Provides for wide discretionary powers to the Judge once the conviction is determined. The power used by court as mentioned supra, is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.