REMEDIES, RELIEFS, SENTENCING AND PUNISHMENT

"Life is a precious gift of nature to a being. Right of life as a fundamental right stands enshrined in the Constitution. The right to livelihood is born of it". **(Madhu Kishwar vs. State of Bihar, AIR 1996 SC 1864: (1996) 5 SCC 125: JT (1996) 4 SC 379)**

Fundamental rights, how far binding on the Judiciary:

While the inclusive definition of 'State' in Art. 12 includes the Judiciary, in some earlier cases, it was observed that (i) a judicial order could not possibly violate a fundamenal right; and (ii) no remedy under Art. 32 was available on the ground that a judicial order violated a fundamental right.

A judicial decision or order which violates a fundamental right is void, even though it will be binding on the parties so long as it is not set aside in appropriate proceedings.

Though the remedy under Art. 32 is not available where the offending Court is the Supreme Court itself, the Court in the exercise o its inherent jurisdiction would review and set aside a previous direction given by the Court which offended a fundamental right, e.g., the natural justice, an ingredient of Art. 14 or 21.

Whether a fundamental right can be waived:

In **Basheshar vs. Commr. Of I.T.,** Bhagwati and Subba Rao, JJ have held that a fundamental right being in the nature of a prohibition addressed to the State, none of the fundamental rights in our Constitution can be waived by an individual (This view is thus in agreement with the majority view in Behram's case).

Right to Equality:

Art. 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Meaning of Equal Protection:

Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed.

Equal Protection extends to Privileges offered by the State:

There should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same; or in

other words, its action must not be arbitrary but must be based on some valid principle which itself must not be irrational or discriminatory.

Rule of Law:

Equality before law is co-relative to the concept of rule of law for all round evaluation of healthy social order. A basic postulate of the rule of law is that "justice should not only be done but it must also be seen to be done".

Discrimination by judicial acts:

While Art. 14 extends to all State actions including even acts of the Judiciary, and would hit arbitrary or wilfull discrimination by a Court, the Article does not guarantee uniformity of decisions or the exercise of judicial discretion. Every judicial decision must of necessity depend on the facts and circumstances of the particular case before the Court and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.

Though the vesting of unguided discretion in the Executive to direct the trial of particular persons under a special procedure may be discriminatory, it would not be so where the discretion is vested in judicial officers who have to exercise their discretion according to well-settled principles and subject to revision by superior Courts.

The remedy of a person aggrieved by the decision of a judicial tribunal is to approach a superior tribunal, if there be any.

'The State shall not' – The word 'State' is to be understood in the sense used in Art. 12. Any State action, legislative or judicial or executive, is void if it contravenes Art. 14.

Discrimination in favour of the State itself:

What is enjoyed by Art. 14, is that the State shall not, by its acts, discriminate as between two individuals who are similarly circumstanced.

Arbitrariness as a test under Art. 14:

The Supreme Court has advanced one step further in condemning arbitrary action on the part of a statutory or other public authority, by laying down that, - apart from the liability under the law of Torts to pay damages for breach of, or negligence in the performance of a statutory duty, - a Writ Court will compensate a citizen for loss or injury (physical or mental), caused by arbitrary or capricious action on the part of a public authority.

Arts. 14, 19 and 21:

These articles are not mutually exclusive and they jointly aim at reasonableness and fairness.

Object of Art. 19(1):

A guarantee against State action – Article 19(1) guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights.

Arts. 19, 21-22:

In Gopalan's case, it was held that the rights conferred by Art. 19 are the rights of free men and a person whose personal liberty has been taken away under a valid law of punitive (Art. 21) or preventive (Art. 22) detention cannot complain of the infringement of any of the fundamental rights guaranteed by Art. 19.

At the same time, a person whose freedom of movement [Art. 19(1)(d)] has been taken away by a sentence of imprisonment or an order of detention, need not lose his other fundamental rights, such as the freedom of expression [Art. 19(1)(d)], in so far as that right may be exercised within the valid conditions relating to his imprisonment or preventive detention.

What constitutes a total prohibition:

Whether a restriction, in effect, amounts to a prohibition, is a question of fact, to be determined according to the circumstances of each case.

Protection in respect of conviction for offences:

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

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Shall be convicted:

The words 'convicted' and 'offence' make it clear that the Article has no application to preventive detention, or an order of externment, but deals with the punishment for offences and provides two safeguards in relation thereto,

namely,

(i) that no one shall be punished for an act which was not an offence under the law in force when it was committed;

(ii) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed.

Law in force:

The law for the violation of which a person is sought to be convicted must 'have been' in force at the time when the act with which he is charged was committed. It follows, therefore, that a person cannot be convicted for an act which was not an offence under the law which was in force when that act was committed.

Penalty greater than that which might have been inflicted:

A person may be subjected to only those penalties which were prescribed by the law which was in force at the time when he committed the offence for which he is being punished. If an additional or higher penalty is prescribed by any law made subsequent to the commission of the offence, that will not operate against him in respect of the offence in question.

Penalty:

'Penalty' means punishment for the offence and would not include any other remedial measure provided for removing the mischief, e.g., summary eviction of a landlord who has contravened the provisions of a Rent Control Law; or the civil liability to pay an enhanced water rate in case of an unauthorised use of water; forfeiture of property to recover embezzled money.

Punishment:

'Punishment' in this clause means a judicial penalty, awarded by a Criminal Court, as distinguished from a statutory and would not include other penalties, such as disciplinary action in the case of public servants, (including penalty imposed under S.22 of the Public Servants (Inquiries) Act, 1850); or action against a lawyer under the Legal Practitioners Act, or the Bar Councils Act, or penalties for jail offences under disciplinary rules of jail or under the Prisons Act; or penalties under S.167(8) of the Sea Customs Act, 1878, or under S.23(1)(a) of the Foreign Exchange Regulation Act, 1947, or penalties prescribed by Rules of a Legislature for breach of privilege; or removal under the Influx from Pakistan (Control) Act, or binding down for good behaviour under S.110 or taking security under S.107 of the Criminal Procedure Code.

Protection of life and personal liberty:

Art. 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Object of Art. 21: Protection of personal liberty:-

1. The object of Art. 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. There is no doctrine of 'State necessity' in India.

2. Before a person is deprived of his life or personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.

Life:

Right to life, enshrined in Art. 21 means something more than survival or animal existence. It would include the right to live with human dignity.

Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.

Rape is violative of right to life which includes right to live with human dignity and so is chronic exposure to polluted air.

A right to early end of criminal proceedings through a speedy trial is a part of right to life.

Right of women to be treated with decency and proper dignity:

It is a basic right of a female to be treated with decency and proper dignity and the search of a woman by a person other than a female officer is violative of it.

Fundamental rights of a prisoner:

As has been stated earlier, it is now established that even where a person is convicted and imprisoned under sentence of Court, he does not lose all the fundamental rights belonging to all persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration, such as the right to move freely [Art. 19(1)(d)] or the right to practice a profession [Art. 19(1)(g)].

Preventive detention and criminal prosecution:

A criminal proceeding and preventive detention are not parallel proceedings. The object of a criminal prosecution is to punish a person for an offence committed by him, while preventive detention is an anticipatory measure and may not relate to an offence.

LEGAL REMEDY:

A **legal remedy**, also **judicial relief** or a **judicial remedy**, is the means with which a court of law, usually in the exercise of civil law jurisdiction, enforces a right, imposes a penalty, or makes another court order to impose its will.

In common law jurisdictions and mixed civil-common law jurisdictions, the law of remedies distinguishes between a legal remedy (e.g. a specific amount of monetary damages) and an equitable remedy (e.g. injunctive relief or specific performance). Another type of remedy available in these systems is declaratory relief, where a court determines the rights of the parties to an action without awarding damages or ordering equitable relief.

Judicial remedies:

Legal remedies:	Equitable remedies:
Compensatory damages	Specific performance
Punitive damages	Account of profits
Incidental damages	Constructive trust
Consequential damages	Injunction
Liquidated damages	Restitution
Reliance damages	Rescission
Nominal damages	Rectification
Statutory damages	Declaratory relief
Treble damages	

Enforcement of Fundamental Rights by Supreme Court:

The sole object of Art. 32 is the enforcement of the fundamental rights guaranteed by the Constitution.

Judiciary is the protector of the fundamental rights.

The Supreme Court has jurisdiction to enforce the fundamental rights against private bodies and individuals and can award compensation for violation of the fundamental rights. It can exercise its jurisdiction suo motu or on the basis of PIL.

In an application for habeas corpus, the petitioner cannot succeed unless he can show an infringement of either Art. 21 or 22. Thus, if he has been arrested under the Criminal Procedure Code on criminal charges or is an under-trial prisoner, his **remedies** in matters relating to bail, delay in investigation or the like are to be had under that Code, and not under Art. 32.

Interference with contractual rights and obligations:

The scope of Art. 32 being confined to the enforcement of fundamental rights, a person cannot come to the Supreme Court under Art. 32 where the right

infringed is a personal right of contract, or not amounting to an interference with the right to carry on a profession or business under Art. 19(1)(g).

Applications under Arts. 32 and 226:

While an application under Art. 32 lies only for the enforcement of fundamental rights, an application under Art. 226 has a wider scope, in that it relates to the enforcement of fundamental as well as ordinary legal rights.

Amplitude of Supreme Court's Jurisdiction under Art. 32:

The language used in Arts. 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of the High Courts in India extend to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of the Constitution, there is no need to look back to the procedural technicalities of these writs in English law. The Court can make an order in the nature of these prerogative writs in all appropriate cases and in an appropriate manner, so long as the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law are observed.

It is to be remembered that quo warranto is also one of the writs which the Supreme Court has the power to issue under Art. 32(2).

In general, it has been observed that under Art. 32, the Supreme Court has an extraordinary power like that under Art. 136, to prevent manifest injustice being done, in proper cases.

Who may apply under Art. 32:

Any person who complains of the infraction of any of the fundamental rights guaranteed by the Constitution is at liberty to move the Supreme Court, including corporate bodies, except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons.

The rights that could be enforced under Art. 32 must ordinarily be the rights of the petitioner himself who complains of the infraction of such rights and approaches the Court for relief, and the proper subjects for investigation by the Court would be what rights, if any, of the petitioner have been violated by the impugned legislation. A petitioner cannot be heard to complain about discrimination suffered by others. An exception to the above general proposition is admitted in the case of habeas corpus: not only the man who is imprisoned or detained in confinement but any person, provided he is not an absolute stranger,

can institute proceedings to obtain a writ of heabeas corpus for the purpose of liberating the person who has been illegally imprisoned.

The traditional rule that only a person who has suffered injury by reason of violation of his legal right or interest is entitled to seek judicial redress had its origin in private law. Its application in public law has recently been liberalised, by enlarging the concept of a 'person aggrieved', to include any public-spirited individual or association, provided only he acts bona fide to vindicate the cause of justice and is not actuated by political motive or other oblique considerations, or he is not a mere busybody or interloper.

In other words, a petition under Art. 32 will be entertained if the petitioner can make out a prima facie case that his fundamental rights are either threatened or violated; it is not necessary for him to wait till the actual threat has taken place.

Public Interest Litigation:

Scope and Object of such litigation – In a PIL the Court can give reliefs in respect of matters which are not even specifically stated in the pleadings with a view to render socioeconomic justice and empowerment to handicapped persons and enforce their fundamental rights. The proceedings in PIL are not adversarial but are of cooperation and collaboration between the State and the Court.

Relief claimed, not based on any fundamental right could not be granted.

Orders which can be passed in public interest litigation:

The Supreme Court may make various kinds of orders to enforce the basic human rights in an effective manner. Thus -

(a) The Court may direct inquiry, without determining the respondents' preliminary objection that no fundamental rights have been affected.

(b) The Court may issue directions of any nature to meet the problem brought before it.

(c) The Court may award compensation.

(d) The Court may award costs to the petitioner even where the petition fails.

(e) The Court may transfer the petition to a High Court within whose jurisdiction the matter lay.

- For the eradication of child prostitution, the Court directed the Governments of the States and Union Territories (a) to set up Advisory Committees to suggest measures to be taken in this behalf, and (b) to take steps in providing rehabilitative homes manned by trained personnel.

- In view of a serious dispute regarding the alleged cold-blooded killing of two persons by staging fake encounters by the police, the Supreme Court directed the District and Sessions Judge to record the evidence of the relevant witnesses and submit to it within six months.

- In a case involving death and grievous injuries to tribals who strayed into the army's ammunition test firing range near Itarsi in M.P. due to inadequacy of safety precautions, for collecting metal scrap of exploded/unexploded ammunition, the Supreme Court directed the Government to implement the recommendations of the High-Level Committee in that respect within a specified time-frame.

- Pollution caused by stone crushing, pulverising and mining operation near tourist places, mining activities directed to be stopped within three kilometers of the centres.

- In a case the Supreme Court directed that orthopaedically handicapped persons suffering from locomotor disability to the extent of 80% and above should be given concession by the Indian Airlines for travelling by air within the country as given to those suffering from blindness on their furnishing necessary certificate from the Chief District Medical Officer.

Expansion of public interest litigation:

This extraordinary jurisdiction was evolved by the Supreme Court for the enforcement of fundamental rights, in its jurisdiction under Art. 32.

Art. 32 and Preventive Detention:

Where the detenu's request for the grant of parole is unjustifiably refused, the High Court under Art. 226 and the Supreme Court under Arts. 32, 136 and 142 can direct temporary release of the detenu. But the Court cannot either reduce or enlarge the period of detention.

Art. 32 and Armed Forces:

An inquiry under Section 177(1) of the Army Act is only in the nature of a preliminary investigation and not a trial. Hence, the rule of double jeopardy cannot be invoked.

REMEDIES:-

When petition infructuous:

A person under Art. 32 is liable to be dismissed on the ground of its having become infructuous -

Where, in a habeas corpus petition, the petitioner has been released during pendency of the proceeding, but a writ petition was allowed to continue as one for qualified habeas corpus for determining whether the petitioner was entitled to compensation for illegal detention as a public law remedy for violation of Art. 21.

Applicability of habeas corpus:

Habeas corpus would issue under Art. 32, to secure the release of a person where the order or the law under which the detention has been made, violates a fundamental right e.g., - Art. 14, 21 or 22.

Habeas corpus would not be available to assail detention under the judgment of conviction by a Criminal Court which has become final.

Habeas corpus petition becomes infructuous if the detenu is produced before the Magistrate.

Applicability of Mandamus:

The writ of mandamus would issue under Art. 32 to cancel an order of an administrative or statutory public authority or the Government itself where it violates a fundamental right, e.g., - Arts. 14, 16, 19; or to prevent the enforcement of a statute, affecting the petitioner, which offends against a fundamental right, seeking ancillary reliefs.

Writ of mandamus along with suitable directions can be issued for the protection and enforcement of fundamental and human rights of working women, here subjected to sexual harassment.

Applicability of Prohibition:

When a quasi-judicial authority proceeds to act in contravention of a fundamental right, the writ of prohibition would issue under Art. 32 to prevent it from proceeding further.

Applicability of Certiorari:

A Writ of Certiorari cannot be issued by the Bench of Supreme Court to quash a judicial order passed by another Bench of Supreme Court, or a High Court.

Applicability of Quo Warranto:

Where the officers had authority to continue on deputation, there was no ground for issuing the writ of quo warranto.

How far existence of alternative remedy bars applications under Art. 32:

Though the existence of an adequate legal remedy is a thing to be taken to be taken into consideration in the matter of granting prerogative writs, this is not an absolute ground for refusing a writ under Art. 32 of the Constitution, because the powers given to the Supreme Court under Art. 32, are much wider and are not confined to the issue of prerogative writs only.

Whether determination of facts possible in a proceeding under Art. 32:

Since the right to approach the Supreme Court is itself guaranteed under Art. 32, once the petitioner has, prima facie, established by his affidavit the breach of a fundamental right, the Court is bound to hear the application on the merits. The Court would not be justified to reject a petition under Art. 32 on the simple ground that it involved a determination of disputed questions of fact.

Onus:

It is for the petitioner to show how his fundamental right has been infringed, failing which, his petition will be dismissed.

Nature of Order:

Where the petitioner succeeds in establishing his case, the Court would grant him any relief which is necessary to afford proper justice, or to prevent manifest injustice regardless of technicalities, e.g., -

i) To stay execution of death sentence pending orders by the President under Art. 72, to commute the death sentence imposed upon the petitioner, which is recommended by the Court.

ii) To direct CBI inquiry into police firing resulting in the death of a person where proper investigation was not done.

Iii) To direct judicial inquiry into allegation of torture in prison.

iv) To provide job opportunity to visually handicapped persons.

Order for compensation:

In cases of deprivation of the right to life and liberty, the Court may, in a proceeding under Art. 32, award compensation to the petitioner, where it is evident that he would have succeeded had he brought a suit for the purpose, without prejudice to the petitioner’s right to sue for damages.

The Court has emphasised that it has wide powers under Art. 32 which imposes a constitutional obligation on the Court to forge new tools for doing complete justice which enables it to award monetary compensation in appropriate cases e.g., in case of custodial death, rape by police. Even interim compensation may be ordered; children procured as labour, found to be dead or missing.

Instances of compensation ordered by the Court:

Fire breaking out in a colony, destroying several jhuggis, due to short circuit of illegal and unauthorised electricity connections given by the employees of DESU resulting in deaths and disability of several victims. The Supreme Court directed the Delhi Administration to pay compensation to the Lrs/victims as fixed by it.

VICTIM COMPENSATION

A victim is a person or a thing injured or destroyed as a result of an event or a circumstance. Where injury or destruction results, it is but natural to expect some redressal in the shape of compensation.

In the administration of Criminal Justice, the focus is always on the offender who is punished and the victim is forgotten. The victim has no effective role to play at any stage. He has no role to play in the trial. He has no right to lead evidence or cross-examine the witness. Retribution, deterrence, expiation and reformation have been the traditional approaches and in all these the concentration is only on the offender.

The Criminal Procedure Code does contain a provision about victim compensation in Sec.357(3) but it is seldom invoked.

The Supreme Court through its activism has been awarding compensation even where the state is the offender.

Though compensation is not a substitute for punishment, one has to agree that Criminal Justice is no more penal justice but restitutive justice.

Section 357 Cr.P.C and Section 5 of the Probation of Offender Act are powerful legislative devices to ensure justice to victims. If these provisions are modulated with judicial craftsmanship, victimology will be a meaningful reality. Sec.357 enables the court to award compensation, in addition to fine, which in certain cases, is **limited**. Sec.5 of P.O.Act while sparing the accused the agony of

incarceration, provides for atonement of his wrong. Even where there is no direct victim (as in the case of abkari offences) compensation can be ordered to the State. The Courts must take inspiration from the law declared in **Hari Krishan (AIR 1988 SC 2127)**. Criminal Justice System is no longer penal justice alone; it is restitutive justice too."

Hari Kishan and State of Haryana v. Sukhbir Singh & others (AIR 1988 SC 2127):

> "Sub-section(1) of section 357 Cr.P.C provides power to award compensation to victims of the offence out of the sentence of fine imposed on the accused. Sub-section(3) is an important provision, but courts have seldom invoked it, perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered. It may be noted that this power of court to award compensation is not ancillary to other sentence but in addition to. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent a constructive approach to crimes. It is indeed a step geared in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so s to meet the ends of justice."

Mere punishment of the offender may exhaust the primary function of criminal law but is not the total fulfilment of the role of law.

Section 357(A) of Cr.P.C was inserted in the Code of Cr.P.C 1973 by Act 5 of 2009 with effect from 31.12.2009 which provides for preparation of a scheme for providing funds for purpose of compensation to the victim or his dependants(wife/husband, father, mother, unmarried daughter, minor children and includes other legal heir of the victim who, on providing sufficient proof is found fully dependent on the victim by the District Legal Services Authority), who have suffered loss or injury as a result of the crime and who require rehabilitation.

The Government of Andhra Pradesh provided "**The Andhra Pradesh Victim Compensation Scheme, 2015.** The Home Department shall be nodal Department for regulating, administering and monitoring the scheme. The Government of Andhra Pradesh issued G.O.Ms.No.43 dated 15.04.2015.

The **State Legal Services Authority** shall be accountable for its functions under the scheme and for furnishing the periodical returns of the sums distributed to them by the State Government through the Nodal Department.

The **Victim Compensation Fund** shall be operated by the Member Secretary of the State Legal Services Authority or the Secretary of the District Legal Services Authority, as the case may be.

Eligibility for Compensation:--

A victim shall be eligible for the grant of compensation if:-

the offender is not traced or identified, but the victim is identified, and where no trial taken place, such victim may apply for grant of compensation under sub-section(4) of section 357-A of the Act;
the victim/claimant reports the crime to the officer-in-charge of the police station or any senior police officer or Executive or Judicial Magistrate of the area within 48 hours of the occurrence.
the offender is traced or identified, and where trial has taken place, the victim/claimant has co-operated with the police during the investigation and trial of the case.
the victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case.
the crime on account of which the compensation to be paid under this scheme should have occurred within the jurisdiction of the State of Andhra Pradesh.

Interim relief to acid attack victim:-

(1) The State or the District Legal Services Authority shall award the relief to the acid attack victims under sub-section (6) of section 357(A) of the Act as the after case rehabilitation cost on the certificate of the officer in charge of the Police Station or the Magistrate of the area concerned, as mentioned in the schedule appended to this scheme.

(2) The above relief shall be subject to the provision of clause 5 as may be applicable and it shall be sanctioned, drawn and disbursed to the acid attack victims by the authorities specified in clause 7.

Limitations:-

No claim made by the victim or his dependents under sub-section(4) of the section 357-A of the Act shall be entertained after a period of twelve months of the crime.

Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal:-

(a) Any victim aggrieved of the denial of compensation/insufficiency of the award by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days from the date of award:

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

(b) The State Legal Services Authority shall dispose the appeal within a period of 90 days after the services of notices to the parties.

Case law:-

In **Laxmi vs. Union of India & Ors. decided by Hon'ble Supreme Court of India in Writ Petition (Crl.)No.129 of 2006**, wherein the Hon'ble Supreme Court directed for setting up of a Criminal Injuries Compensation Board and directed that:

"In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes."

As per the directions of the Hon'ble Supreme Court of India in the above citation, **Criminal Injuries Compensation Board is constituted at Srikakulam** and it consists of:

1. The Principal District Judge, Srikakulam.

Co-opted members:

2. The District Magistrate and Collector, Srikakulam.
3. The Superintendent of police, Srikakulam.
4. The Chief Medical Officer i.e., The District Medical and Health Officer, Srikakulam.

The **District Legal Services Authority, Srikakulam** will take up the matter of compensation claim of any acid attack victim through the above said Board.

Costs:

In a writ petition with frivolous allegations that the police caused the death of a person and disposed of his body, the Supreme Court directed the petitioner to pay Rs.2000/- as costs to be credited to the Legal Aid Committee of the Court.

RELIEFS:

The object of the Act-**The Protection of Women from Domestic Violence Act, 2005** is the protection of women from domestic violence, to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected there with or incidental thereto.

The **Section 12 of the Act** empowers the Magistrate to pass protection orders in favor of the aggrieved person to prevent the respondent from aiding or commuting an act of domestic violence or any other specified act, entering a work place or any other place frequented by the aggrieved person attempt to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence i.e., **reliefs-Section 18** protection orders, **Section 19** Residence orders, **Sec 20** Monetary reliefs, **Sec 21** Custody orders, **Sec 22** Compensation orders etc ..... and they are in addition to and along with any other relief that the aggrieved person may seek the relief in other suits and legal proceedings before a Civil or Criminal Court of Section 26 of D V C Act.

PRINCIPLES OF SENTENCING

Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better-off situation. Law Courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. In the present-day society, crime is now considered a social problem and by reason therefore a tremendous change even conceptually is being seen in the legal horizon so far as the punishment is concerned.

The final aspect in every criminal trial is sentence. The sentence follows the conviction. Every criminal trial is essentially divided into two stages, the conviction, and sentencing. The stages of sentencing and conviction are thus two different stages. This was held in the case of **Standard Chartered Bank vs. Directorate of Enforcement [(2005) 4 SCC 530, at para 43]**. It was also held in the case of **State of Punjab vs. Prem Sagar [(2008) 7 SCC 550].** Guilt once established the punitive dilemma begins **[Ediga Annamma vs. State of A.P. (AIR 1974 SC 799 (803)]**. The object of the whole exercise of criminal proceedings from the stage of registration of First Information Report till the termination of criminal trial before the Court is to punish the offenders found guilty and convicted for commission of a crime.

Under the Indian Penal Code, there are six types of punishments which can be imposed, in the order of harshness are:

1) Death Penalty
2) Life Imprisonment
3) Rigorous Imprisonment
4) Simple Imprisonment
5) Forfeiture of property
6) Fine

Sentencing Policy:

The onerous duty of sentencing is cast upon Judges and for more than a century, the Judges are carrying out this duty in India. The Penal Policy of our country in the field of sentencing is ‘harsh and humane’. The modern penology regards crime, criminal and the victim as equally material for right sentence which has to be picked out. Thus, a duty is cast on the Judge to see that the sentence shall consist of an element of reformation of the criminal and also the

reparation of the victim, along with the elements of deterrence, prevention and retribution. Thus, the Judge has to balance all these conflicting interests and choose the right and appropriate sentence, for the sentence to be meaningful.

Measure of Punishment:

The seriousness of the offence and its general effect on the public tranquillity 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.

In **D.R.Bhagare vs. State of Maharashtra (AIR 1974 SC 476),** the 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.

Adequacy of Sentence:

In **Ramashraya Chakravarthi vs. State of M.P. (AIR 1976 SC 392 (393)**, Supreme Court held:

> "In judging the adequacy of a sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other facts which would be ordinarily taken into consideration by Court".
>
> The Judge, while imposing punishment should exercise greater discretion in making the penalty fit the crime. The Courts should not pass a sentence which is disproportionately severe as compared with the nature of the offence committed and at the same time the Court should take care that it is not manifestly inadequate in which case it would fail to produce a deterrent effect on the offender. Though no hard and fast rule can be laid down for measuring the adequacy of sentence, yet the Courts are expected to observe a desirable proportion between the gravity of

offence and the punishment for it. The sentencing judge shall see the punishment fits the crime and the criminal.

Pre-sentence hearing:

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.

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 data of the culprit to the extent required in the verdict on sentence. However, in the Criminal Procedure Code, 1973 about to come into 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 (Section 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".

Section 235 of Cr.P.C. 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 Section360, hear the accused on the question of sentence, and then pass sentence on him according to law.

Section 248 of Cr.P.C. 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 Section 325 or Section 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 a 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's case [AIR 1976 SC 2386 (2390)]**, 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 give an opportunity to the prosecution and the accused to place before the Court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same, of course, care would have to be taken by the Court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of 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.

In the case of **Alister Anthony Pareira vs. State of Maharashtra [(2012) 2 SCC 648]**, "Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime

and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The Courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the Court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

In **Tarlok Singh vs. State of Punjab [(AIR 1977 SC 1747 (1749)]**, 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.

The case of Section 303, Indian Penal Code:

The Section 303 of the IPC, mandated that if anyone who was undergoing a life imprisonment committed a murder, would be a given a mandatory death sentence.

Duty of the Court:

The role of the Judge at the stage of hearing on sentence is not passive and he has to actively participate in the enquiry and make every endeavour to get all the facts and evidence, which have bearing in determining the sentence.

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 Section 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)**.

Case laws:

1) 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) Whether the conviction is under Section 302 IPC (with or without the aid of Section 34 or 149 or 120B 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".

2) The case of **Macchi Singh vs. State of Punjab (1983 SCC (3) 470)**, which was a decision rendered by a three judge bench, laid down a few categories, which could help the Courts in deciding whether to award the death penalty to a convict. These categories were:

1) Manner of commission of murder

2) Motive for commission of murder

3) Anti social or abhorrent nature of crime

4) Magnitude of crime

5) Personality of victim of murder.

3) In the case of **Dhanonjoy Chatterjee vs. West Bengal (1994) 2 SCC 220**, it was held that the Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment.

4) In **Rajesh Kumar vs. State (2011) 13 SCC 706**, wherein the Court held that the sentencing policy of a state reflect the progress of a maturing democracy:

"……These changes in the sentencing structure reflect the evolving standards of decency that mark the progress of a maturing democracy and which are in accord with the concept of dignity of the individual one of the core values in our preamble to the constitution. In a way these changes

signify a paradigm shift in our jurisprudence with the gradual transition of our legal regime from the rule of law to the 'due process of law'....."

5) In the case of **Ramashraya Chakravarthi vs. State of Maharashtra (1976(1) SCC 281)**:

"To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. Sentencing involves an element of guessing but often settles down to practice obtaining in a particular Court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a matter of judicial discretion subject to any mandatory minimum prescribed by law".

6) In the case of **Nadella Venkata Krishna Rao vs. State of Andhra Pradesh (1978) 1 SCC 208)**:

"The accent must therefore be more and more an rehabilitation, rather than retributive punitivity inside the prison. The purpose and justification of a sentence of imprisonment or a similar measure derivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so-far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life".

7) In Singh & Ors vs. State Of Punjab (1979 AIR 1384), wherein Justice Krishna Iyer, V.R. held that :

"A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less 'law declared' within the meaning of Art. 141 of the Constitution so as to bind all courts within the territory of India".

8) In BACHAN SINGH Vs. STATE OF PUNJAB ETC. (1982 AIR 1325), wherein Supreme Court Held that:

" The Constitution of India is a unique document. It is not a mere pedantic legal text but it embodies certain human values, cherished principles, and spiritual norms and recognises and upholds the dignity of man. It accepts the individual as the focal point of all development and regards his material, moral and spiritual development as the chief concern of its various provisions. It does not treat the individual as a cog in the mighty all-powerful machine of the State but places him at the centre of the constitutional scheme and focuses on the fullest development of his personality. The several provisions enacted in the constitutions for

> the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development would be meaningless and ineffectual unless there is rule of law to invest them with life and force."

9) CONFIRMATION CASE No.2 OF 2010 IN SESSIONS CASE NO.175 OF 2009,

The State of Maharashtra, complainant vs. Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid, respondent (Orig. Accused No.1), wherein Supreme Court held that:

(We remind ourselves of the observations of the Supreme Court in Dhananjay Chatterjee, which are as under:

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

PUNISHMENT

One of the primary challenges confronting any society is to ensure that people follow the legal rules that protect public safety and security. This is partially achieved through the influence of families, friends, teachers, the media, and religion. Perhaps the most powerful method to persuade people to obey legal rules is through the threat of criminal punishment. Following a defendant's conviction, the judge must determine the appropriate type and length of the sentence. The sentence typically reflects the purpose of the punishment. A penalty intended to exact revenge will result in a harsher punishment than a penalty designed to assist an offender to "turn his or her life around."

Purpose of Punishment. The emphasis is on deterrence, rehabilitation, incapacitation, education, and treatment of offenders rather than on habilitation.

• **Judicial Discretion**. Judicial discretion in sentencing is greatly reduced. The federal government and states have introduced sentencing guidelines and mandatory minimum sentences, illustrated by “Three Strikes and You’re Out” legislation and drug laws.

• **Truth in Sentencing**. The authority of parole boards to release prisoners prior to the completion of their sentence and the ability of incarcerated individuals to accumulate “good time” is vastly reduced as a result of “truth in sentencing” legislation. As a consequence, offenders are serving a greater percentage of their sentences.

• **Victims**. Victims are being provided a greater role and protections in the criminal justice process.

• **Death Penalty**. The death penalty does not violate the Eighth Amendment. Capital punishment, however, is subject to a number of constitutional limitations under the Eighth Amendment intended to insure that death is a proportionate penalty to the offender’s crime.

• **Terms of Years**. Courts have deferred to the decision of state legislatures and the Congress in regards to sentencing decisions and generally have held that prison sentences are proportionate to the offender’s crime.

• **Equal Protection**. Courts have ruled that sentencing decisions and statutes based on race or gender violate the Equal Protection Clause.

Theories of Punishment:

There are two theories of punishment.
1) “Let the punishment fit the crime”.
2) “Punishment fitting the criminal in order to keep the balance”.

Types of Punishment:

Various types of punishments are available to Judges. The chapter 3 of the India Penal Code , 1860 deals with punishments u/Ss. 53 to 75 .

Criminal Rules of Practice:

The Criminal Rules of Practice and Circular Orders ,1990 deals with sentences under Rule 63 and 64 and clearly shows how to award sentences of

imprisonment in default of payment of fine and to consider the purpose of Probation of Offenders Act, 20 of 1958 or Section 360 of the Cr.P.C.

Case Laws:

1) The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment. **(Dhananjoy Chatterjee vs. State of West Bengal, (1994) 2 SCC 220: 1994 SCC (Cri) 358)**

2) In case **Jai Kumar vs. State of M.P**. "Ours is a civilised society – a tooth for a tooth and an eye for an eye ought not to be the criterion; civilisation and the due process of law coupled with social order ought not to permit the Courts to be hasty in regard to the award of capital punishment and as a matter of fact the Courts ought to be rather slow in that direction."

3) "The law Courts as a matter of fact have been rather consistent in the approach that a reasonable proportion has to be maintained between the seriousness of crime and the punishment. While it is true that a sentence disproportionately severe ought not to be passed but that does not even clothe the law Courts with an option to award the sentence which would be manifestly inadequate having due regard to the nature of the offence since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society: while undue harshness is not required but inadequate punishment may lead to suffering of the community at large. **(Jai Kumar vs. State of M.P., (1999) 5 SCC 1; AIR 1999 SC 1860)**

4) In an other case **Surja Ram vs. State of Rajasthan, (1996) 6 SCC 271: JT (1996) 8 SC 461**. The Supreme Court said while considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the Court for appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

5) In NIRBHAYA CASE, wherein Supreme Court held that:

> *119.* ***Whether the case falls under rarest of rare cases:*** *"Law relating to award of death sentence in India has evolved through massive policy reforms-nationally as well as internationally and through a catena of judicial pronouncements, showcasing distinct phases of our view towards imposition of death penalty. Undoubtedly, continuing prominence of reformative approach in sentencing and India's international obligations have been majorly instrumental in facilitating a visible shift in Court's view towards restricting imposition of death sentence. While closing the shutter of deterrent approach of sentencing in India, the small window of 'award of death sentence' was left open in the category of 'rarest of rare case' in* ***Bachan Singh vs. State of Punjab [(1980) 2 SCC 684]****, by a Constitution Bench of this Court.*
>
> *144. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal justice system. As held in* ***Om Prakash vs. State of Haryana [(1993) 3 SCC 19]****, the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime."*

This is my humble submission of the topics designated to me.

I thank one and all.

<u>Bibliography</u>:

1) Shorter Constitution of India Text Book by Durga Das Basu.

2) Law of Crimes and Criminology Text Book by R.P. Kathuria.

3) The Criminal Rules of Practice and Circulars Orders, 1990.

4) The Protection of Women from Domestic Violence Act, 2005 by Justice P.S. Narayana.

5) Wikipedia.

SMT. K.SUDHAMANI
JUDGE, FAMILY COURT,
SRIKAKULAM.