

Principles of Sentencing in Criminal Justice System

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Abstract

Pining appropriate punishment that fits the crime and social interest is as essential as convicting an accused of a crime. Sentencing and its management, thus is a significant stage of criminal justice proceedings, which determine the appropriateness and utility of the criminal justice system as a whole. Several recognized principles of sentencing in turn, serve to make punishment reasonable and rational. And many of these principles, which stem from international law, fair trial principles, criminology, are consistent with human rights law standards and also to elementary goals or rationales of sentences.

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INTRODUCTION

Criminal justice system is a sub-system of the overall governance of a sovereign State. Criminal law and justice deals with the personal conducts, essentially relating to the threats to safety. Criminal justice responds the conduct offended negatively. Punishment is the form of that negative response to an offender who has committed crime. The investigation, prosecution and adjudication systems together with policymaking and executing mechanism and appropriate sentencing policy form the framework of the criminal justice system of every country (CeLRRd, 2002:28).

The rationale of criminal justice system rest on the legitimacy of fairness, reasonableness and conformity to the rule of law. Proper observance of appropriate sanction in accordance with the gravity of the crime may lead to respect and trust of people in the criminal justice system whereby, justice is ensured. Appropriateness and utility of the criminal justice system is directly affected by sentence or punishment.

Sentencing and its management is a significant stage of criminal justice proceedings. When some one is convicted of an offence, the question arises what would be the reasonable corresponding punishment? And after a sentence is passed another question arises, whether the sanction was fair and appropriate enough to serve the interest of justice or not?

CONTEXTUAL MEANING

Sentence, punishment, sanction and penalty are synonymous, generally used interchangeably. Punishment though, used in context of violation of law as well as in commission of some wrong, sentence is more specific. It relates to the court proceedings whereas punishment, sanction and penalty would be applicable in other spheres as well. That is, "the punishment given by a court of law" is sentence (Hernby, 2000).

Sentencing, gerund form of sentence denotes a process of punishing some one who is convicted of breaking of law by a court of law. Sentencing has been defined as "the judicial determination of a legal sanction to be imposed on a person found guilty on and offence" (Canadian Sentencing Commission 1987: 115 quoted in MJNZ, 1997: 13). Ministry of Justice New Zealand, has considered it as "one of the several stages which together comprise what is often referred to as the criminal justice system"(MJNZ, 1997: 13). According to Joel (1988) 'sentencing is a process by which penalties are imposed on convicted defendants. ...Sentencing is easily a second most important point in the criminal process after arrest' (p.460).

In other words, sentencing is an action of passing judgement by a court of law under legitimate jurisdiction where formal declaration of legal consequence of the acts or omissions of a convict is pronounced. Therefore, sentencing is a judgement where the accused compel to bear the legal consequence of his acts or omissions. It is imposing of penalty on convicted defendant. It means sentencing is a legal consequence of antisocial acts of defendant. Therefore, it is central task of administration of justice by a court of law.

REFERENCE OF SENTENCING IN CRIMINAL PROCEEDING

Criminal proceeding passes through different stages, particularly being divided into three phases, i.e., pre-trial, trial and post trial dispositions. It encompasses investigation (detection and enforcement), prosecution, ascertainment (conviction/ acquittal), sentencing and sentence-execution. Sentencing comes with the termination of the trial phase. By the examination of the witness and evaluation of the invoked demands of the party of the crime, the court determines whether the crime was committed or not and whether or not the accused is to be imposed criminal responsibility. If the court concludes a conviction on a charge then the door for sentencing opens for court.

FORMS OF SENTENCES

Sentence or punishment in criminal justice is understood as a form of deprivation. Death penalty, banishment, imprisonment and dispossessions are recognized as customary sentences. Among them death penalty and banishment as forms of sentence are gradually disappearing from civilized nations' criminal justice system. Therefore, imprisonment and dispossessions are only forms that are presently recognized by international community. In addition, demand of use of alternatives to imprisonment is also in rise.

United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) has suggested alternatives to imprisonment, whereby, sentencing dispositions as verbal sanctions, such as admonition, reprimand and warning; conditional discharge; status penalties; economic sanctions and monetary penalties, such as fines and day-fines; confiscation or an expropriation order; restitution to the victims or a compensation order; suspended or deferred sentence; probation and judicial supervision; community service order; referral to an attendance center; house arrest; any other mode of non-institutional treatment; and some combination of the measures listed above (UN 1994: 339-340) are sought as proper alternative to imprisonment.

With huge varieties of social setups, sentence and sentencing are, in many countries, practiced in various forms. "Five general types of punishment are in use in the United States: fines, probation, intermediate punishments (various punishments that are more restrictive than probation but less restrictive and costly than imprisonment), imprisonment, and death"(Bohm and Haley 1999: 270 -271). In India, there are five different kinds of sentence in use. According to Section 53 (chapter III, of Punishments) of Indian Penal Code (IPC) sentences for offenders liable under the code are: death, imprisonment for life, imprisonment (rigorous and simple), forfeiture of property, and fine (Ranchhoddas and Thakore, 2001: 49).

In jurisdictions where English Law is applicable (in United Kingdom) there are varieties of sentencing options. The sentences include compensation order (with absolute discharge or conditional discharge), fine, community service orders (probation, combination, curfew, attendance and supervision), and custodial sentences. Similarly, the court may issue restitution orders, deportation orders, confiscation orders and disqualification orders etc. (Ashworth, 1995: 2 -6).

NEPALESE FORMS OF SENTENCE

Until the commencement of the Constitution of Kingdom of Nepal 1990, sentence to death, life imprisonment with forfeiture of property, life imprisonment, imprisonment, and fine were principle modes of punishment in Nepal. Promulgation of 1990 Constitution abolished death penalty. Thus, in Nepalese Law the main three types of punishments are imprisonment, fine and confiscation of property. In addition to above forms, Black Marketing and other Social Offences and Punishment Act 1975, provides for the public condemnation of the black marketers (Keeling and Bhattarai 2001: 63).

Furthermore, in cases of narcotic drug abuse, the court is empowered to issue an attendance order instead of imprisonment according to Narcotic Drug (Control) Act 1976 (proviso of Section 14.1 (a), (e) and (h). Where, attendance order would also be considered as another form of punishment. More recently, Nepal has introduced Community Service Order as another important sentencing option by inserting Section 10 (a) in Prison Act, which speaks to the very effect.

PRINCIPLES OF SENTENCING

Philosophies and theories of sentencing are found in international law as governing and guiding principles of sentencing under standards of fair trial and administration of criminal justice. Similarly, criminology has

contributed to establish some specific principles from the perspectives of objective of punishment and sentencing.

There are several recognized principles of sentencing as they serve to make punishment reasonable and rational. Many of these principles are consistent with human rights law standards and also to elementary goals or rationales of sentences. Recognized principles of sentencing are principle of justice, peace and humanity. Similarly, other major principles are: minimum intervention, equality, proportionality, sufficiency, imprisonment as last resort and cost effectiveness of sentence.

The principle of minimum intervention wishes for the use of the least disturbing and least severe sanction possible, given the circumstances of the offence and the offender, and the intended aims of the sentencing system. This means that where possible, monetary penalties are imposed rather than community-based sentences, community-based sentences are used in preference to imprisonment, and terms of imprisonment, where imposed, are as short as possible. The principle consists with humanitarian view that the pain of punishment should be minimized as far as possible. Furthermore, it suggests economizing the use of sentence.

The principle of equality before law argues that certain personal characteristics not pertaining to the offender's crime should be excluded and considered irrelevant in sentencing decisions. Consistent application of the principle is dependent on there being a general consensus as to what constitutes such characteristics. This principle prohibits discrimination on the grounds of sex, marital status, religious or ethical belief, color, race, ethnic or national origins, disability, age, political opinion, employment status, family status, and sexual orientation. If it is considered that equality before the law is a critical aspect of that right then sentencing decisions should not discriminate offenders according to any of the above grounds. However, this does not prohibit sentencing with differentiated treatment on the basis of principle of equal impact and proportionality.

Equality of impact and proportionality principle seems to be in conflict with the principle of equality before the law, arguably raising the issue that all people are not equal in terms of social, economic, and personal circumstances, treating all people equally will result in injustices. It suggests the need to adjust sentencing to the particular circumstances of the offender, as in the already cited example of unit fines. At its most extreme the principle would lead to sentencing which differentiate positively towards the socially disadvantaged.

This principle leads and suggests developing and applying variations in sentences for the similar offences. Indirectly this principle justifies ever-

increasing terms of imprisonment for repeat offenders as well as ever-diminishing impact of prison on those who keep returning. This equality of impact and proportionality concept advocates human treatment.

This principle has two wings, i.e., aggravating factors and mitigating factors. Aggravating factors are those, which may increase the sentence, while mitigating factors may have the opposite effect. Sentencing includes the weighing up of aggravating and mitigating factors in order to individualize the sentence with respect to the offender and the circumstances of the offence.

Imprisonment sentence of last resort could be understood as an extended idea of minimal intervention. This principle emerged when the popularity of imprisonment declined as crime did not decrease even when there was a very high rate of incarceration. “In the early 1970s a school of criminologists argued for the abolition of imprisonment as a sanction. Although their view clearly has not prevailed, their supporting arguments involving the inefficacy of imprisonment have remained persuasive”. (MJNZ 1997: 55).

Above mentioned principle clearly suggests that there are alternatives to imprisonment available in the form of non-custodial measure to deal with criminality. Logically it also recommends that non-custodial sentences would serve as alternatives to imprisonment but imprisonment may not serve as alternatives to non-custodial sentences. However, imprisonment could be used as last resort and may be applicable where all other options would fail to serve the purpose.

Cost effectiveness of sentence is an extended form of the principle of minimum intervention. Washington Correctional Association has rightly observed that:

The objectives of punishment, retribution, deterrence, incapacitation, and rehabilitation, while legitimate social goals, should be applied to the sentencing process which attempts to control crime as much as possible, at the lowest cost to taxpayers, in the least restrictive environment consistent with good public safety (WCA 2005).

This principle campaigns need for taking account of the cost of administering sentences. The principle, suggests imposing alternative sentences or deferring imposing sentences of imprisonment until some inmates are released from prison as the limited resource is already in use.