

## CHAPTER IV

### AIMS AND PRINCIPLES OF SENTENCING

Sentencing the offender may be the final stage of a criminal case in court, should there be a conviction. This however, is not the end of the story. Sentences imposed are not ends in themselves, but means to an end or ends. The best example that may be cited is the case in which a man is sentenced to imprisonment. When the magistrate makes an order for imprisonment, he cannot control what happens in the prison. Hence, the success of the sentence depends on the prison institution. The rehabilitation of the offender is out of the hands of the magistrate.

Since the objective of this paper does not revolve around the efficacy of sentences, not the jurisprudence of punishment, the aims and principles of sentencing will be dealt with briefly, in order that one may see the sentences imposed in their proper place and perspective.

#### Aims of Sentencing.

##### Retribution:

This is based on the idea that a punishment should fit the crime, and only offenders should atone for their crimes by paying for it. This concept used to be tied to the idea of "revenge". However, as Lord Justice Lawton puts it, "The Old Testament concept of an eye for an eye,

and a tooth for a tooth, no longer plays any part in our criminal law."<sup>1</sup>

### Denunciation:

Closely linked to retribution is the concept of denunciation. The offender must be made to pay for his crime so that he may learn that crime does not pay, and the gravity with which the society in which he lives views it. "Society through the courts, must show its abhorrence of particular types of crimes."<sup>2</sup> This should be reflected in the sentences passed.

### Deterrence:

There are two types of deterrence, namely, individual and general deterrence. The former involves the deterrence of the offender, the latter, the offenders-to-be. A sentence is thus aimed at discouraging people from breaking the law, by making the consequences of a breach of the law unpleasant. An offender stands to be sentenced to death, to lose his liberty, to suffer financially, if convicted. Deterrent sentences will vary from time to time, depending on society's needs. Exemplary sentences may be imposed to check a sudden increase in the incidence of crime. In carrying out this aim, the magistrate should pose the question of

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<sup>1</sup>James Henry Sargeant, 1974. Criminal Law Reporter 74,77.

<sup>2</sup>Ibid. Per Lawton L.J.,p.77.

what kind of technique is likely to yield reduction in crime in relation to the expenses involved, social or economic, to himself.

#### Protection of the Public and Prevention:

This aim sets out to reduce the frequency of the types of behaviour prohibited by the law. The public must be protected from offenders and offenders-to-be. Thus, prevention of crime seems to be the answer. There are three ways to prevent crimes:<sup>3</sup>

1. by taking away the power to offend- incapacitation.

2. by taking away the desire to offend-

rehabilitation.

3. by making him afraid to offend- intimidation.

The aim of protection of the public includes the protection of suspected offenders from unofficial retaliation.<sup>4</sup>

#### Rehabilitation:

This is fast becoming the most important and favoured aim in sentencing. The objective is to encourage the offender to abstain from criminal behaviour by providing him with training, treatment or aid, so that he may fit into society and adjust. Much effort

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<sup>3</sup>Halsbury's Laws of England, 3rd Ed., Vol.10, p.487.

<sup>4</sup>Nigel Walker, Crime and Punishment in England, Revised Ed., Edinburgh University Press, 1968, p.128.

is being made to impose sentences which are suitable to the offender's personality and circumstances, in order to reach the most appropriate measure for his reform. In the case of R v Ball<sup>5</sup>, it was held that in sentencing an offender, one must consider public interest and the need to prevent crimes, and punish offenders. The punishment should deter both the offender from repeating his crime, and others from following him in the way of crime. However, public interest is best served if the offender reforms and acquires a desire to turn over a new leaf. The court has the duty to decide to be harsh or lenient.

### Principles of Sentencing.

The details will be dealt with in the following chapters. Briefly, a magistrate has the choice of one out of two approaches in sentencing. There is the tariff approach, and the approach of individualisation. The former approach is applied when a magistrate decides to impose a custodial sentence. The tariff system is the process by which the length of a sentence is calculated.<sup>6</sup> The concept of

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<sup>5</sup> 35 Criminal Appeal Report, p.164. This case was approved by the local case of Abu Bakar v R, 1953 M.L.J. 19.

<sup>6</sup> D.A.Thomas, Principles of Sentencing, 1st.Ed., Heineman Educational Books, 1970, p.35.

individualisation is generally, but not necessarily exclusively, linked with non-custodial sentences. There is an element of individualisation in custodial sentences too. Individualisation simply means that the needs of the offender is given priority over the need for deterrence or retribution. Reformation and rehabilitation are the main aims in the individualised approach. It is the offender who is the crux of the matter, not the offence. In the tariff system, the main decision rotates around the nature and gravity of the offence, leaving scope for the individual only in mitigation. In determining which approach to use, the magistrate is in effect making what Mr.D.A.Thomas refers to as the "primary decision"<sup>7</sup>. The factors to be considered in making this decision will be dealt with in the next chapter.

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<sup>7</sup>Thomas, op cit. p.7.