

CHAPTER 19

Sentences

PART A.—GENERAL

1. The determination of appropriate punishment after the conviction of an offender is often a question of great difficulty and always require careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law of any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstances, such as sudden temptation, previous convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence.

The award of suitable sentence depends on a variety of considerations.

2. The Indian Penal Code permits (Vide Section 53) the following classes of punishments viz fine, imprisonment, imprisonment for life and death. The sentence of forfeiture of property was abolished for certain offences (e.g., sections 121 and 122) by Act XVI of 1921 but can be imposed for certain other offences (e.g. sections 126 and 127). The sentence of penal servitude which could be awarded against Europeans and Americans in lieu of transportation was abolished by Act XVII of 1949. Act 26 of 1955 has abolished the sentence of transportation and Act 44 of 1955 which has repealed the Whipping Act, 1909, abolishes the sentence of whipping which could be imposed in lieu of or in addition to other punishments. The Reformatory Schools Act, 1897, provides for "youthful offenders" (i.e. offenders below the age of 15 years) sentenced to imprisonment being detained in a Reformatory School instead of being sent to Jail, Section 562 of

Various kinds of punishments. Minimum and enhanced punishments prescribed in different cases.

the Criminal Procedure Code enables the Court to release offenders in certain cases after taking a bond for good behaviors or in trivial cases even with a mere admonition. On the other hand there are certain offences for which a minimum punishment is prescribed (see e. g., section 397, Indian Penal Code), and the Court cannot pass a lesser sentence on a person convicted of such an offence. Section 75 of the Indian Penal Code makes a previous convict liable to enhanced punishment in the case of certain offences. There are also other Acts of the Legislature (e.g., the Punjab Excise Act), which lay down an enhanced penalty for repetition of an offence.

In certain cases, the Court can take action when passing the sentence to ensure good behavior on the part of a convict on his release from jail. In the case of a person convicted of an offence involving a breach of the peace, the court can order him to execute a bond for keeping peace for a period up to three years (section 106, Criminal Procedure Code). Section 565, Criminal Procedure Code enables Courts to order convicts to remain under police surveillance after their release from jail in the case of certain offences. In the same circumstances, an order of restriction can be passed under section 8 of the Restriction of Offenders Act, 1918.

3. In passing sentence, the Court has not only to bear in mind the nature and the limit of the punishment prescribed for the offence of which the accused is found guilty, but also the nature and the limit of the punishment which it is empowered to impose. Sections 31 to 35 of the Criminal Procedure Code lay down the limits of the sentences which different classes of courts are empowered to impose. Magistrates of the 2nd or 3rd class are not empowered to exercise powers under section 565, Criminal Procedure Code. Nor can they deal with first offenders under section 562 Criminal Procedure Code unless empowered by the State Government. In the Punjab however, the State Government has empowered all Magistrates of the 2nd class to take security from first offenders under section 562 of the Criminal Procedure Code. The powers under the Reformatory Schools Act cannot be exercised by any Magistrate other than the District Magistrate, unless

Limits of the sentences which different classes of Magistrates can impose.

he is specially empowered by the State Government in that behalf.

4. When a Magistrate of the 2nd and 3rd class is of opinion that an offender should receive a punishment different in kind from or more severe than that which such Magistrate is empowered to inflict or that he should be sent to a Reformatory School, he should take action under section 349, Criminal Procedure Code, and forward the proceedings to the District Magistrate or the Sub-Divisional Magistrate to whom he is subordinate. Similarly when a Magistrate of the 1st class is of opinion that an offender, owing to previous convictions or other circumstances deserves a severer sentence than what he can inflict, he should report the case to the District Magistrate with a view to have it transferred to a Magistrate empowered under section 30 of the Criminal Procedure Code or should commit the case to the Sessions Court if the case is serious enough to justify that course. Instructions on this subject in chapter 23 relating to "Habitual offenders" should also be consulted in this connection.

Procedure when Magistrate thinks that the accused should receive greater punishment than he can award.

5. Where a Person is convicted of an offence which is made up of parts each of which constitute an offence or when a Person is convicted of more offences than one the limitations imposed by sections 71 Indian Penal Code and section 350 Code of Criminal Procedure must be adhered to. When a person is convicted of more than one offence, the Court should be careful to pass a separate sentence for each offence so that if the conviction is set aside on appeal with respect to one of the offences there will be no room for doubt as to the sentences passed with respect to the rest. The Court has discretion to make such sentences run concurrently and this discretion should be exercised so as to make the effective sentence proportionate to the gravity of the offence. Under section 397 of the Code (as amended in 1923 and 1955) the Court has now power to order in the case of an accused person who is already undergoing imprisonment for another offence that a subsequent sentence of imprisonment passed on him shall take effect at once and run concurrently with the sentence he is undergoing. Where, however, the

Limitation imposed by Section 71, Indian Penal Code, and section 35, Criminal procedure Code Sentences in cases of accused convicted of several offences Concurrent sentences.

previous sentence is of imprisonment for life, the subsequent sentence of imprisonment must be made to run concurrently with such previous sentence.

Recommendations to Government for remission or commutation of punishment.

6. Whenever it is considered necessary in a case to recommend the remission or commutation of a sentence, the instructions contained in Chapter 20-F of this Volume and the provisions of sections 401 and 402 of the Code (as amended by the Adaptation of Laws Order, 1950) may be referred to.