

PART C.—IMPRISONMENT

The Indian Penal Code provides for imprisonment of two kinds, viz., simple and rigorous, and the Court must choose one or the other form in view of all the circumstances. In certain Local and Special Acts, it will be found that the Legislature has not specified the kind of imprisonment which may be awarded. Under section 3(27) of the General Clauses Act, 1897, such imprisonment may be simple or rigorous. In the case of many offences under the Indian Penal Code and other Acts, it is provided that the offender *shall* be punished with imprisonment up to a certain term and *shall also be liable to fine*. In such cases the offender must be sentenced to some period of imprisonment (however small), but it is not obligatory to impose fine in addition, as supposed by some Magistrates.

Kinds of imprisonment and their selection.

2. Simple imprisonment is suitable where a fine will not suffice and a very short term of imprisonment has to be imposed. This ensures casual offenders being kept apart from the contamination of hardened criminals.

When simple imprisonment is suitable.

3. The Indian Penal Code provides for "solitary confinement" being awarded up to a certain limit (*vide* section 73). This form of punishment; is appropriate in the case of the more heinous class of offences. It should be borne in mind, however, that solitary confinement can be awarded in the case or offences under the Indian Penal Code only and not in the case or offences under Special or Local Acts.

When solitary confinement is suitable.

4. Short term imprisonments should ordinary be avoided and before passing such sentences the Court should consider whether the imprisonment till the rising of the court, allowed by law, could not appropriately be passed instead or the provisions of section 562 of the Code applied in favour of the accused. This is however not intended to fetter the judicial discretion of the Courts.

Short term imprisonment.

5. The Honourable the Chief Justice and the Judges have expressed agreement with the following

Ditto.

paragraphs of the Report of the Jail Reforms Committee, recommending abolition of short term sentences -

"23. It is common knowledge that short sojourn in jail is very harmful to the first offender in as much as by association with other prisoners, such sojourn may result in making an ordinary offender to become a hardened criminal. Besides, such short sentences take away the fear of jail life from the mind of the offenders as well as from the public mind. They provide more work for the jail officials and are uneconomical to the State. Evidently short sentences cannot be reformatory in character. It is for this reason that in many countries, sentences of imprisonment for less than 4 weeks have been abolished. The Committee also recommends that simple imprisonment for less than four weeks should be abolished 270. * * *

It is considered opinion of prisoner experts that a short sentence is neither deterrent nor reformatory in its effect, but is positively harmful. As said in the Indian Jail Committee's report "short sentence was often the introduction to life of crime. It familiarised the offender with prison, destroyed his self-respect and made him indifferent to further disgrace." The only justification for the award of short sentence was the lack of a suitable alternative. Trivial offences in respect of which short sentence are passed could equally be suitably dealt with by imposing fine, admonishing or awarding a sentence till the rising of the court,

* * . In many such cases "the publicity and inconvenience and anxiety of a public trial are more punishing than a sentence." (Mr. Justice Heaton) there may, however be occasions when in the opinion of the Court, imprisonment is the only sentence and the ends of justice would not be met by a mere sentence of fine. The court can while dealing with such cases give a sentence of imprisonment but all the same our recommendations considering all the pros and cons of the question would be that the sentence should not be for a period less than four weeks."