

SENTENCING: LAW & GUIDELINES

**Dr Khurshid Iqbal,
Dean Faculty**

Justification

- ⦿ Basic understanding of sentencing process
- ⦿ Significance of sentencing in criminal justice system
- ⦿ The law relating to sentencing
- ⦿ Challenges in effective sentencing

What is sentencing?

- ⦿ The judgment that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer (Black's Law Dictionary Ninth Edition)
- ⦿ A judicial sentence is expression of power on part of society, through judges (Psychology of Judicial sentencing)

Conviction & Sentence

- Conviction is the act or process of judicially finding some one guilty of a crime; the state of having been proved guilty (Black's Law Dictionary)
- Conviction is followed by sentence; the two are thus different from each other
- Conviction—outcome of a criminal trial in the form of guilty verdict
- Sentencing—determination of kind and quantum and execution of punishment

Theories of sentencing

- ◉ **Retribution**-(an eye for eye, retrospective)
- ◉ **Deterrence**-(to prevent something or making something less enthusiastic for others; general, specific, prospective)
- ◉ **Denunciation**-(society's disapproval of criminal activity)
- ◉ **Incapacitation**-(preventing repetition of wrong by the criminal)
- ◉ **Rehabilitation**-(roll back to society)
- ◉ **Reparation**-(compensatory and restitutive)

What is the current trend?

- ◎ **Stress on one or a mixture of all?**

- ◎ **Mixture of all**

Types of sentences

- ◉ **Indeterminate**-(no specific term; no date of release)
- ◉ **Determinate** (specific term determined by law)
- ◉ **Mandatory or fixed**-(No discretion)
- ◉ **Discretionary or variable**-(scope of discretion: minimum and maximum terms)
- ◉ **Rehabilitation**-(roll back to society)
- ◉ **Reparation**-(compensatory and restitutive)
- ◉ **Tariff**-(spending the rest of life in prison: UK law)

Sentencing in Pakistan: FCR

- **Punishment:** On conviction, a P.A. or DCO may pass sentence of imprisonment or fine or both, provided the sentence shall not exceed 14 yrs (s12)
- **Enforcement of sentence:** In the manner provided under chapter XXVIII CRPC; and imprisonment for life shall be rigorous imprisonment may extend to 14 yrs; in default of payment of fine, provisions of Ss 63-70 CRPC to apply; imprisonment and fine provided by PPC shall apply to offences in schedule-II to FCR (s13)
- **Powers of courts:** Magistrate-I and u/s30 CRPC if so conferred by Governor (s4)

Sentencing: PPC/CrPC

◎ Main types of sentencing

- Determinate sentences
- Mandatory threshold (E.g. voluntary causing of hurt in or attempting to commit (S 394PPC—imprisonment for life or rigorous imprisonment not less than 4 years nor more than 10 yrs; other examples—dacoity & dacoity with murder)
- Other examples: dacoity/dacoity with murder
- Mandatory absolute sentence (S 302(a)PPC)
- Discretionary sentence (S457PPC-criminal trespass)

PPC (Ss 53-75)

Arsh	Compensation specified to be paid by offender to the victim
Daman	Compensation determined by court to be paid by offender to the victim
Diyat	Compensation specified in s323 CrPC payable to heirs of victim; diyat is not compensation by punishment
Fine	Pecuniary punishment, payable to the State
Qisas	Punishment causing similar hurt to offender as he s/he caused to victim
Tazir	Not fixed by legislature but left to the discretion of the court
Imprisonment for life	Fixed by legislature in penal law
Imprisonment	Fixed by law: simple and rigorous
Forfeiture	Fixed by law

Imprisonment in lieu of fine

Sections 63-70 PPC

- Fine unlimited if not prescribed by law, but shall not be excessive (s. 63)
- Imprisonment in lieu of fine
 - Fine may be awarded (a) with or without imprisonment, and (b) independently where only fine could be imposed
 - In default of payment of fine, imprisonment may be imposed, but shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence” (s. 64)
 - Imprisonment not to exceed one-fourth of the maximum term in case of imprisonment as well as fine (s65)
 - Such imprisonment may be of any description: simple or rigorous (s 66)
 - If punishment is fine only; such imprisonment shall be simple

Lieu of fine...

Sections 63-70 PPC

- Imprisonment in lieu of fine
 - If punishment is fine only; such imprisonment shall be simple;
 - Limit: (a) not exceeding 02 month when fine is not less than Rs 50; (b) not exceeding 04 months when fine is not less than Rs100; and (c) not exceeding 06 months in any other case (s 67)
 - Imprisonment to terminate on (a) payment of fine or being levied by process of law (s68), and (b) on payment of proportionate part of fine (s69) [Illustration may be read]
 - Unpaid fine leviabale within 06 yrs of the sentence; if sentence is longer than 06 yrs, any time previous the expriy of that term; death not discharge property from liability (s70)

Limit of punishment

Sections 70-75 PPC

- Offence falling in one or more separate definitions, or
 - Several acts when one or more acts constitute a separate offence—
 - Court not to award more severe punishment than the one which it could award for any one of such offences (s71)
- Offence in question doubtful
 - Person found guilty but it is doubtful of which one he is guilty, shall be punished of one carrying the lowest punishment (s72)
- Solitary confinement
 - Court having power to award rigorous imprisonment may award solitary confinement, not exceeding 06 month in the whole (s73) and 15 days at a time (s74)
- Previous conviction for offences in ch XII or XVII PPC
 - Subsequent offence: imprisonment for life or of maximum 10 yrs (s75)

Sentencing: CrPC provisions

HC	Any sentence authorized by law (s 31(1))
SJ/Add.SJ	Any sentence authorized by law; death sentence subject to confirmation (s 31(2))
Asst. SJ	Any sentence authorized by law, except death or imprisonment exceeding 07 yrs (s31(3))
Magistrate-I	Impris: max. 03 yrs, fine Rs 45,000, arsh, daman (s32)
Magistrate-II	Impris: max. 01 yr, fine Rs 15000 (s32)
Magistrate-III	Impris:max.01 month, fine Rs 3000 (s32)
Magistrate (in default of fine)	Authorized by law provided it does not exceed the power conferred under the CRPC; not more than on-fourth of total term in case of fine as part of substantive sentence (s33)
Magistrate S30	Authorized by law except death or max. 07 yrs (s34)

Conviction of several offences at one trial-imprisonment to run consecutively unless court directs it to run concurrently .

If aggregate punishment exceeds jurisdiction—not necessary to send the case to higher court, provided max. punishment in no case exceeds 14 yrs; in case of magistrate, no exceeds twice the amount authorized by law (s35)

Challenges in Pakistan

- ⦿ No specific sentencing law in Pakistan
- ⦿ No separate provisions of pre-sentencing hearing
- ⦿ No separate provisions to obtain pre-sentencing report
- ⦿ No specific statutory sentencing guidelines except of a few
- ⦿ Purpose of sentencing not specifically stated
- ⦿ Huge swing of discretion of courts
- ⦿ No sentencing commission
- ⦿ No permanent body to monitor pos-sentencing effects
- ⦿ No mechanism to ensure uniformity in sentencing

Key guidelines

- Courts not to be mechanical, but to think and consider what a proper sentence ought to be (2006PCrLJ1431)
- Utmost care on the part of court dealing with life and liberty of accused (2010 SCMR 949)
- Culpability (intention) of accused
- Harm caused to victim or authorities
- Aggravating and mitigating factors
- Guilty plea
- Proportionality or totality of the offence
- Reasons for giving a sentencing between the starting and ending point of term (UK Sentencing Council)

THANK YOU

DISCUSSION