In the name of Allah, the Most Beneficent, the Most Merciful
Sentencing Jurisprudence of Pakistan
Overview, Challenges and their Solutions

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Objectives of Presentation

- To refresh our understanding on sentencing process
- To sensitize ourselves on the importance of sentencing with reference to fair trial
- To share our experience in the field of sentencing
- To know the challenges on sentencing and their solutions
Sentencing Powers of Judges

- What people think about it
Judges are powerful people. The way they use their power affects us all, directly or indirectly.

Yet

most of us have never thought about how judges approach the strange job of measuring their distaste for offender into punishment_years, pounds or hours

(The Psychology of Judicial Sentencing)
What is Sentence?
What is sentence?

- 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)*

- It is the ultimate goal of any justice delivery system.
  
  *(State of Punjab v Prem Sagar & Ors. SC of India in 2008)*
What is Conviction?
Conviction is the act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. *(Black’s Law Dictionary Ninth Edition)*

Relationship of conviction and sentence?
Conviction and Sentence

- Sentence succeeds conviction and is not the same thing as conviction nor both are a merger or a mixture.

- As conviction and sentence are separate entities so treating both in the same breath may lower the emphasis on either and in our case on latter.

- After conviction starting point for determination of proper sentence is consideration of aims or purposes of sentence.

- What are aims or purposes of sentencing?
SIX Aims of Sentencing

- retribution, (eye for eye, retrospective)
- deterrence, (general, specific, prospective)
- denunciation, (society's disapproval of criminal activity)
- incapacitation, (preventive in nature)
- rehabilitation （roll back to society）
- Reparation (compensatory and restitutive)
Current Trend

Mixed Aims
No aspect of the administration of criminal justice has aroused as much concern among jurists and criminologists as the sentencing of convicted offenders. (Edward Green)

The question of sentence demands utmost care on the part of the court dealing with the life and liberties of the accused person. (SC of Pakistan, 2010 SCMR 949)
The Courts are not supposed to be mechanical at the time of awarding sentence.

They are supposed to think and consider what a proper sentence ought to be.  
2006 P Cr. LJ 1431
Nature of sentencing process

Is sentencing an easy process?

OR

A difficult stage for a judge?
Does sentencing resemble Juggling on a rope
At least a sentencing judge says this

- Sentencing is an attempt to juggle object of various sizes while walking a tight rope which is being shaken at both ends. (Queensland judge)
Types of sentences

- Indeterminate sentences
- Determinate sentences
- Mandatory or fixed sentences
- Discretionary or variable sentences
- Individualized sentencing
- Tariff sentencing
Types of sentences in Pakistan

- Determinate sentences (with some mixture of rehabilitative process)
- Mandatory threshold sentences (394, 395 PPC)
- Mandatory absolute sentences (302(a) PPC)
- Discretionary sentences (457 PPC)
Individualized Sentencing

- Sentencing for Juveniles
- Sentencing for Women
- Sentencing for Mental Health Patients
Treatment of sentencing in Pakistan

- No specific sentencing statute in Pakistan
- No separate provision for pre-sentence hearing
- No separate procedure to get pre-sentencing reports
- No specific statutory sentencing guidelines except of a few
Treatment of sentencing in Pakistan (cont...)

- Purposes of sentencing not specifically stated
- Huge discretion despite bench trial
- No sentencing commission
- No permanent body to monitor post sentencing effects
- No mechanism to ensure uniformity in sentencing or study disparities in sentencing process
Sentencing provisions in PPC

- Sections 53 to 75 PPC

- S. 323 Value of Diyat, Disbursment and payment of Diyat S. 330, 331 PPC

- Payment of Arsh 337–X, Value of daman, S 337 Y, PPC

- S. 337N(2) grounds for tazir sentence in hurts
  - (1999 P Cr. LJ 230[Peshawar]
  - 2009 P Cr. LJ 405[Lahore]

- See also Diyat, Daman and Arsh Rules 2007
Sentencing provisions in Cr.P.C

- Ss. 31 to 35 (Sentencing powers of courts)
- Passing of sentence by magistrate S 245(2)
- Procedure in case of previous conviction, S 245-A
  - Above section envisage recording of evidence after conviction for purpose of sentence
- Parallel provisions for session trial are 265-H, I
- S. 367 (5)
- Procedure of sentence of Death 368
- Confirmation of death sentence S 374
Sentencing provisions in Cr.P.C (cont...)

- Postponement of sentence 382-A
- Consideration of during trial custody 382-B
- Scandalous, false and frivolous pleas in defense to be considered while sentencing S.382-C
- Suspension of sentence of imprisonment for non-payment of fine S-388
- Whipping sentences Ss. 390 to 395
- Concurrent sentence of offender already sentenced for another offence S.397
Important judgments

Expectancy of life, death penalty not the only normal sentence for murder
  - *Hassan v The State*, PLD 2013 SC 793

In narcotics Sentence linked to quantity
  - *Ameer Zeb v The State*, PLD 2012 SC 380

Kinds of sentences
  - *Saleemuddin v State* 2011 SCMR 1171

Question of sentence demands utmost care
  - *Israr Ali v State* 2007 SCMR 525

Hesitancy of courts to award death penalty
  - *Muhammad Sharif v Muhammad Javed*, PLD 1976 SC 452
Role of police in sentencing

- Collection of evidence
- Circumstances of accused
- Circumstances of victim
- Criminal history of accused
Role of prosecutor

- Scrutiny of police file
- Framing of charge
- Fair presentation of circumstances
- Request for proper sentence
Indian jurisdiction

Pre-sentence hearing is provided in S 235(2) Cr.P.C.1973, in a trial before court of Sessions.

- Magisterial courts are guided by S 248 Cr.PC to accord hearing before sentencing.

- But still Indian SC says, there is no proper guidance on sentencing except observations and there is no sentencing policy (Prem Sager Case referred above).
SENTENCING LEGISLATION IN THE UK

Criminal Justice Act 1991

Crime and Disorder Act 1988

Powers of Criminal Courts (Sentencing) Act 2000

Criminal Justice Act, 2003

Legal Aid, Sentencing and Punishment of Offenders Act 2012.
Purposes of Sentencing in UK

As per Criminal Justice Act, 2003 purposes of sentencing in UK are:

◦ (a) The punishment of offenders,

◦ (b) The reduction of crime (including its reduction by deterrence),

◦ (c) The reform and rehabilitation of offenders,

◦ (d) The protection of the public, and

◦ (e) The making of reparation by offenders to persons affected by their offences
In the U.K. since early 1980’s Court of Appeal increasingly laid down sentencing guidelines and brought more focus on sentencing process.

Advisory Panel was created under Crime and Disorder Act 1988.

Criminal Justice Act, 2003 created the Sentencing Guidelines Council (SGC).

Now Sentencing Council has replaced SGC.
Australian Statutes

- Australian Capital Territory Crimes (Sentencing) Act 2005
- New South Wales Crimes (Sentencing Procedure) Act 1999
- Northern Territory Sentencing Act 1995
- South Australia Criminal Law (Sentencing) Act 1988 etc.
United States Sentencing regime

- THE SENTENCING REFORM ACT OF 1984 (U.S.)
  - Sentencing Commission has been set up
  - Sentencing guidelines are provided
  - Judicial discretion is structured
  - Uniformity and consistency in sentencing is stressed
- Fair Sentencing Act of 2010
- Smarter Sentencing Act of 2013 (Bill)
Way Forward

- Training and sensitization of justice sector
- Optimum use of present legislative provisions and available guiding principles
- Increased guidance from superior courts
- Legislative aid...in how many ways?
References


Cross, Rupert. , *Punishment, Prison and the Public*. London: The Hamlyn Trust,


High Court Rules & Orders

Bench books