

A Critical Study on Theories and Principles of Punishment in India

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Abstract: *The term sentence refers to response of the criminal justice system to commission of crime. Despite the fact that all the persons convicted of a particular offence are proved to have been guilty of the commission of such act that constitute the said offence however, as the character, background of offender, socio-economic circumstances, enormity, modus operandi, motive and reasons behind commission of the same offence by different persons vary therefore the response with regard to different offenders must also vary. For instance, persons may commit an offence under social compulsions or under pressure of poverty or on account of retributive instinct or greed, lust, aggressive nature or in a sudden rage or anger, variation in all these circumstances necessitate variation in sentence. Secondly, the response of any particular system to crime depends on the purpose it seeks to achieve through such a response. The justifications for different responses may be found in the theories of punishment propounded by penologists. Thirdly, the principles governing the process of sentencing in any criminal justice system also reflect how the system strives to strike a fine balance between the conflicting rights of victim and the society on one hand and the rights of the offenders on the other. In order to ensure such balancing at the practical level, the systems vest the courts with certain degree of discretion in deciding what would be an appropriate sentence in a particular case. The punishment does not only involve the physical pain but it also carries with it the mental anguish and loss of social reputation. It may also bring the loss of certain civil rights. In hedonistic sense whatever kind of punishment, the offender has to bear some sort of pain.*

Keywords: Punishment, Sentence, Imprisonment, Penalty, Guilty, Offender

I. INTRODUCTION

Punishment is given to the offenders with the aim to check them from committing crimes again. It deters not only the actual offenders but also others from doing the same kinds of acts in future. On the one hand, it is some solace to the victim or his relatives if the offenders are punished and on the other hand it serves a social purpose to prevent the people from indulging in criminal acts. The persons in authority or members of the society may think the punishment as a device to induce conformity with social and legal norms. In every society, the law violators have to bear the penalties. The tribals have their own laws. With the advancement of civilization, the change in the punishments and its form have come one the scene, so that the punishment may be reasonable means to check the crime, the three things are essential for it. The first is the speedy and inescapable detection and prosecution, the second is a 'fair chance for a fresh start' after the punishment and the third is that the State which claims the right to punish must uphold superior values to be reasonably expected from the prisoner for being acknowledged.

The punishment does not only involve the physical pain but it is also carries with it the mental anguish and loss of social reputation. It may also bring the loss of certain civil rights. In hedonistic sense whatever kind of punishment, the offender has to bear some sort of pain. The punishment is imposed not only by the State but in the broader perspective by other institutions also. E.g., school, club and other organizations for the violation of their rules, the punishment is imposed by heads of the communities also. Thus, in India, we find the examples of the punishment being awarded by the Panchayats where the heads through Panches give the Judgments for the violation of norms. We are mainly concerned here with the punishments being awarded by the State.

Broadly, the term sentence refers to response of the criminal justice system to commission of crime. Thus, this article deals with the ways in which the criminal justice system responds to commission of crime, the theoretical basis of responses and the law relating to the considerations that determine such response and the procedure for its determination. Despite the fact that all the persons convicted of a particular offence are proved to have been guilty of the commission of such act that constitute the said offence however, as the character, background of offender, socio-economic circumstances, enormity, modus operandi, motive and reasons behind commission of the same offence by different persons vary therefore the response with regard to different offenders must also vary.

For instance, persons may commit an offence under social compulsions or under pressure of poverty or on account of retributive instinct or greed, lust, aggressive nature or in a sudden rage or anger, variation in all these circumstances necessitate variation in sentence. Secondly, the response of any particular system to crime depends on the purpose it seeks to achieve through such a response. The justifications for different responses may be found in the theories of punishment propounded by penologists. Thirdly, the principles governing the process of sentencing in any criminal justice system also reflect how the system strives to strike a fine balance between the conflicting rights of victim and the society on one hand and the rights of the offenders on the other. In order to ensure such balancing at the practical level, the systems vest the courts with certain degree of discretion in deciding what would be an appropriate sentence in a particular case.

Evolution of Punishment

In the primitive societies, the kinsmen were collectively responsible for injuries inflicted by their members on the member of another group, the latter group used to take blood-feud from the former. The punishment was imposed by the kin-group. For the blood-feuds within the same group or tribe, the punishment was given by the chiefs of the tribe, elders or kings in case the injuries were grave to be taken as against the whole community rather than the private injuries. For murder and theft, the responsibility was considered of the kin-group.

In most of the primitive societies, the punishment is not found so severe and barbarous as in the advanced societies. The severe punishment symbolises display of strength and suppression of any threat to the governmental authority. The development of administrative system devoted solely to the crime and punishment as a specialized branch have prosecutors, Magistrates and Judges, torturers, hangmen etc. who are professionally trained in carrying out the punishment to the full extent right from the stage of detection of the crime to the stage of the enforcement of punishment. The societies when stratified into the classes, the personal relations disappeared and there remained no bond of affection or friendly attitude between the people in heterogenous society so that the offender was regarded as enemy of the society. The severity of punishment consequently followed.¹

When we turnover the pages of history, we find that branding, mutilation, tearing apart, feeding to beasts, slow starving, burning, exposing in pillories to the insult of passers-by, enslaving in galleys, crucification and pressing to death were the unpleasant forms of punishment. Now these forms of punishments have been generally abandoned due to change of attitude that the punishment must not be inhuman and that the execution must be painless. The reasons for the punishment may differ with the changing concepts of crime criminality and punishment but one reason which appears to be important from the very beginning is the revengeful attitude towards the criminal. Both the victim's and society's intolerance of criminal behaviour is expressed in the form of punishment, the forms of which may differ from age to age and society to society.²

The human nature of maintaining the orderly society with internal peace and harmony has given place to a regulated combat against the crime instead of feud. Feuding involves killing which means the absence of law therefore every society has evolved some set procedure to avoid it.³

¹Walter C Reckless, The Crime Problem, pp. 494-496; Ellsworth Faris, The Nature of Human Nature, pp. 86-93.

²S.S. Srivastava, Criminology, Penology and Victimology, Central Law Agency, Allahabad, 2017, p.286.

³E. Adamson Hoebel, The Law of Primitive Man, Cambridge Mass, Harvard University Press, 1954, pp. 329-330.

II. THEORIES OF PUNISHMENT

The determination of guilt in a criminal case is followed by a decision on the kind of treatment that should be meted out to the offender. As mentioned earlier the treatment suggested by different theorists varies according to the purpose sought to be achieved. The purposes which broadly govern the decision with regard to such a treatment are:

- Deterrence
- Prevention
- Retribution
- Reformation and rehabilitation
- Restoration and reparation

Deterrence

To deter means to discourage or dissuade someone and in case of punishment for an offence it implies dissuasion from commission of offence. This dissuasion may act at various levels viz., at individual, general or educative level.⁴ The deterrent theory of punishment aims at reducing recurrence of crime by punishing the offender, which discourages not only the offender from committing crime again but such unpleasant consequences also deter people generally who might have thought of committing crime in future. This theory of punishment seeks to “*educate the public as to the proper distinction between good and bad conduct*”⁵ and thus plays an educative role in the long run.

The deterrence theory favors such sentences which are likely to create a fear in the minds of actual and potential offenders and thus discourage or de-motivate them from committing offences in future. The drawbacks of this approach to sentencing are twofold. On the one hand it would justify imposition of harsh sentence on an offender in order to deter others from committing a similar offence and on the other such an approach would not be averse to imposition of punishment on an innocent person provided it serves to deter others.

Supreme Court of India has also recognized that “*punishment to an accused in criminal jurisprudence is not merely to punish the wrongdoer but also to strike warning to those who are in the same sphere of crime or to those intending to join in such crime.*”⁶ It also recognized that deterrence is inbuilt in the sentencing system.⁷

Prevention

Prevention seeks to prevent the offender from committing a crime again by rendering the offender incapable of committing the crime. The punishments guided by this theory of punishment may seek to bring about permanent incapacitation for instance by imposing death penalty or by severing limbs or by disqualifying a person from doing something for example disqualification from driving. Even sentence of imprisonment incapacitates the offender but that incapacitation is only temporary in nature. This theory views punishment as a means to ensure prevention of commission of crime in future and in that sense is forward looking like the deterrence theory. An important consideration in a sentence based on prevention as the purpose of punishment is the likelihood of commission of crime by the same offender again. This is also viewed as a drawback of this approach as it seeks to impose punishment not for the past offence of the offender but the possible future offences that he is likely to commit.⁸ Moreover the correctness of the prediction of commission of crime in future is also questionable.⁹

⁴C.M.V.Clarkson *et al.*, (2007) *Clarkson and Keating Criminal Law: Text and Materials*, Sweet and Maxwell, London, pp. 34-39.

⁵*Id.*, p. 39.

⁶Gurdeep Singh v. State (Delhi Administration) AIR 1999 SC 3646.

⁷Adu Ram v. Mukna AIR 2004 SC 5064, State of Karnataka v. Krishnappa AIR 2000 SC 1470.

⁸Nigel Walker (1980) *Punishment and Stigma*, pp. 98-99.

⁹*Id.*, p. 44.

Retribution

Retributive theory of punishment is based on the idea that the offender should suffer for the wrong committed by him. The suffering is imposed on the offender on account of either vengeance, expiation or as just deserts.¹⁰ Let's try to understand the notion of vengeance, expiation and just deserts, reflected in this theory especially focusing on how they suggest three different purposes for imposition of suffering. Unlike the aforesaid theories this theory focuses on the past action of the offender rather than the future i.e., protection of society, preventing commission of crime in future.

The notion of vengeance views the punishment as an expression of the feeling of revenge that is aroused in the mind of the victim, his near and dear ones and the society in general on account of the commission of crime. While punishing the state acts on behalf of the victim as well as the entire society and thus avoids private retaliation.¹¹

The notion of expiation implies that the guilt of the offender is blotted out by the suffering imposed on him. In other words, once the offender undergoes the suffering imposed on him for his wrong, he is considered to have paid back his "debt"¹² owed to victim and society at large. The debt it is said is incurred on account of transgression of law by the offender. Once this debt is paid the liability of the offender is extinguished and innocence is substituted for guilt.

The notion of just deserts implies that the person deserves to be punished for the offence he has committed. This notion further has two ideas associated with it i.e., just desert as eliminating undue advantage and secondly just desert as censure or renunciation.

Undeserved advantage - It is said that the offenders gain undeserved advantage by breaking themselves free of the restrictions, which all others abide by and thus remain under the burden of those restrictions. The punishment thus restores the balance between those who accrue undue advantage by destroying the undue advantage enjoyed by them.¹³ This notion has been criticized on two accounts one being that the idea of benefits and burden presumes that law-abiding conduct is necessarily burdensome and crime is advantageous.¹⁴ Secondly, the notion is silent on quantum of punishment in specific cases so as to strike a balance between benefits and burdens.¹⁵

Censure – Some theorists believe that the offender deserves punishment as punishment is an expression of censure, condemnation or denunciation of the conduct of the offender. It is away through which disapproval of the action is communicated and it thus has symbolic value.¹⁶ The communication of censure may be verbal or through hard treatment as punishment. This approach treats offenders as moral agents, who can be communicated through punishment that they have committed a wrong and they must refrain from such action in future.

The idea that the offender deserves to be punished attaches two significant advantages to this approach. Firstly, it restricts the power of the state to impose excessive punishments and secondly it reduces disparity in sentences.¹⁷ However, the approach of just deserts considers persons as 'free willed' individuals and their actions, solely a manifestation of their free will. It fails to take into account social disadvantages which may be at the root of the commission of crime.¹⁸ Just desert approach emphasizing proportionality between crime and sentence has time and again been emphasized by the courts as an important principle for determination of sentence.¹⁹

¹⁰ *Id.*, p. 26.

¹¹ James Fitzjames Stephen "A History of the Criminal law of England," vol. II (1883), pp. 81-83, in C.M.V.Clarkson et al., (2007) Clarkson and Keating Criminal Law: Text and Materials, Sweet and Maxwell, London, p. 27.

¹² *Ibid.*

¹³ Andrew Von Hirsch, Doing Justice – The Choice of punishments (Report of the Committee for the Study of Incarceration) (1976) pp. 45-49, in C.M.V.Clarkson et al., (2007) Clarkson and Keating Criminal Law: Text and Materials, Sweet and Maxwell, London, p. 30.

¹⁴ John Braithwaite and Philip Petit, Not Just deserts: A Republican Theory of Criminal Justice, 1990, pp. 158-159.

¹⁵ *Ibid.*

¹⁶ Joel Feinberg, The Expressive Function of Punishment (1965) vol. 49 No. 3, The Monist, pp. 397-423.

¹⁷ C.M.V.Clarkson et al., (2007) Clarkson and Keating Criminal Law: Text and Materials, Sweet and Maxwell, London, p. 34.

¹⁸ Mathiesen (1990) Prison on Trial, Sage, London, p. 121, in Andrew Ashworth (2005) Sentencing and Criminal Justice, Cambridge University Press, p. 86.

Reformation and Rehabilitation

Unlike other approaches to punishment the reformatory and rehabilitative approach focus on the criminal rather than the crime. Rather than considering criminal as a rational and calculating individual, it views the criminal as a person in need of treatment so as to enable him to better adjust to the environment in which he exists. This approach views individual pathology or maladjustment as the cause of criminal behavior and thus focuses on the needs of the particular offender as determinative of the kind treatment that should be given to him. This approach approves of sentences which seek to bring about attitudinal or behavioral change in the offender through moral training, education, psychological help, enable him to find occupations by developing his skills. Under this approach the treatment of the offender should end when he is fit to get reintegrated in the society. Such an approach however, encouraged subjection of offenders for indeterminate period of time.²⁰ Moreover, many studies²¹ point out that there is not much difference between this approach and the others as far as prevention of commission of crime in future is concerned.

Recent trend in penology focusing on treatment of offenders in order to reform and rehabilitate them also finds resonance in the judicial decisions. The court has held that "*Crime is a pathological aberration; the criminal can ordinarily be redeemed. The State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behavior has to be countered not by undue cruelty but by re-culturization.*"²²

Restoration and Reparation

Restorative justice aims at repairing the harm to the victim and the community by making the offender recognize his wrong, "healing" the conflict between victim and offender, repairing the breach in community's sense of trust wherein the community is reassured against further offending and diminishing the fear of crime²³ created by commission of offence. This approach embodies a socially integrative²⁴ response to crime. The response is woven in the wider social perspective. Unlike other approaches which focus on the offender this approach shifts the focus of criminal justice system to the victim of crime while also trying to instill a sense of shame in the offender. However, questions have been raised as to what the notion of "community restoration" entails and how it is to be operationalized.²⁵

One of the major constituents of restorative justice is compensation to the victim. Criminal justice system in India does recognize victim compensation as a response to commission of crime. Even the Supreme Court has recognized the efficacy of restoration as a component of response to crime. In *Mohd. Giasuddin Vs. State of Andhra Pradesh* the court held that "in white collar crimes, imposing sentence of fine for the purpose of reimbursement to victims will drive home a sense of moral responsibility to repair the injury inflicted."²⁶ The court has also recognized that victim compensation aims at reconciling the victim with the offender.²⁷

¹⁹ State of Karnataka v. Raju AIR 2007 SC 3225.

²⁰ C.M.V. Clarkson et al., (2007) Clarkson and Keating Criminal Law: Text and Materials, Sweet and Maxwell, London, p. 50.

²¹ R. Martison et al (1974), "*What Works? Questions and Answers about Prison Reform*", The Public Interest p. 22, cited in Andrew Ashworth (2005) Sentencing and Criminal Justice, Cambridge University Press, p. 82.

²² T.K. Gopal v. State of Karnataka AIR 2000 SC 1669.

²³ Andrew Hirsh (2009), Principled Sentencing: Readings on Theory and policy, Hart Publishing, pp. 211-217, at p. 211.

²⁴ Andrew Hirsh (2009), Principled Sentencing: Readings on Theory and policy, Hart Publishing, pp. 189-198 at p. 189.

²⁵ Andrew Hirsh (2009), Principled Sentencing: Readings on Theory and policy, Hart Publishing, pp. 211-217, at p. 212.

²⁶ AIR 1977 SC 1926.

²⁷ Jacob George v. State of Kerala (1994) 3 SCC 430.

Sentencing Guidelines in India

Kinds of Sentences and Procedure for Determination of Sentence

In India, the criminal justice system, recognizes following as responses to the commission of crime.

1. Death penalty²⁸
2. Imprisonment for life²⁹
3. Rigorous imprisonment, i.e., with hard labor³⁰
4. Simple imprisonment³¹
5. Solitary confinement³²
6. Forfeiture of property³³
7. Fine³⁴
8. Probation of good conduct³⁵
9. Admonition³⁶
10. Compensation³⁷
11. Order to pay costs in non-cognizable cases³⁸
12. Apology in contempt cases³⁹
13. Order for notifying address of previously convicted offender⁴⁰

The above-mentioned responses to crime may also be classified into custodial sentences and non-custodial sentences, where custodial sentences refer to sentence of any kind of imprisonment and all the others fall in the category of non-custodial sentences. The other classification may be on the basis of the penological approach that they reflect for instance deterrent or preventive approach is reflected in responses like death penalty, while reformatory or rehabilitative approach is integral to probation of good conduct and finally responses like compensation, payment of cost imbibes notion reparation and restitution.

In the light of these modern ideas in penology, sentencing is now regarded as a separate stage in the process of administration of criminal justice. After it is concluded that the accused is guilty, an opportunity is given to the accused to make his submissions (written and oral) with regard to the sentence. It is mandatory to hear the offender before the court passes a sentence on him.⁴¹ Only in cases where the court releases the offender on probation of good conduct or after admonition under section 360 of Cr.P.C. that hearing the offender before passing of sentence is not mandatory.⁴² The purpose of the provision is to satisfy the rule of natural justice and to enable the judge to decide the quantum and nature of sentence keeping in mind circumstances not only relating to the crime but also those relating to the criminal.⁴³ Such a hearing on the question of sentence ensures individualization of sentence. Non-compliance with this requirement of hearing before passing a sentence is not a mere irregularity but it is of such a character that it vitiates the

²⁸ The Indian Penal Code, 1860, section 53.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Id.*, sections 73, 74.

³³ The Indian Penal Code, 1860, section 53.

³⁴ *Ibid.*

³⁵ *Id.*, section 360 (1), The Probation of Offenders Act, 1958, section 4.

³⁶ *Id.*, section 360 (3). The Probation of Offenders Act, 1958, section 3.

³⁷ *Id.*, section 357. The Probation of Offenders Act, 1958, section 5.

³⁸ *Id.*, section 359 (1).

³⁹ *Id.*, section 348, also see Halsbury's Laws of India vol 5 (1), Lexis Nexis Butterworths, [105.418], p. 394.

⁴⁰ *Id.*, section 356.

⁴¹ The Code of Criminal Procedure, 1973 sections 235 (2) and 248 (2).

⁴² *Ibid.*

⁴³ Allauddin Mian v. State of Bihar AIR 1989 SC 1456.

sentence.⁴⁴ The court is also required to give reasons for the sentence that is awarded and if it awards a sentence of death then it has to state special reasons for doing so.⁴⁵

Principles Governing Exercise of Discretion in Sentencing

As we learnt earlier that there is absence of comprehensive guidelines for determining the kind and quantum of sentence in the Code of Criminal Procedure, however sketchy suggestions can be discerned from certain provisions of the code discussed above. However, the judiciary has recognized certain factors that must be kept in mind while determining an appropriate sentence in a particular case. These factors are as follows:

Offender's social and personal factors⁴⁶

Motive and circumstances of offence⁴⁷

Nature of offence and degree of deliberation⁴⁸

Delicate and dispassionate balancing of aggravating and mitigating factors⁴⁹

Impact of crime on the affected party⁵⁰ and on society⁵¹

Effect of punishment on the offender⁵² possibility of his treatment and return to normal life⁵³

Apart from these factors a principle which has been recognized by courts in the context of sentencing is that the measure of punishment should be proportionate to the gravity of offence.⁵⁴

Principles Governing Release on Probation

After the determination of guilt, a person may be released on probation of good conduct in certain cases. In tune with the reformatory rehabilitative approach to punishment, the criminal justice system in India provides for release of offenders on probation of good conduct on entering into a bond with or without sureties for a maximum period of three years. Under the Code of Criminal Procedure, the court may allow the benefit of probation to an offender in following cases:

When the offender above 21 years of age has been found guilty of an offence punishable with –

Only fine; or

With imprisonment for a term of seven years or less⁵⁵

When the offender below 21 years of age or a woman has been found guilty of an offence punishable not with death or imprisonment for life and he/she is a first-time offender⁵⁶

When the offender or his surety has a fixed place of abode or regular occupation or place of living within the jurisdiction of the court⁵⁷

However, under the Probation of Offenders Act, 1958 the any person, not convicted of an offence punishable with death or imprisonment of life may be released on probation of good conduct by the court.⁵⁸

⁴⁴Santa Singh v. State of Punjab AIR 1976 SC 2386.

⁴⁵*Id.*, section 354 (1) (b), 354 (3).

⁴⁶Ediga Anamma v. State of Andhra Pradesh AIR 1974 SC 799.

⁴⁷Modi Ram v. State of Madhya Pradesh AIR 1972 SC 2438.

⁴⁸Sham Sunder v. Puran AIR 1991 SC 8.

⁴⁹Surja Ram v. State of Rajasthan AIR 1997 SC 18.

⁵⁰Shivnarayan Lakshminarayan Joshi v. State of Maharashtra AIR 1980 SC 439.

⁵¹State of Madhya Pradesh v. Saleem (2005) 5 SCC 554.

⁵²Ramashraya Chakravarti v. State of Madhya Pradesh AIR 1976 SC 392.

⁵³Santa Singh v. State of Punjab AIR 1976 SC 2386.

⁵⁴Sham Sunder v. Puran AIR 1991 SC 8.

⁵⁵The Code of Criminal Procedure, 1973, section 360 (1).

⁵⁶*Ibid.*

⁵⁷*Id.*, 360 (7).

⁵⁸The Probation of Offenders Act, 1958, section 4.

While deciding whether to release the offender on probation the court also considers the following factors⁵⁹:

Age of the offender
Character and antecedents of the offender
Circumstances in which the offence was committed

Principles Governing Release after Admonition

An offender may be released by the court after admonition if he is convicted of any of the following offences⁶⁰:

Theft
Theft in a building
Dishonest misappropriation
Cheating
Any offence punishable with imprisonment for less than 2 years
Any offence punishable with fine only
Only a person who has not been convicted before can be released after admonition by the court in such cases. Moreover, the court has to form an opinion regarding the suitability of release after admonition for which the following factors must be taken into account⁶¹:

Age of the offender
Character and antecedents of the Offender
Physical and mental condition of the offender
Trivial nature of the offence
Extenuating circumstances in which the offence is committed

Sentencing Guidelines in UK

In order to ensure consistency in the pattern of sentencing, Sentencing Guidelines Council has been established in England under the Criminal Justice ACT 2003. The Sentencing Guidelines Council issues guidelines⁶² after receiving advice from the Sentencing Advisory Panel.⁶³ The courts are required to follow these guidelines while determining a sentence to be imposed and the courts are under an obligation to give reasons if in a particular case the decision is not in conformity with the guidelines. The guidelines that are issued may be general in nature or pertain to specific category of offence or offender. The Council has already issued guidelines with respect to the following:

Principles for measuring the seriousness of offences
Guidelines pertaining to the use of new forms of sentences introduced by the Criminal Justice Act 2003
Reduction in sentence of a guilty plea, manslaughter by reason of provocation and robbery
The Criminal Justice Act 2003 also recognizes the following purposes of sentencing:
The punishment of offenders
The reduction of crime (including reduction by deterrence)
The reform and rehabilitation of offenders
The protection of the public
The making of reparation by offenders to persons affected by their offences
The Act however, does not rank these purposes which are likely to result in sentencing disparity.⁶⁴

⁵⁹Id., section 360 (1).

⁶⁰Id., section 360 (3), The Probation of Offenders Act, 1958, section 3.

⁶¹ *Ibid.*

⁶²Criminal Justice ACT 2003, section 170.

⁶³Id., section 171.

⁶⁴ C.M.V. Clarkson et al., (2007) Clarkson and Keating Criminal Law: Text and Materials, Sweet and Maxwell, London, p.72

Sentencing Guidelines in USA

In order to control the exercise of discretion in sentencing, a Sentencing Commission has been established. The Commission lays down guidelines with respect to determination of sentence within the boundaries of sentence provided in statutes. These guidelines are generally based on 2 factors:

The severity of the offence

Offender's prior criminal history

Offences are ranked in order of their seriousness and the commission specifies a limited number of aggravating and mitigating circumstances which increase or decrease the severity of the offence.⁶⁵ Factors relating to offenders' prior history include the following⁶⁶:

Previous convictions

Prior incarcerations

Whether the person was on parole or probation at the time when offence was committed

*"For each combination of offence and offender including a consideration of aggravating and mitigating circumstances the guidelines provide a narrow sentencing range. The sentencing judge is expected to impose a sentence within this range. But if there are special circumstances not adequately taken into account by the guidelines there may be a departure from the guidelines."*⁶⁷

Like in England, once a court departs from these guidelines it is required to give reason for doing the same. Moreover, the sentence automatically becomes subject to appellate review.⁶⁸

III. CONCLUSION

The criminal justice system in India confers a wide discretion on judges with respect to the sentence to be imposed on the offender. The Indian Penal Code generally prescribes the maximum punishment that may be imposed for a particular offence. Therefore, court has discretion to award suitable sentence within the limits prescribed by law. Unlike, USA and UK, the penal law in India does not lay down specific guidelines with regard to the criteria to be adopted while exercising this discretion in general.

However, there are certain provisions in the Code of Criminal procedure which reflect a tilt towards certain choices among the punishments prescribed. In other words, Cr.P.C. in certain provisions lays down the requirement of special reasons to be given in the judgment where a particular response is chosen or certain response is considered inappropriate. It is from these provisions that some guidance with regard to sentencing may be inferred.

Section 354 (3) of Cr.P.C. makes it mandatory for the court to record special reasons for preferring a sentence of death over that of life imprisonment. Therefore, a sentence of imprisonment for life is the rule while death sentence is an exception. Before 1955 the rule was just the opposite and this shift took place gradually. In 1955 section 357 (5) which provided for sentence of imprisonment for life only in exceptional cases was deleted thus leaving with the courts the choice between the two alternative sentences. In 1973, the new code laid down the rule that death sentence is to be awarded only in exceptional cases.

Where the punishment prescribed for an offence is imprisonment for a term of one year or more, the court may sentence the offender to imprisonment till the rising of the court. If in such cases the court sentences the offender to imprisonment for a period of less than 3 months then the court has to record reasons for doing so. However, where the said offence has been tried through summary procedure, sentence of imprisonment for less than 3 months may be imposed. The discretion with regard to sentence is severely restricted as far as cases in which summary trial is conducted. Cr.P.C. provides that in such cases no sentence of imprisonment for a term exceeding three months can be passed.

⁶⁵*Id.*, p. 65.

⁶⁶*Ibid.*

⁶⁷*Ibid.*

⁶⁸*Ibid.*

When a person is convicted of two or more offences in one trial then the several punishments that are imposed by the court with respect to those offences run consecutively one after the other. However, the court also has discretion to direct that such punishments would run concurrently.

The Code of Criminal Procedure also makes it mandatory for the court to give special reasons in case the offender who could be released on probation or after admonition under the law or could be dealt with under a law relating to young offenders is not dealt with under those laws.