NATIONAL JUDICIAL ACADEMY

NATIONAL CONFERENCE ON SENTENCING, PROBATION AND VICTIM COMPENSATION [P-1341]

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PROGRAMME REPORT

PROGRAMME COORDINATORS: MR. PRASIDH RAJ SINGH & MS. ANKITA PANDEY
FACULTY
NATIONAL JUDICIAL ACADEMY

OVERVIEW OF THE PROGRAMME

The Conference was conceived to draw attention of judges towards issues and challenges in sentencing practice, victim compensation and disposal of cases by resorting to triple method of plea bargaining, compounding of offences and the Probation of Offenders Act, 1958. The Conference manifested discussion on approaches towards sentencing policy and practice while enhancing the skills of judges by providing theoretical perspectives and deliberating on pragmatic requirements. The Conference facilitated participant judges to comprehend the substantive and procedural aspects relating to probation of offenders in upholding the edifice of administration of justice. The participant judges were acquainted with the legislative mandate of compounding of offences and effective utilisation of compounding in criminal cases. The evolving horizons and general principle of plea bargaining was also deliberated. The scheme of victim compensation and application of mind while recording reasons for awarding or refusing compensation also formed part of the discourse. The conference provided a platform for judges to share experience, insights, and suggestions with a panel of distinguished resource persons from the judicial branch and other relevant domain experts on relevant themes.

DAY 1

Session 1 – Sentencing Procedure: Issues & Challenges

Session 2 – Law relating to Probation: An Overview

Session 3 – Compounding of Offences

DAY 2

Session 4 – Plea Bargaining: Challenges in Implementation

Session 5 – Victim Compensation: Judicial approach towards Compensatory Jurisprudence

DAY I

SESSION 1

THEME – SENTENCING PROCEDURE: ISSUES & CHALLENGES

PANEL – JUSTICE ASHUTOSH KUMAR & JUSTICE ANUJA PRABHUDESSAI

The session shed light on the complexities and evolving nature of sentencing practices, calling for a careful balance between justice, fairness, and the need for a coherent sentencing policy. The discussion began by examining the fundamental purpose of sentencing, stressing that it should be viewed as a means to accomplish specific objectives within the criminal justice system, rather than an end in itself.

The speakers raised questions regarding the exercise of judicial discretion beyond the minimum prescribed sentences, posing the query of whether this falls under the purview of policy-making. The absence of a well-defined sentencing policy was underscored, prompting consideration of whether sentencing could be calibrated in accordance with the English system's focus on evaluating the nature of the offense rather than the character of the offender. The session delved into the complex interplay between morality and decency in administering punishments, particularly in cases involving the death penalty. The contrasting viewpoints on capital punishment were explored, with reference made to notable cases that have shaped the ongoing debate. Furthermore, the session reflected on the disparities in sentencing practices across different types of offenses and geographical regions. An illustrative example was presented, highlighting a defamation case in Gujarat where a lengthy judgment resulted in the imposition of the maximum sentence of two years. It was urged that judges should consider whether such outcomes were rational, impulsive, or proportionate in nature.

The importance of carefully sifting through evidence was emphasized to ensure an accurate understanding of the truth, particularly in cases where judges must make decisions based on unfamiliar incidents and unknown individuals. Participants were suggested to serve their role with kindness and empathy, without compromising objectivity. The session emphasized the significance of considering each person's unique perspective, ideas, philosophies, and notions of right and wrong, as these factors shape their interpretation of the law.

A reference was made to two significant cases. Firstly, the ***Henry Sweet*** *case* highlighted the challenges faced by a defendant who was tried not only for justice but for his life. The role of Clarence Darrow, a prominent criminal advocate, and his perspective on equality under the law were discussed. Secondly, the *Harshad Mehta scam* was mentioned to illustrate the limitations of the legal system. The role of

investigations in the legal process was explored, emphasizing the importance of thorough and conscientious investigation. The *Watergate scandal* was cited as an example where investigations caused harm to the legal system due to incomplete evidence and potential false confessions. It was stressed that laws and regulations alone are insufficient to achieve justice, therefore it is the responsibility of judges to handle cases with a strong moral compass, ensuring that justice is served. The session encouraged judges to be brave, strong, and extraordinary in their pursuit of justice.

The discussion further touched upon the different theories of punishment, such as retributive, deterrent, and reformative systems, as well as the concept of justice and just deserts. The changing approach of the judiciary towards sentencing was highlighted. It was emphasized that extreme penalties should be reserved for the worst cases in their category and highlighted the importance of combining deterrence and reformation in sentencing. The importance of understanding of relevant sections of the Indian Penal Code (IPC) for appropriate sentencing was emphasized upon.

During the course of discussion various landmark cases were referred including, ***In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences[1]; Manoj v. State of M.P.[2]; State of Gujrat v. Gandabhai Govindbhai and Others[3]; Tarlok Singh v. State of Punjab[4]; Sundar @ Sundarrajan v. State by Inspector of Police[5]; Bachan Singh v. State of Punjab[6]; Machi Singh and others v. State of Punjab[7].***

SESSION 2

THEME – LAW RELATING TO PROBATION: AN OVERVIEW

PANEL –JUSTICE C.V. KARTHIKEYAN & JUSTICE ASHWANI KUMAR SINGH

The session commenced by reflecting upon the origin and meaning of probation. It was underscored that probation has emerged as an effective approach to addressing offender rehabilitation, particularly for young and first-time offenders. It was pointed out that Juvenile probation programs, in particular, provide an opportunity for young individuals to correct their behavior while connected to their communities. A reference was made to the Juvenile Justice (Care and Protection of Children) Act, 2000, which further reinforces the importance of probation in providing support and supervision for children who have

[1] 2022 SCC OnLine SC 1246
[2] 2021 SCC OnLine SC 3219
[3] 1999 SCC OnLine Guj 371
[4] (1977) 3 SCC 218
[5] Review Petition (Crl.) Nos. 159-160 of 2013 in Criminal Appeal Nos. 300-301 of 2011
[6] (1980) 2 SCC 684
[7] AIR 1983 SC 957

committed offenses. It was emphasized that by offering an alternative to incarceration and focusing on rehabilitation, probation serves is a crucial tool in reintegrating offenders into society and promoting positive behavioral changes.

It was highlighted that the Probation of Offenders Act, 1958 requires obtaining a report from the probationary officer before granting probation. It was emphasized that the distinctions between Section 360 of the Cr.P.C. and the provisions of the Probation of Offenders Act, 1958 is essential for judges and judicial officers involved in the decision-making process at the trial level. While Section 360 of the Cr.P.C. emphasizes preventing young offenders from being incarcerated for the first time, the Probation of Offenders Act provides a more structured approach. It was stressed that the court must determine that it is expedient and necessary for the offender to be released on probation of good conduct, considering the offender's age, character, antecedents, and the circumstances of the offense.

During the discussion, it was highlighted that while examining a case on appeal, the court should first consider the correlation between the sentence imposed and the specific provision of law under which the accused was convicted. This correlation ensures the fairness and appropriateness of the sentencing decision. Additionally, it was advised to carefully evaluate the available evidence and link it to the sentencing process. However, it was suggested that caution should be exercised when applying Section 360 of the Cr.P.C. or the Probation of Offenders Act in cases involving sexual offenses, habitual offenders, or offenses governed by specific acts such as NDPS or POCSO Act. Participants were suggested to read relevant judgments to gain a comprehensive understanding of the applicability of Section 360 and the Probation of Offenders Act. Furthermore, it was highlighted that the concept of rehabilitation and reformation aligns with the probationary concept under the Probation of Offenders Act. This approach involves implementing conditions of probation, therapy treatments programs, and other measures aimed at facilitating the offender's successful reintegration into the society.

It was elucidated that under Section 361 of the CrPC, release on probation is permitted for offenses where the conviction does not exceed seven years and the offender is above 21 years of age. For individuals below 21 years of age or women, the provision is applicable regardless of the offense. It was mentioned that, Section 4 of the Probation of Offenders Act does not discriminate based on age or sex and extends to any person found guilty of an offense. The session further highlighted the importance of considering the nature of the offense and the individual's potential for reformation when determining probation eligibility. However, it was mentioned that the court may deny the benefit of the Provision of Offenders Act even in cases of a trivial nature if it is deemed that the person cannot be reformed.

The session also highlighted the inflexibility and lack of discretion in Section 361 of the CrPC when a previous conviction exists, limiting the court's ability to exercise discretion. On the other hand, the Provision of Offenders Act permits the court to grant probation to an individual with previous convictions without any such restrictions. Additionally, it was highlighted that Section 360 of the Cr.P.C. does not include provisions for probation officers to assist courts in matters related to supervision or other areas. It was pointed out that Section 4, clause 2 and 3, and Section 6(2) of the Provision of Offenders Act explicitly indicate that courts should consider reports from probation officers when making decisions concerning probation and supervision.

SESSION 3

THEME – COMPOUNDING OF OFFENCES

PANEL – JUSTICE ASHUTOSH KUMAR & JUSTICE ANUJA PRABHUDESSAI

The session delved into the significance of Sections 320 and 321 of the Cr.P.C. It was emphasized that Section 320 pertains to the compounding of offenses, while Section 321 deals with the withdrawal of charges by the complainant. The discussion touched upon the inclusion of abetment, attempts, and joint liability within compoundable offenses. The provisions regarding the compounding of cases involving minors, lunatics, or deceased individuals were also discussed. A notable challenge was raised concerning the absence of an amendment to Section 320 to accommodate Section 498A, which addresses matrimonial offenses. In this regard it was mentioned that courts face limitations in compounding such cases, despite the potential for resolution through mediation. The pragmatic approach adopted by several High Courts and the Supreme Court in handling these matters was acknowledged.

It was emphasized that in past, compounding an offence was considered an offence itself. However, the understanding of compounding evolved, and the focus shifted towards allowing compounding in appropriate cases for the sake of justice and to avoid unnecessary state intervention in private matters. A reference was made to the case of ***Rajendra Singh v. Delhi Administration***[8], wherein the Supreme Court permitted the compounding of an offense under Section 325 while considering the associated offense under Section 452 as non-compoundable. It was highlighted that the court took a pragmatic view and reduced the sentence for the non-compoundable offense based on the period already undergone by the accused.

[8] 1980 Supp (1) SCC 337

The session highlighted the need for a balanced approach, considering the interest of justice, discretion of the public prosecutor, and the court's responsibility to ensure fairness and prevent injustice. Regarding the withdrawal of prosecution, the discussion focused on Section 321 of the Cr.P.C., which requires the consent of the court when a public prosecutor or assistant public prosecutor seeks withdrawal from a case. The distinction between withdrawal of a case and withdrawal from prosecution was emphasized. The session dwelt upon the intent behind Section 321 is to grant the executive the power to withdraw prosecution for reasons such as expediency, broader public interest, peace and harmony, law and order, and changing social circumstances. It was accentuated that the court has a responsibility to examine and decide upon the request for withdrawal, ensuring that justice is not compromised.

A reference was made to the case *of* ***Pravat Chandra Mohanty v. State of Odisha***[9], wherein the Apex court stated that the grant of leave as contemplated by sub-section (5) of Section 320 is not automatic nor it has to be mechanical on receipt of request by the appellant which may be agreed by the victim. The statutory requirement, makes it a clear duty of the Court to look into the nature of the offence and the evidence and to satisfy itself whether permission should be or should not be granted. The administration of criminal justice requires prosecution of all offenders by the State. During the course of discussion various landmark case, pertaining to the guidelines and principles governing the withdrawal of criminal prosecution were highlighted. The case of ***M/s Meters and Instrument Private Limited v. Kanchan Mehta***[10] *and* ***State of Kerala v. K. Ajith***[11] were further deliberated upon.

[9] 2021 SCC OnLine SC 81
[10] (2017) 7 SCC 668
[11] AIR 2021 SC 3954

DAY II

SESSION 4

THEME – PLEA BARGAINING: CHALLENGES IN IMPLEMENTATION

PANEL – JUSTICE G.R. SWAMINATHAN & DR. JUSTICE G. JAYACHANDRAN

The evolution and development of the concept of plea bargaining was traced to the 19th century with specific reference to the doctrine of *nolo contendere.* It was stated that the modern concept of plea bargaining emerged in the 19th century, having its trace in American Judiciary. The discussion elucidated upon the various judgments such as ***Madanlal Ram Chandra Daga & Others v. State of Maharashtra***[12] and ***Muralidhar Meghraj Loya v. State of Maharashtra***[13] wherein the Supreme Court did not appreciate the concept of entering into such bargains in criminal cases by subtly subverting the mandate of the law. In ***Kaachhia Patel Shantilal Koderlal v. State of Gujarat & Another***[14]*,* ***Kasambhai Ardul Rehmanbhai v. State of Gujarat & Another***[15] and ***Ganeshmal Jashraj v. Govt. of Gujarat***[16], the Supreme Court held that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice. Similarly, in ***State of Uttar Pradesh v. Chandrika***[17], the Apex Court had held that it is a settled law that on the basis of plea bargaining the court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. It was further held that neither a mere acceptance or admission of the guilt should be a ground for reduction of sentence nor can the accused bargain with the court that as he is pleading guilty, sentence should be reduced.

However, it was stressed that highlighting the glaring inefficiency of the Indian Criminal Justice system, with a multitude of backlogs, excessively long trial life spans and low rate of conviction, the Law Commission of India, in its 142nd Report in 1991 implicitly underlined the need for Plea Bargaining. In its 154th Report in 1996, it called for having a remedial measure for the timely disposal of trials for the better of under-trial prisoners. Thereafter, in 2001 in its 177th Report, the need for the concept of Plea Bargaining was reiterated. Justice Malimath Committee set up in the year 2003 to suggest improvements to India's

[12] AIR 1968 SC 1267
[13] (1976) 3 SCC 684
[14] (1980) 3 SCC 120
[15] AIR 1980 SC 854
[16] AIR 1980 SC 264
[17] AIR 2000 SC 164

criminal justice system recommended the implementation of the plea bargaining concept for speedy disposal of cases and reduced burden on courts.

The discussion further highlighted that voluntariness, informed choice and mutuality are main features of the process of plea bargaining while deliberating upon the scheme of Section 265A to 265L under Chapter XXI A of the Cr.P.C. It was clarified that Court has been enjoined upon to ensure the voluntary character of the process of plea-bargaining under sub-section (4) of Section 265 B of the Cr.P.C. The Court is under a legal duty to examine the accused in camera to satisfy itself that the application was filed by the accused voluntarily. The Court must inform the accused the implications of plea of guilt and possible sentence in the case. The accused must be put to notice that in case, his plea- bargain is accepted, he would be convicted for the offences and sentenced accordingly. When the Court is satisfied that the accused understood the nature and extent of punishment provided under the law for the offence and the application was filed voluntarily, then the Court should call the parties to work out a mutually satisfactory disposition. If, no such disposition could be worked out, the Court shall record such observation and the case will proceed from the stage such application was filed.

The various types of plea bargaining were discussed, such as: (i) Charge bargaining involves a negotiation of the specific charges or crimes that the defendants will face at trial. That is to say, in return for a plea of 'guilty' to a lesser charge, a prosecutor will dismiss the higher or other charges counts; (ii) Sentence bargaining involves the agreement to a plea of guilty for the stated charge in return for a lighter sentence than prescribed for the offence; (iii) Counts bargaining involves the defendant pleading guilty to a subset of multiple original charges; and (iv) Facts bargain involves an admission to certain facts, thereby eliminating the need for the prosecutor to have to prove them, in return for an agreement not to introduce certain other facts into evidence. Further, the advantages and disadvantages of implementing plea bargaining as part of the criminal justice system were pointed.

The suggestions for effectuating the provisions relating to plea bargaining vide ***In Re: Policy Strategy for Grant of Bail***[18] was delineated. It was observed that in cases where the under trial is in judicial custody, the trial court may explain to the accused and the learned counsel appearing for the accused to explore the possibility of plea bargaining. In order to make the plea bargaining more effective, to reduce the delays in criminal justice system and growing pendency of criminal cases, it was stressed that the causes due to which plea bargaining has not been successful so far must be appreciated. The Criminal Justice System has to be more efficient, reliable and predictable with higher rates of convictions, to allow an accused to make an informed choice for plea bargaining.

[18] 2022 SCC OnLine SC 1487

SESSION 5

THEME – VICTIM COMPENSATION: JUDICIAL APPROACH TOWARDS COMPENSATORY JURISPRUDENCE

PANEL – DR. JUSTICE G. JAYACHANDRAN & JUSTICE G.R. SWAMINATHAN

The session with the assertion that in order to render justice in true sense to a victim of crime it is of utmost importance that to provide some relief in the form of compensation. While quoting Justice Krishna Iyer from ***Maru Ram & Others v. Union of India***[19] it was iterated that *"victimology must find fulfillment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn"*. It was remarked that a long line of judicial pronouncements of the Supreme Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crime who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid-1960s and gained momentum in the decades that followed.

In this regard, specific reference was made to Section 545(1)(b) of the Cr.P.C. The scheme of Section 357, Cr.P.C was explained in detail. It was heighted that under the new scheme, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The United Nations Declaration of Basic Principles of Justice for Victims for Crimes & Abuse of Power, 1985 was referred with emphasizing that the victim's perspective emerged in a new and powerful way after the declaration which recognized four major needs of crime victims to be access to justice & fair treatment, restitution, compensation and assistance.

It was further iterated that expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution. Therefore, Section-357A was inserted by the CrPC (Amendment) Act, 2008 on the recommendation of the Malimath Committee Report on 'Reforms of Criminal Justice System, 2008'. In this context, Section 357 A, 357 B and 357 C under Chapter XXVII of the Cr.P.C. was discussed at length.

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[19] AIR 1980 SC 2147

In ***Hari Krishan & State of Haryana v. Sikhbir Singh***[20] referring to provisions for compensation, the Hon'ble Supreme Court observed *"...This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way."* In ***Manish Jalan v. State of Karnataka***[21] the Supreme Court observed that the quantum of compensation is to be determined by taking into account the nature of crime, injury suffered and the capacity of convict to pay compensation. Nevertheless, the amount of compensation should be reasonable. Further, it was pointed that the Supreme Court directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims, vide judgments ***Kewal Pati v. State of U.P.***[22]***; Supreme Court Legal Aid Committee v. State of Bihar***[23]***; Chairman, Rly. Board v. Chandrima Das***[24]***; Nilabati Behera v. State of Orissa***[25]***; Khatri (I) v. State of Bihar***[26]***; Union Carbide Corporation v. Union of India***[27]***; Nipun Saxena v. Union of India***[28]**.** The recent decision in ***Karan v. State NCT of Delhi***[29] was referred wherein the the Delhi High Court has devised a formula of Victim Impact Report to determine the quantum of compensation to the victim in conjunction with the paying capacity of the accused. The Victim Impact Report is to be filed by the Delhi State Legal Services Authority (DSLSA) in every criminal case after conducting a summary inquiry.

It was further emphasized that the Supreme Court or the High Courts are entitled to render compensatory justice by awarding reasonable monetary compensation under Article 32 or 226 of the Constitution of India, for any mental, physical, fiscal injury suffered by the individual for violation of fundamental rights guaranteed under the Constitution. But, however, it must be conclusively established that the State failed to take any positive action in protecting the fundamental rights of the citizens. It was clarified that it is not necessary that the victim should approach the Civil Court by invoking common law remedy for claiming damages for violation of the fundamental rights. The option is left to the victim to claim the damages by invoking either the constitutional remedy or civil remedy. Since the constitutional remedy is a public law

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[20] AIR 1998 SC 2127
[21] (2008) 8 SCC 225
[22] (1995) 3 SCC 600
[23] (1991) 3 SCC 482
[24] (2000) 2 SCC 465
[25] (1993) 2 SCC 746
[26] (1981) 1 SCC 623
[27] (1989) 1 SCC 674
[28] (2019) 2 SCC 703
[29] 2020 SCC OnLine Del 775

remedy, the actual victim need not approach the Court. The relief can also be awarded either by exercise of suo motu power or in a public interest litigation case.
